

Complaint handling: Outsourcing

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Government functions are often delivered to the public by private sector and not-for-profit community organisations. Efficiency and flexibility are two reasons why government chooses this method of service delivery.

There can be advantages, but there can be a downside if adequate controls are not in place to ensure review and accountability of decisions made and actions taken by the service provider. Members of the public have a right to complain about government decisions and actions. They should not lose that right when a government function is provided by some other body. Responsibility for providing a government service can be transferred: accountability cannot.

This fact sheet outlines the steps that government agencies and the organisations that provide services on their behalf must take to ensure that proper complaint handling arrangements are in place. This obligation applies to organisations that provide services to the public on the government's behalf. An organisation that receives government funding for other purposes might not need a complaint handling system, particularly if the organisation is small or does not deal with the public.

The agency's responsibility

A government agency retains ultimate responsibility for the way that a function is discharged on its behalf. This imposes four obligations on the agency in terms of complaint handling.

The agreement

The contract or funding agreement with the non-government organisation that is to provide the service should deal with the issue of complaints. The matters that should be addressed are set out in the next section. The agency may also wish to develop complaint handling guidelines, particularly where more than one service provider is involved in delivering a government function.

Monitoring

The agency should monitor the service provider's handling of complaints. This should be seen as an essential part of effective management of the contract or funding agreement. The agency must receive regular reports from the service provider on complaint numbers and issues. Periodic auditing is another way the agency can ensure that complaint handling is undertaken properly, and agency staff may need training in monitoring and quality assurance processes. More generally, the agency should monitor complaint information from all sources to identify problems and trends. The agency should be prepared to work with service providers to help them meet their obligations, but should also be prepared to view a failure to comply with complaint handling requirements as a serious matter. In particular, the agency should note any tendency of service providers not to register or report complaints because of concerns that complaints may reflect adversely on their performance. Where no complaints have been recorded over a long period, the agency should follow that matter up. Agencies should also encourage service providers to view complaints as a valuable source of information that they can use in refining their services and working more effectively with the agency to carry out the government function.

Complaints to the agency

A principle of good administration is that agencies must receive and deal with complaints about their functions and responsibilities. This means that a person can complain directly to an agency about an organisation that delivers services on the agency's behalf. It is a breach of the agency's responsibility to transfer all complaints about the function to the service provider without keeping an eye on how those complaints are resolved. Depending upon the volume of complaints, the agency may need to establish a process for receiving and investigating complaints about service providers.

Reporting

Information about the number and type of complaints about service providers and the outcomes of those complaints should be included in the agency's public reports, such as its annual report.

The arrangements between an agency and a service provider can vary to take account of special circumstances. For example, where the agency and service providers share an information technology system, the agency should consider adding the complaints register to that system to ensure consistency in recordkeeping and agency access to complaints information. Alternatively the agency and the service provider might establish a joint facility for receiving complaints.

What should be in a contract or funding agreement?

Contracts and funding agreements are both used to facilitate the delivery of government functions by other bodies. The contract or agreement should address the following minimum complaint handling requirements, either within the agreement itself or in a code of conduct or standards given force by the agreement.

Complaint process: The service provider should be required to have a transparent and accessible complaint process that complies as far as practicable with the Australian Standard AS ISO 10002:2006, *Customer Satisfaction—guidelines for complaints handling in organizations*. The Commonwealth Ombudsman's *Better Practice Guide to Complaint Handling* also spells out essential principles for effective complaint handling.

Complaint policy: The service provider should detail its complaint handling process in a written policy that is given to the agency for approval or comment. The policy must reflect the service provider's obligation to ensure that no detriment to a client arises from making a complaint.

Complaint register: The service provider must keep a complaint register that can be accessed by the agency. The information required to be entered in the register should be specified in the contract or agreement. This information is especially important to effective agency oversight and accountability where a network of non-government organisations delivers the service regionally or nationally.

Complaints to the agency: The contract or agreement should acknowledge the public's right to complain directly to the agency about the service provider, and explain how the agency will deal with those complaints: for example, who will be responsible and whether the agency will require access to the service provider's staff or documents. The service provider should be required to advise clients that information it has collected in its dealings with them may need to be provided to the agency.

Review rights: The service provider must inform clients of their other complaint and review rights. Specifically, the Commonwealth Ombudsman has jurisdiction under the *Ombudsman Act 1976* to investigate complaints about services provided to the public under a contract with a government agency. There may be a right to appeal to a tribunal, such as the Social Security Appeals Tribunal or Administrative Appeals Tribunal, against an agency decision arising from the service provider's actions or recommendations. Clients also have the right to complain directly to the government agency, as noted above.

Agency review of complaint handling: The contract or agreement should stipulate when reports are to be given to the agency on complaint numbers and issues, the consultation to occur after a report is received, and how complaint handling will be considered in the agency's evaluation of the service provider's performance.

Referral of complaints: The service provider should notify the agency of some complaints or complaint issues individually rather than in a periodic report, and the contract or agreement should stipulate when this is to occur. For example, the agency may need early notification of a complaint that points to a flaw in the agency program, or an allegation that exposes the agency to legal risk.

Specialist complaint issues: Complaints received by the service provider could require specialist consideration, for example, by a medical practitioner. The contract or agreement should spell out the circumstances in which the service provider must obtain expert assistance.

Complaint handling by subcontractors: If subcontracting is contemplated, the service provider should be required to ensure that the subcontractor also has an adequate complaint process and reports regularly to the head contractor.

The service provider's responsibility

As well as ensuring that it complies with its obligations under the contract or agreement, a service provider should ensure that it receives and manages complaints in a positive, timely, accessible and fair way. Key principles, outlined below, are addressed in more detail in the *Better Practice Guide to Complaint Handling*.

The complaint process: The service provider should give information about its complaint process in its correspondence, on its website and in posters or brochures made available to the public. There should be no cost to a person who makes a complaint. Unnecessary formalities should be excluded (such as requiring complaints to be made on a specific form or in writing). While complainants should generally be expected to identify themselves, there may be cases where this is inappropriate. The complaint process should ensure that no adverse finding is reached or adverse action taken against a complainant without giving them a reasonable opportunity to comment. Unless a complaint can be resolved quickly or by telephone or in person, a complainant should be given a written acknowledgement which specifies who will be responding to the complaint and the expected timeframe.

Staff training: Staff of the service provider should be made aware of what constitutes a complaint, how the complaint handling process works and their obligations in dealing with complaints. Staff should understand that the organisation's role in providing services to the public on behalf of government can impose special requirements on them and their organisation. Ideally, some staff should receive specific training in complaint handling, particularly if complaints are numerous or raise significant issues.

Recordkeeping: Proper records must be kept, including details of the complaint, the investigation process, the outcome and relevant documents.

Reporting: The service provider should give as much complaint information as possible to the agency about individual complaints, complaint issues and overall trends. In consultation with the agency, the service provider should periodically review the complaint process, including by a quality assurance process and (less regularly) a formal complainant survey.

FURTHER INFORMATION

The Ombudsman has published various guidelines and reports on complaint handling, including by outsourced service providers (marked with an *):

- *A Good Practice Guide for Effective Complaint Handling*, 1997
- *Own motion investigation into Australian Taxation Office complaint handling*, Report No 2/2003
- *Own motion investigation into complaint handling in the Job Network*, Report No 2/2003*
- *Complaint handling in Australian airports*, Report No 3/2007
- *Migration Agents Registration Authority: Complaint-handling process*, Report No 5/2007*
- *Better Practice Guide to Complaint Handling*, 2009.

Other reports that discuss accountability for outsourced government functions include:

- Administrative Review Council, *Administrative Review and Funding Programs*, Report No 37, 1995; *Contracting Out of Government Services*, Report No 42, 1998
- Industry Commission, *Competitive Tendering and Contracting by Government Public Sector Agencies*, Report No 48, 1996
- Joint Committee of Public Accounts and Audit, *Contract Management in the Australian Public Service*, Report No 379, 2000

More information?

If you would like copies of other Commonwealth Ombudsman fact sheets, more information about the work of the Ombudsman's office, or a more detailed briefing for agency staff, please contact the Director Public Affairs.

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