

Parliamentary Complaint Handling Procedures

1. Overview and glossary

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OVERVIEW	3
1.1 SCOPE	3
1.2 HOW TO USE THIS RESOURCE	3
1.3 ASSUMED RESOLVE KNOWLEDGE	4
1.4 GLOSSARY	5
1.5 ACRONYMS	8

Overview

The *Commonwealth Ombudsman's Parliamentary Complaint Handling Procedures* (the Procedures) outline how complaints about Commonwealth or ACT government agencies (parliamentary complaints) should be handled by the Commonwealth Ombudsman's Office (the Office). They support staff to confidently perform their duties in a consistent and efficient manner.

The Procedures cover all aspects of the Office's management of parliamentary complaints including how and when to communicate with complainants, how to receive, assess and respond to complaints, the powers of the Office and which procedures apply to specific parts of the complaint handling process.

1.1 Scope

The Procedures apply to how the Office handles complaints about the administrative actions of Commonwealth and ACT government agencies, and how we respond to matters outside of our jurisdiction. This incorporates complaints made to the Office under the Commonwealth Ombudsman, ACT Ombudsman and Defence Force Ombudsman jurisdictions, and in its role overseeing external territories and receiving complaints about how other agencies have handled Public Interest Disclosures¹. For the purposes of the Procedures, these matters are referred to as parliamentary complaints.

The Procedures **do not** apply to how the Office handles complaints or contacts about:

- public and private sector organisations under our Overseas Students, Postal Industry, Private Health Insurance or VET Student Loans Ombudsman jurisdiction
- Freedom of Information (FOI), including ACT Freedom of Information applications and administrative information release requests
- serious abuse in the Australian Defence Force under our Defence Force Ombudsman jurisdiction
- the ACT Integrity Commission or the ACT Reportable Conduct Scheme, or
- how our staff have handled any of the above.

1.2 How to use this resource

The Procedures address discreet aspects of the complaint handling process, acknowledging the different pathways a complaint may follow. Individual Procedures do not explain the entirety of the parliamentary complaint handling process.

The complete Commonwealth Ombudsman Parliamentary Complaint Handling Procedures:

Procedure 1 – Overview and glossary

Procedure 2 – Complainant contact and service

Procedure 3 – Working with agencies

Procedure 4 – Jurisdiction

Procedure 5 – Receiving and registration

Procedure 6 – Allocating a complaint

Procedure 7 – Assessing complaints and determining a course of action

Procedure 8 – Actioning your decision: not investigating and transferring complaints

¹ Internal PID procedures may differ in some respects and should be consulted in the first instance.

Procedure 9 – Actioning your decision: preliminary inquiries

Procedure 10 – Actioning your decision: conducting investigations

Procedure 11 – Complex investigations and coercive powers

Procedure 12 – Finalising complaints

Procedure 13 – Formal reports

Procedure 14 – Internal reviews

Procedure 15 – Quality assurance

Certain Procedures will apply to all complaints (e.g. Procedure 2 – Complainant contact and service, Procedure 4 – Jurisdiction, and Procedure 7 - Assessing complaints and determining a course of action), regardless of the nature or complexity of a complaint or how it is handled.

Other Procedures reflect how and why to do aspects of the complaint handling process and therefore will only apply to complaints where that aspect of the process applies (e.g. Procedure 10 – Conducting investigations or Procedure 14 – Internal reviews). At the completion of each step, staff are expected to move to the next identified step until the complaint is closed.

Each Procedure works as a standalone information resource and forms a key role in the induction, training and professional development of staff.

1.3 Using Resolve

The Procedures assume that staff are trained in and understand Resolve, the Office’s case management system. While processes, case management steps and recordkeeping are explained in the Procedures, basic Resolve functionality is not.

The [Resolve User Guide](#) (also accessible by pressing F1 while using Resolve) clearly explains how to access and use Resolve including:

- understanding the layout
- creating Person records and Approaches
- understanding and using Resolve’s search capabilities
- using issue strings and closing cases
- creating and searching Issues of Interest
- explanations of Resolve workflows.

If you are unclear how to use an aspect of Resolve that is referred to in the Procedures, you should refer to the Resolve User Guide in the first instance. While we have aimed to remove any inconsistencies between the User Guide and these procedures, if at any point the User Guide conflicts with the Procedures, the Procedures take precedence. Please advise your Director if you identify any inconsistencies between the User Guide and these Procedures.

1.4 Glossary

This section provides definitions for many of the terms used in the Procedures, and explains concepts relevant to complaint handling within the Office.

Some terms in the Procedures are also defined in the [Office's Style Guide](#).

ACT Strategy

The ACT Strategy team manages the Office's strategic direction, liaison and engagement for complaints received under the *Ombudsman Act 1989* (ACT). The team is a subject matter specialist for ACT complaint relationship arrangements and issues of interest.

Agency

In this document, an agency includes a Commonwealth or ACT government department, agency or office.

Australian Government Agency Index

A searchable online list of Australian Government agencies. To locate the index on the Commonwealth Ombudsman intranet follow the path *Home > Your everyday needs > Agency information > [Australian Government Agency Index](#)*.

ADJR Act

The [Administrative Decisions \(Judicial Review\) Act 1977 \(Cth\)](#) allows people to apply to the Federal Court of Australia or the Federal Circuit Court of Australia to seek a review of certain decisions, failures to make decisions, and decision making conduct by Australian Government agencies.

Categories

Resolve functionality, used to define the stage a contact is at in the complaint handling process. (Note: how we use categories is currently under review)

Coercive powers

Provisions in the *Ombudsman Act 1976* (Cth) and *Ombudsman Act 1989* (ACT) by which the Ombudsman can require an agency or person to provide the Office with information. Refer to Procedure 11.

Complainant

A complainant is any person who contacts the Office to complain about an agency, including a representative authorised to complain on behalf of (OBO) someone else (the affected person).

Contact

Any external contact to our Office. Each complaint is a contact, although not all contacts are complaints (for example, FOI requests, media enquiries, service delivery complaints about our Office, or matters relevant to our specific programs, such as Defence abuse reports or PIDs).

Note: 'contacts' are known as 'approaches' in Resolve.

Industry Branch

A branch of the Office responsible for the Private Health Insurance Ombudsman (PHIO), Postal Industry Ombudsman (PIO), Vocational Education Training Student Loans Ombudsman (VSLO) and Overseas Students Ombudsman (OSO).

Issue of Interest (IOI)

Issues of interest (IOI) is a function in Resolve used by our Office to describe, track and monitor systemic issues, decisions or other actions and information. IOIs can be used to inform future actions and direction, such as deciding to write an issues paper, deciding to deal with a particular issue in a certain way or conduct own motion investigations.

Legal Team

The team responsible for providing legal and FOI advice to Office staff.

Ombudsman Act (ACT)

The legislation establishing the functions, powers and duties of the ACT Ombudsman.

Ombudsman Act (Cth)

The legislation establishing the functions, powers and duties of the Commonwealth Ombudsman.

Out of jurisdiction

A matter the Office has no legal power to investigate.

Parliamentary complaint

Complaints to the Office about Commonwealth or ACT government agencies.

Preliminary inquiry

A short inquiry to an agency for the purpose of establishing jurisdiction or determining whether or not to exercise a discretion to not investigate a complaint.

Preliminary view

An internal Office process whereby issues identified during investigation are explained to the relevant agency and the opportunity to comment provided, before our Office reaches a final view.

Procedures

The Office's Parliamentary Complaint Handling Procedures.

The Quality assurance framework

An approved framework for how the Office conducts post-decision quality checking on closed parliamentary complaints.

Quality checking

Peer or supervisor review of work, whether internal (e.g. of Resolve actions) or external (e.g. review of outgoing correspondence). Quality checking can occur before a decision is made or action is taken, or afterwards. Whether and when quality checking is required is generally agreed between a staff member, and their supervisor and/or Director.

Sensitivity

An attribute of a complaint which may relate to this circumstances of the complainant or the content of the complaint.

Senior Leadership Group (SLG)

A committee, comprising the Ombudsman, Deputy Ombudsman, Chief Operating Officer and all Senior Assistant Ombudsman, which oversees the overall performance and delivery of the Office.

Strategic Policy Board (SPB)

A committee, comprising the Ombudsman, Deputy Ombudsman, Chief Operating Officer and all Senior Assistant Ombudsman, which determines and monitors the strategic priorities of the Office.

Standard Words document

A document used by the CME Branch to enhance consistency and clarity in written correspondence.

Strategy Branch

The Strategy Branch manages many of the relationships with Commonwealth government agencies, including investigating and reporting on systemic issues, managing and establishing relationship protocols and liaising with peak bodies or other stakeholders.

Strategy Team

A strategy team contributes to the goals of the Strategy Branch. Strategic teams generally have a portfolio of agencies or jurisdictions which they manage. CME Branch staff should approach the Strategy Team which manages the relevant agency they have an issue or query about.

Systemic issue

A systemic issue is likely to affect a class of persons beyond any person who lodged a complaint or raised a concern. Several complaints of the same type or a single complaint may raise a systemic issue, provided that the effect of the issue may clearly extend beyond a single complainant.

Resolve

The case management software used to support our complaint handling function.

Procedure

A section or chapter of the Parliamentary Complaint Handling Procedures. Each Procedure covers a different aspect of the parliamentary complaint handling process.

Transfer

Action by the Office to enable a complaint made to us to be actioned by another agency in accordance with its usual processes. Transfers may be authorised or required by legislation or occur by administrative agreement between the Office and the relevant agency.

These can be contrasted with when we 'refer' a complainant to another agency, which involves us advising the complainant where and how to make a complaint to that agency, but we take no further action.

Vulnerability

An attribute of a complainant which may require particular considerations on our part to ensure equal access to our services. See Procedure 7.

X-refs, cross references

A case which has been linked through Resolve with another case. Cross references normally occur between cases from the same person or a relative.

1.5 Acronyms

AAT	Administrative Appeals Tribunal
APS	Australian Public Service
ATO	Australian Taxation Office
CALD	Culturally and linguistically diverse
CDDA	Compensation for Detriment caused by Defective Administration
CMEB	Complaints Management and Education Branch (or CME Branch)
EL	Executive Level
FOI	Freedom of Information
IO	Investigation Officer
IOI	Issues of Interest
KPIs	Key Performance Indicators
MP	Member of Parliament
N/A	Not applicable
OBO	on behalf of (someone else)
OCO	Office of the Commonwealth Ombudsman
OOJ	Out of jurisdiction
OSO	Overseas Students Ombudsman
PHIO	Private Health Insurance Ombudsman
PID	Public Interest Disclosure
PIO	Postal Industry Ombudsman
QA	Quality Assurance
QAF	Quality Assurance Framework
QC	Quality Checking
SAO	Senior Assistant Ombudsman
SMS	subject matter specialist
SLG	Senior Leadership Group
SPB	Strategic Policy Board
TIS	Translating and Interpreting Services
VSLO	VET Student Loans Ombudsman

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Parliamentary Complaint Handling Procedures

2. Complainant contact and service

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OVERVIEW	3
2.1 SERVICE EXPECTATIONS	3
2.1.1 Service charter	3
2.1.2 Timeliness expectations	3
2.2 ON BEHALF OF COMPLAINTS	5
2.2.1 When to obtain OBO	5
2.2.2 How to obtain the OBO authority	5
2.2.3 What can we do if no OBO authority has been provided	6
2.2.4 Checklist for OBO complaints	6
2.2.5 Anonymous complainants	7
2.3 ACCESSIBILITY	7
2.3.1 Complainants with a disability	7
2.3.2 Cultural and linguistic diversity	8
2.3.3 Indigenous complainants	9
2.4 COMPLAINANT CONTACT - GENERAL	9
2.4.1 Communicating with complainants – core principles	9
2.4.2 How you should contact complainants	10
2.4.3 Record keeping contact with complainants	11
2.4.4 How often should you contact complainants?	12
2.4.5 Unsuccessful contact attempts	13
2.4.6 Lapsing complaints	13
2.4.7 Advising of staff leave	13
2.4.8 Contacting detainees and inmates	14
2.5 COMMUNICATION METHODS – WRITTEN COMMUNICATION	15
2.5.1 Language and style expectations	15
2.5.2 Recording written communication	15
2.5.3 Who signs written correspondence?	16
2.5.4 Email signature blocks	17
2.6 COMMUNICATION METHODS - TELEPHONE AND FACE-TO-FACE CONTACT	17
2.6.1 Calling complainants	17
2.6.2 Receiving complainant calls	17
2.6.3 Leaving telephone messages	18
2.6.4 Being recorded	18
2.6.5 Complainant requests face to face meeting	18
2.7 UNREASONABLE COMPLAINANT CONDUCT	19
2.8 ALERTS	19
2.9 SERVICE DELIVERY COMPLAINTS	21
2.9.1 Call escalations	21
2.9.2 Resolving service delivery complaints	21
2.9.3 Processing service delivery complaints	21

Overview

Our Office is committed to providing better practice service to the people who make complaints to us. Better practice service means communication which is:

- respectful
- accessible
- timely
- clear.

Better practice service requires us to follow our Procedures when dealing with complainants, including people who are acting unreasonably or displaying inappropriate behaviours. It is also important we demonstrate our commitment to good complainant service if we are to criticise agencies about how they deliver services to members of the public.

This Procedure explains:

- the service and timeliness expectations for handling parliamentary complaints
- who is a complainant
- accessibility expectations
- communication expectations
- service delivery complaints and how to respond to them.

Purpose	To explain the expectations for complainant service in parliamentary complaint handling and outline complainant related processes and business rules
Workflow	Applicable at all complaint handling stages
Scope	All general rules set out in this Procedure are subject to more specific directions set out in our Office’s approved policies

2.1 Service expectations

2.1.1 Service charter

The [service charter](#) sets out the Office’s service commitments to complainants, as well as a complainant’s responsibilities when making a complaint.

All staff are expected to familiarise themselves with the service charter.

2.1.2 Timeliness expectations

Our Office has internal and external KPIs to guide timely resolution of complaints.

The external KPIs are based on confidence intervals and apply to all Parliamentary complaints (Commonwealth and ACT). Industry complaints, out of jurisdiction complaints, enquiries, and our other programs (e.g. Defence abuse reports) each have their own confidence intervals.

Table 2.1: KPIs applicable to Parliamentary complaints

Percentage of complaints	Timeline
70% of complaints finalised	Within 7 days of receipt*
90% of complaints finalised	Within 30 days of receipt
95% of complaints finalised	Within 90 days of receipt
99% of complaints finalised	Within 12 months of receipt

Table 2.2 is for internal tracking purposes only and should not be disclosed to complainants. We have not set these as formal KPIs to be reported on publicly.

Table 2.2: Internal Key Performance Indicators for parliamentary complaints

Key function	KPI
Timely intake service	95% of complaints have had initial contact made within 7 days*
Timely early resolution service	90% of matters referred for early resolution are resolved within 30 days
Timely transfers	85% of transfers to an agency where further information was not required from the agency occur within 14 days**
Timely investigations	70% of investigations are finalised within 90 days
Timely reviews	90% of review requests are determined within 14 days**

*We seek to meet these deadlines within 5 working days, but to enable reporting, the official KPI is 7 days.

**As above, we seek to meet these deadlines within 10 working days, with the official KPI 14 days.

Using confidence intervals reflects the expected time for a standard case, but recognises that some cases take additional time to perform a key function or resolve a complaint.

This might be due to a number of factors, including but not limited to:

- the complexity or sensitivity of the complaint, e.g.:
 - the need to seek internal advice on aspects of the complaint
 - the complaint forming part of our Office's work to address systemic issues (e.g. own motion investigations, issues papers and reports)
 - the volume or complexity of information required to be considered.
- external factors, e.g.:
 - difficulties contacting the complainant
 - delay by an agency in responding to our Office's contacts or requests
 - difficulty in accessing an interpreter.
- the complainant requires additional time or assistance engaging with our Office, e.g.:
 - the complainant requires accessibility accommodations, e.g. due to literacy, age, disability, or cultural or linguistically diversity
 - the complainant requires contact by post

2.2 On behalf of complaints

A complainant is any person who contacts the Office to complain about an agency, including a representative authorised to complain on behalf of (OBO) someone else (the affected person).

Generally where a complaint has been made by a representative OBO, our Office requires consent from the affected person that they authorise the representative to speak to us on their behalf. This includes providing and receiving information about them and making decisions about the complaint in their name. Consent lasts the duration of a complaint, unless withdrawn, and will usually be obtained during complaint registration. If consent has not already been obtained, you should obtain it as soon as practicable.

If a new complaint has been received, another OBO consent will be required.

2.2.1 When to obtain OBO

As a general rule, you do not need to obtain consent where:

- A parent is complaining OBO their child and the child is under 18 years old¹
- The representative complaining OBO can show:
 - they have a legally formalised authority to act on behalf of the affected person (e.g. through power of attorney, guardianship order or executorship)
 - they are acting on behalf of the affected person in a professional capacity which extends to a complaint to this Office (e.g. as the affected person's solicitor, tax or migration agent).

2.2.2 How to obtain the OBO authority

Staff are expected to exercise a reasonable degree of judgement in deciding whether the evidence provided is satisfactory for the circumstances. Obtaining sufficient information is important to ensure the Office complies with its legislative privacy obligations.

Authority can be provided in writing using [our Office's consent form](#) or on a unique document.

A valid authority **must** include:

- the affected persons full name
- their authorised representative's full name
- a statement, which should be signed by the person, that the representative can act on their behalf, including providing and receiving their personal information.

A photo of a document (if clear) is a satisfactory way for a person to provide authority.

While it is preferable to obtain OBO authority in writing, you can do so by telephone. Be mindful of any power imbalances where the affected person may feel pressured to give their consent to an authorised representative. The issues of the complaint may be relevant in an OBO assessment.

Agency nominee or representative forms are not sufficient evidence of OBO authority for this Office as they only cover consent for the agency concerned.

¹ Note: if there is a reason to believe that the child may not consent (e.g. private medical issues for a child aged 16), please discuss with your Director to determine whether additional OBO authority should be obtained.

2.2.3 What can we do if no OBO authority has been provided

If the complaint does not fall into one of the above categories and you are unable to obtain consent, in accordance with our [Privacy Policy](#) the Office will be limited in the actions it is able to take on the complaint.

Table 2.3 outlines the actions you can and cannot take if there is no consent.

Table 2.3: Actions staff can take without OBO consent

Actions our Office cannot take	Actions our Office can take
Transfer the complaint and request the agency contact the complainant or the person making the OBO complaint	Some legislative transfers do not require consent for transfer. See Procedure 8 for more information.
Discuss the information obtained through preliminary inquiries with the person making the OBO complaint	Make preliminary inquiries
Discuss the information obtained through the investigation with the person making the OBO complaint	Commence an investigation
Discuss your conclusions about the reasonableness of any specific actions or decisions made by the agency	Advise the person making the OBO complaint of decisions about how to progress the complaint or that you have decided to close the complaint

If it is unclear whether consent is required or whether satisfactory consent has been obtained for a particular person or to take a particular action on a complaint you should consult with your supervisor.

2.2.4 Process for OBO complaints

1	Consider whether consent needs to be obtained	Read the information provide in the complaint. Identify if there is an OBO arrangement without consent. Consider whether there are circumstances where the offer of an OBO arrangement could be beneficial.
2	If necessary, obtain consent	See Procedure 5 – Receiving and registration for guidance on how to obtain and record consent
3	Confirm contact arrangements	Determine the preferred contact arrangements between yourself, the authorised representative making the complaint and (if appropriate) the affected person.
4	Record the OBO arrangement	OBO arrangements are recorded clearly on the approach entry screen. See Procedure 5 – Receiving and registration for guidance on how to record OBO arrangements

2.2.5 Anonymous complainants

A complainant may wish to remain anonymous to the agency they are complaining about, or anonymous to the agency *and* our Office. If the complainant is only anonymous to the agency, this **must** be explicit on Resolve through the use of an alert and clear advice at the top of the Resolve summary screen.

We must consider anonymous approaches. However, it is often difficult to investigate and take action on complaints where we have limited information about the complainant or we are limited in the information we can provide to the agency.

To ensure our Office complies with s 12 of the *Ombudsman Act* (Cth) and s 15 of the *Ombudsman Act* (ACT), it may be necessary to make arrangements with the complainant about how to inform them about the outcome of the complaint.

2.3 Accessibility

It is important all members of the public have easy access to our Office's complaint handling system.

Accessibility requires us to work to increase awareness of the Commonwealth Ombudsman so people who want to make a complaint know about us and can bring their complaints to the Office. Government service providers also have an obligation to tell their customers about us.

We do this by:

- providing different ways to complain to us
- ensuring our processes are clear and easy to follow
- clearly explaining what to expect from the Commonwealth Ombudsman when you complain to us
- taking appropriate time and persistence communicating information and outcomes
- publishing information in different languages and formats.

2.3.1 Complainants with disability

The Office is required by legislation to operate in a way that is accessible to people with disability.

Being accessible also requires us to make our services easy to use for people who want to make a complaint, including those who have a disability. Our processes aim for a minimum of formality, with regular phone contact with complainants and reasonable flexibility to consider individual circumstances that arise.

In line with the [Disability Discrimination Act 1992 \(Cth\)](#) the Office is committed to ensuring our information and services are provided in a non-discriminatory way. This means making reasonable adjustments to allow people with a disability to access our services. When asked, and if advised of a complainant's disability, you **must** implement appropriate accessibility arrangements - we work with all complainants to make sure we adapt to meet their needs. If you are unsure how to, or you think a requested adjustment is unreasonable you should speak with your Director and make a record of the discussion.

Being accessible may require creative thinking, additional research and alternative communications. Our Office acknowledges that increasing our accessibility takes time, and we encourage staff to take reasonable time when making reasonable adjustments. For example, spending longer on a telephone call, or sending more written correspondence than you usually would otherwise. Our KPIs acknowledge that this may result in an individual complaint taking more time to finalise than would otherwise be the case.

Table 2.4 may help you to provide best practice service.

Table 2.4: Communication strategies for complainants with a disability

Service and technique	Description/use
National Relay Service	Allows people who are deaf, hard of hearing and/or have a speech impairment to make and receive telephone calls
Adjusted font type and size in letters and emails	Can be used to accommodate people with diminished sight. The Accessible Communication Guide includes guidelines for ensuring written communication is accessible at page 5
Providing written correspondence in a format accessible to screen readers	Assists people with visual impairments who have access to screen readers. The Accessible Communication Guide including information about making written correspondence accessible for assistive technologies at page 6
Allow the complainant to record telephone conversations	Assists people with reduced capacity to remember information and/or take written notes. Officers should familiarise themselves with our Office's policy on being recorded at 2.6.3 of this Procedure
Invite the complainant to contact our Office with or via a representative/support person	See Part 2.2 of this Procedure
Taking appropriate time and effort communicating information and outcomes	You should be mindful complainants may assign different meanings or contexts to phrases or words.
Invite the complainant to discuss their complaint in person	The ability to invite complainants to a physical office will depend on the particular circumstances of the case, whether parliamentary complaint handling staff are available and whether the Office is accessible to the general public.

2.3.2 Cultural and linguistic diversity

Our Office regularly receives complaints from people from culturally and linguistically diverse (CALD) backgrounds. Complainants whose first language is not English may find it difficult to understand our written or verbal communications. It is important you are aware of and familiar with the Office's Translating and Interpreting policy and processes.

The [Racial Discrimination Act 1975 \(RDA\)](#) makes it unlawful to discriminate against a person because of his or her race, colour, descent, national origin or ethnic origin, or immigrant status. The RDA makes it unlawful to discriminate in the provision of services provided by government departments.

This means that it is against the law for a provider of services to discriminate against a person because of their race by:

- refusing to provide a person with goods, services and facilities
- providing them with goods, services and facilities on less favourable terms and conditions, or
- providing the goods, services and facilities in an unfair manner.

This includes features which can relate to a person's race, such as having a first language other than English.

Procedure 2 Complainant contact and service

As a general rule, friends and relatives of the complainant should not be used as interpreters. Our Office uses Translating and Interpreting Services (TIS) to assist complainants whose first language is not English:

- [Step by Step Guide](#) – TIS Interpreters for using TIS to communicate verbally
- [Step by Step Guide](#) – Translations for using TIS to communicate in writing.

As a general rule, interpreters and translator should be used in circumstances where:

- the complainant requests one
- the need for one is indicated in Resolve on the complainant's file
- when staff assess an interpreter is required.

In some cases, it may be unclear whether an interpreter or translator is required. If you are unsure, refer to our [Operational Guideline – Use of Interpreters and Translators](#).

If you have a question about handling a complaint from a person who is CALD speak with your supervisor and make a record of the discussion.

2.3.3 Indigenous complainants

Complainants who identify as Aboriginal and/or Torres Strait Islander may have accessibility requirements. The RDA also applies when dealing with Aboriginal and/or Torres Strait Islander complainants.

You should be mindful complainants may assign different meanings or contexts to phrases or words, depending on their cultural background.

Our Office's [Step by Step Guide – Indigenous Language Interpreters](#) outlines the process for using Indigenous language interpreters, and guidance for assessing when an interpreter may be required.

If you have a question about handling a complaint from a person who identifies as Aboriginal and/or Torres Strait Islander speak with your supervisor and make a record of the discussion.

2.4 Complainant contact - general

2.4.1 Communicating with complainants – core principles

It is important the language we use in our verbal and written communication is clear, effective and consistent across the Office. You should have the following core principles in mind when communicating with complainants.

Do not purport to express a view on behalf of the Ombudsman

Staff should not commit the Ombudsman to a particular view unless there are instructions or policy guidelines on the matter, or the view point has been specifically outlined by the Ombudsman, Deputy Ombudsman or Senior Assistant Ombudsman.

You should always consider the potential circumstances of what you say and never prejudice a case or express personal views about the merits of an investigation.

At the same time, you should remember that you represent the Ombudsman, and the Office, in all interactions with the public.

Giving advice to complainants

Our Office is regarded as a source of authoritative advice. Because of this, complainants may consider anything we say on a particular subject as definitive.

Procedure 2 Complainant contact and service

From time to time a complainant may ask you for advice about their eligibility or prospects of success in relation to, an agency's program or benefits, compensation scheme, or in relation to private disputes. It is important the advice you provide does not include a merits assessment or personal view about whether another application, review or appeal process will or should be eligible or successful.

Maintain confidentiality

You should ensure you comply with the privacy and confidentiality obligations of the *Ombudsman Act* (Cth) and *Privacy Act* (Cth). You should familiarise yourself with the Office's [Privacy Policy](#) and ensure your attendance at privacy training is up to date.

You should ensure you verify a person's identity when calling a complainant and confirm contact details (if unclear or out of date) before sending personal information via email. Be mindful that some email accounts are shared or accessible by others. Be mindful that sometimes, information obtained during our complaint handling cannot be shared with complainant.

Maintaining impartiality in communication

It should be clear in our Office's communication that we are impartial and objective when considering complaints. When communicating with complainants and agencies, it is important we maintain a sense of balance and demonstrate an open mind until all the facts are known.

Table 2.5: Tips for impartial communication

Do not	Do
Use adverbs to intensify language unnecessarily e.g. 'completely' understand ; 'totally' agree; 'significant' delay	Use neutral language with a focus on factual information
Suggest fault if all the circumstances are not yet clear and agreed	<ul style="list-style-type: none"> • Present issues in neutral terms such as 'allegations' or 'assertions' • Use mitigating language when presenting arguments or conclusions such as 'it appears that...' or 'Ms E claims that...'
Use overly familiar greetings or include personal comments in written correspondence to agency contacts or complainants	Use formal greetings and sign offs i.e. 'Dear Mr Smith'; 'Yours sincerely'...
Use overly-emotive language	Manage the complainant's expectations that we cannot represent or advocate for them

2.4.2 How you should contact complainants

The general rule is that staff are expected to contact complainants by telephone. However, there are situations where contact in writing will be more appropriate. When deciding how to contact complainants, you should have regard to the following factors:

- Any preferred method of contact indicated by the complainant. Any reasonable contact preferences should be accommodated.
- Any communication barriers indicated by the complainant (see 2.3 of this Procedure).
- Any service restrictions that have been placed on the complainant (see 2.7 and 2.8 of this Procedure).

Procedure 2 Complainant contact and service

- The type and complexity of the information that needs to be conveyed.
- The type of complainant (e.g. see 2.4.8 ‘Contacting detainees’).

Any specific contact arrangements or preferences should be recorded in Resolve as an alert on the complainant’s file (see 2.8 of this Procedure).

2.4.3 Record keeping contact with complainants

Staff are expected to make timely, detailed and accurate records of *all* contact with complainants in Resolve. Each contact with a complainant **must** be recorded in Resolve in its own action in the ‘actions’ tab of the relevant complaint and any written correspondence **must** be saved in the ‘documents’ tab.

If staff identify during the course of contact with a complainant that information held on our records is incorrect, out of date or inconsistent they **must** update the record with the correct information.

Staff should be mindful that a complaint file, including contact records, can be obtained by complainants under the *Freedom of Information Act 1982 (Cth)* and *Freedom of Information Act 2016 (ACT)*. Contact records must include only factual information and not the officer’s own interpretation of the information provided by the complainant, or any commentary, assumptions or judgements about the complainant or their state of mind.

Table 2.6: Record keeping expectations

Type of contact	How to record	Information to include (at minimum)
Telephone contact	<i>Telephone conversation with caller action</i>	<ul style="list-style-type: none"> • the date of the call • the reason for the call • any specific decisions or advice communicated to the complainant • any comments or advice provided by the complainant • key points of discussion • where relevant, duration of call.
Email or letter to the complainant	See 2.5 of this Procedure	<ul style="list-style-type: none"> • reference to the corresponding document in the documents tab.
Unsuccessful telephone contact	<i>Telephone conversation with caller action</i>	<ul style="list-style-type: none"> • the date and time of the call • the number called • whether a voicemail was left, and if so, a summary of the message.
Face to face	<i>Attended office or Conversation in Person</i>	<ul style="list-style-type: none"> • the date, time, duration and location of the contact • the attendees • the reason for the contact • any specific decisions or advice communicated to the complainant • any comments or advice provided by the complainant.

2.4.4 How often should you contact complainants?

Maintaining good communication with complainants is essential for making sure our complaint handling process is transparent. By communicating clearly and often we ensure complainants have a good understanding, and realistic expectations about our processes and the status of their complaint.

Staff are expected to take the following action to maintain communication with complainants. Exercise common sense to avoid unnecessary or repetitive contact to complainants within short time periods.

Table 2.7: Frequency of contact

Situation	Action required	Timeframe	Exceptions
Complainant has been allocated or re-allocated to you	Acknowledge the complaint and provide the following information ² <ul style="list-style-type: none"> your contact details³ an expected timeframe for when you will next contact the complainant confirmation of specific contact arrangements or preferences information about the role of our office and responsibilities of the complainant (this may include any applicable fact sheets).⁴ 	5 working days	If a decision <i>will be</i> made and communicated within that time (e.g to transfer complaint) this contact is not necessary.
You make a decision about how to progress a complaint	<ul style="list-style-type: none"> advise of the decision if you have decided to investigate some, but not all, issues in a complaint you can advise of this decision by phone. However, you must also send a written confirmation of the issues you intend not to investigate or consider. 	5 working days	Staff do not need to contact to advise a complaint will be allocated to a different team.
You miss a call from a complainant	<ul style="list-style-type: none"> return contact. 	2 working days	
The agency provides information	<ul style="list-style-type: none"> provide update. 	10 working days	
There is an unexpected delay/ you are unable to progress a complaint within previously stated timeframes	<ul style="list-style-type: none"> provide update. 	Before the due date or previously stated timeframe elapses	

² In cases where complaints are acknowledged and finalised in a single contact, it is not necessary to provide this information.

³ The Office maintains separate branding and contact information for the Commonwealth Ombudsman and the ACT Ombudsman complaints – see 2.5.1. Please ensure your contact information reflects the jurisdiction of the complaint you are working on.

⁴ Investigators **must** send the fact sheet on roles and responsibilities within their first written correspondence (A1730570 and A1730565).

2.4.5 Unsuccessful contact attempts

You may decide it is necessary to speak to a complainant in order to progress their complaint. If you call a complainant and they do not answer, you **must** make reasonable attempts to follow up with the complainant.

Table 2.8: Responding to unsuccessful contact attempts


Situation	Action required	Information to include
Complainant has provided an email or postal address	Follow up contact in writing and request a response within: <ul style="list-style-type: none"> 3 working days, if contacting by email 10 working days, if contacting by post. 	<ul style="list-style-type: none"> the date, time and number you called the information/action you require from the complainant the complaint may be closed if the complainant does not contact you within the specified timeframe.
Complainant has not provided an email or postal address	Call at least twice and leave at least one voicemail and request a response within 3 working days	<ul style="list-style-type: none"> the date, time and number you called the complaint may be closed if the complainant does not contact you within 3 working days.
Complainant has not provided an email or postal address and does not have a voicemail facility	Call at least three times over 2 working days	N/A

You should consider the personal circumstances of the complainant in assessing whether additional attempts to follow are warranted. If you are unsure, consult your supervisor.

2.4.6 Lapsing complaints

You may require particular information from the complainant to assess whether investigation is warranted. In such cases and where the complainant has not responded to your reasonable follow up attempts, you can close the complaint as 'lapsed'. If you are attempting to contact the complainant only to provide an update, and do not require information in order to assess or progress the complaint, you **must** not finalise the complaint as lapsed.

A decision to close a complaint as lapsed should be recorded in Resolve in the approach issue strings.

 Case Issue

Issue >	...	Non-programme Service > Complaints service
Cause >	...	Deficient Decision > Delay
Outcome >	...	Investigation declined > Approach Lapsed

If you are taking planned leave for three or more working days you **must** create an out-of-office greeting:

- on your voicemail (see 2.6.3 of this Procedure)
- on your work email. To create an out-of-office greeting in Outlook:
 - select 'file' and 'automatic replies 'out of office'
 - select 'send automatic replies', 'only send during this timeframe'

Procedure 2 Complainant contact and service

- o specify a start and end time
- o type your message in the *'inside my organisation'* and *'outside my organisation'* tabs.

Out-of-office greetings **must** include your date of departure, date of return, and alternative contact details for urgent matters.

You should advise complainants of planned leave in situations where you will be away for longer than one week and you were due to contact them in that time.

2.4.8 Contacting detainees

Detainees in immigration detention

Detainees at immigration detention facilities can be contacted directly by telephone or email. If you are unable to contact a detainee directly, you should contact them by letter to the relevant immigration detention facility.

Correctional detainees

If the complainant is a detainee at the Alexander Maconochie Centre (in the ACT), the default way to contact them is directly by email, unless you are aware that they are currently in segregation and/or do not yet have access to email (in which case a letter should be sent).

If the complainant is an inmate in any other state or territory prison, you should contact them by letter to the relevant state or territory correctional facility.

Privileged communications

Letters from our Office to both types of detainees are classed as 'privileged mail' and **must** be provided to the recipient unopened. The below table sets out the process for ensuring this:

1	Enclose letter to the detainee/inmate in a standard (business) sized envelope	Envelope must be sealed and addressed to the detainee/inmate.
2	Draft a cover letter to the manager/governor of the facility	A template cover letter can be generated in Resolve and includes an acknowledgement slip for the detainee/inmate to sign to confirm they received the correspondence unopened
3	Enclose 1) sealed letter to the detainee/inmate and 2) cover letter to the manager/governor in an A5 envelope	
4	Self-address a standard (business) sized envelope	Envelope must be unsealed. It will be used to return the signed acknowledgement slip to our Office
5	Enclose 1) sealed letter to the detainee/inmate and 2) cover letter to the manager/governor and 3) self-addressed envelope in an A5 envelope	Envelope must be <ul style="list-style-type: none"> • sealed • addressed to the manager/governor of the facility
6	Send A5 envelope	

2.5 Communication methods – written communication

2.5.1 Language and style expectations

The [Ombudsman Style Guide](#) and [Quick Reference Sheet](#) set out our Office's expected style and presentation for documents. Some key tips from the Ombudsman Style Guide include:

- use plain English
- use active voice rather than passive (e.g. 'we decided' instead of 'the decision has been made to')
- use simple sentences. A sentence should contain one idea or concept
- avoid double negatives (e.g. 'not infrequently')
- be consistent in tense.

The Office maintains separate branding and contact information for our Commonwealth Ombudsman and ACT Ombudsman work. When sending letters or email, ensure you are using the correct letterhead/email signature block, with correct branding and contact details, for the jurisdiction of your complaint.

You should familiarise yourself with the following resources to ensure consistency across our Office.

Table 2.9: Written guidance materials

Resources	Description/use
Ombudsman preferred terms	Lists what terminology should be used/not used
Accessible communication guide	Sets out guidelines for accessible and inclusive language and style
Style manual	Provides advice on best practices in writing, editing, design and production for all published material
Standard Words	Provides suggested sentences and paragraphs for use in outgoing complainant correspondence.

2.5.2 Recording written communication

Written communication to complainants should be recorded in Resolve:

- in the appropriate action
- by saving a copy in the Documents Tab under Outgoing Documents. If you send a letter to the complainant as an attachment in an email, you should also save a copy of the email in the Documents tab.

The action you record written communication in will depend on the purpose of the communication. The following table sets out which actions to use for particular types of correspondence.

Table 2.10: Written communication and appropriate Resolve action

Written Communication	Action
Acknowledging approach	<i>Acknowledge Approach</i>
Acknowledging OBO approach	<i>OBO Acknowledgement, advise caller via letter</i>
Requesting special documents or further information	<i>Documents requested via written</i>

Written Communication	Action
Notifying of decision not to investigate	<i>s6 Discretion</i>
Notifying of a decision to finalise or complete investigation	<i>s 12/15 inform caller of decision</i> Select closure status <i>Letter – Advise Caller</i>
Notifying of reconsideration decision	<i>Reconsider Decision not to Investigate</i>
All other written correspondence	<i>Write to caller</i>

2.5.3 Who signs written correspondence?

When deciding who should sign written correspondence, you should take into account the category of the complaint, the title of the addressee (e.g. Member of Parliament, Secretary), the identity of the complainant, potential for media interest, and any other potentially sensitive or significant factors.

As a general rule:

- the person handling the complaint should sign:
 - correspondence to complainants
 - s 8 and s 12(1) notices to agencies (or ACT equivalent)
- letters to an agency criticising or proposing to criticise it should be signed and sent by an Director or above

If you are unsure whether correspondence should be signed at a more senior level, consult with your supervisor.

Table 2.11: Written signatories

Document	Who should sign
Letter to agencies providing preliminary views or s 12(4)/15(4) comments	Director (normally Investigations) however in some cases it may be appropriate to escalate to SAO
Letters to agencies asking to reconsider a CDDA or Act of Grace decision	SAO
Letters addressed to agency heads	Ombudsman or Deputy Ombudsman unless there is an established protocol between our Office and the agency that such correspondence be signed at a lower level
Notice to a Minister advising of the use of coercive powers	Ombudsman or Deputy Ombudsman
Letters to Members of Parliament ⁵	Ombudsman, Deputy Ombudsman or SAO (If the letter was addressed to the Ombudsman, they will sign the response).
Letters to the staff of Members of Parliament	Director or SAO
Letters to staff of Members of Parliament acknowledging receipt of an approach	Case Officer

⁵ Includes Federal Parliament, the ACT Legislative Assembly and any other State or Territory parliament.

2.5.3 Email signature blocks

All emails to complainants **must** be sent from the relevant group email box, and include a signature block. You should use the [approved signature block template](#) and ensure it includes:

- Your first name (and consider whether appropriate in the circumstances to also include your surname) and role.
- The name, relevant branding and website address of the Office. You should maintain separate signature blocks for ACT and Commonwealth Ombudsman correspondence.
- A phone contact. For Commonwealth complaints, this will be the Office's general number (1300 362 072). Complaints about ACT government should include the ACT line number (02 6276 3773).
- An email contact. This should either be your relevant group email (not required for Intake & Assessment Officers).

You should have a separate signature block for contacts with agencies, which includes your direct phone number.⁶

2.6 Communication methods - Telephone and face-to-face contact

2.6.1 Calling complainants

Before calling a complainant by telephone, you should have in mind:

- the reason you are calling/the purpose of the call
- any specific information you require from the complainant
- any strategies you may need to put in place to manage the behaviour of the complainant.

When calling a complainant, always identify yourself by your first name and advise you are calling from the Commonwealth/ACT Ombudsman. If a person other than the complainant answers the phone, you should still introduce yourself and ask for the complainant.

2.6.2 Receiving complainant calls

Complainants contact our Office by telephone through the Intake and Assessment team. The Intake and Assessment team will exercise their professional judgement when deciding whether it is necessary or appropriate to transfer a complainant's call to a particular staff member. This will include considering whether:

- the complainant is providing new information that should be registered as a new complaint
- the call relates to correspondence received by or sent by the officer and further input is required to understand or explain the document
- the complaint has already been reconsidered and the complainant should submit a review request rather than speak to the original decision maker.

The general rule is that all officers who are in the Office and present at their desk must accept incoming calls from the Intake and Assessment team where the call relates to:

- an open approach held by the officer

⁶ You may also wish to maintain a signature block for communications within the Office.

- a decision made by the officer
- any correspondence sent to the complainant

2.6.3 Setting up voicemail

All Officers **must** have an up-to-date voicemail message on their telephone extension. Our Office's [Voicemail – Quick Setup Guide](#) outlines the process for setting up a voicemail message. An example voicemail message is:

'You've contacted [your name]. I'm not available to take your call right now. Please leave your name, phone number and a brief message and I will return your call as soon as possible. Thank you.'

2.6.4 Leaving telephone messages

If you call a complainant and they do not answer, you should leave a recorded message. This includes circumstances where the complainant's voicemail does not identify them.

As a general rule, phone messages should include your name (surname optional) and you are calling from the Commonwealth/ACT Ombudsman. However, if you believe identifying yourself or where you are calling from may put the complainant in danger or breach their privacy, you should not leave a message, but you must first discuss this approach with your supervisor.

Phone messages should not include any information about the nature of the complaint.

2.6.5 Being recorded

Our Office position is to refuse requests from complainants to record our telephone conversations with them and to terminate any calls where a complainant insists on recording the conversation or we reasonably believe the complainant is recording the conversation (subject to the exceptions below). It is important we are able to conduct investigations in private. Further, difficulties may arise if a complainant were to publicise quotes from our Office that are out of context or incomplete.

Even if a complainant asserts that the laws of their State or Territory allow for the recording of phone calls without consent, staff are under no obligation to continue to participate in a recorded phone call.

If you believe a complainant is recording your telephone conversation, you should advise them of the Office policy and provide a warning to them before terminating the call. Any decision to terminate the call should be recorded in the relevant *Telephone conversation with caller* action.

If a complainant continues to insist on recording telephone conversations with our Office, you might consider whether it is appropriate to restrict the way the complainant can contact our office to writing only (see 2.7 of this Procedure).

Exceptions

There may be some circumstances where it is appropriate to allow a complainant to record a conversation. This may be based on a number of factors, including but not limited to:

- where the person has literacy issues or other barriers to taking notes of the conversation
- where the person has a disability (see 2.3.1 of this Procedure)

If you believe it is appropriate to allow a complainant to record a conversation, you should first discuss this with your supervisor.

2.6.6 Complainant requests face to face meeting

Complainants may request to speak to you face-to-face regarding their complaint. Where the complainant is located in the same location as the complaint Officer, appropriate facilities are available, and there appears to be

Procedure 2 Complainant contact and service

information either they can provide us or we can better provide them through the meeting, staff should generally agree to the meeting. Meeting face-to-face may also be appropriate for complainants with accessibility requirements.

Where you consider it is unlikely the conversation will be productive or the complainant has previously displayed unreasonable complainant behaviour, it may be reasonable to refuse the request to meet in person. If unsure, seek advice from your supervisor.

2.7 Unreasonable complainant conduct

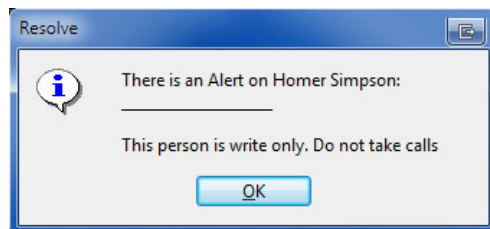
Complainant behaviour becomes unreasonable when, because of its nature or frequency, it raises health, safety, resource or equity issues for our Office, staff and the people who use our services. Unreasonable behaviour includes obscene language, abuse, threats to damage property, threats to self-harm, to harm Officers or other people, and violence.

You should familiarise yourself with our Office's [Unreasonable Complainant Conduct Policy](#), which provides guidance on how to respond to specific complainant behaviours which can become unreasonable. The policy also addresses the circumstances where it may be appropriate for our Office to restrict the way we provide services to a complainant, and how to implement a service restriction.

Staff should familiarise themselves with the strategies outlined in the [Managing Unreasonable Conduct by Complainants Practice Manual](#) for identifying and preventing unreasonable complainant conduct.

2.8 Alerts

An alert is a text box that displays when you open a complainant's file on Resolve, or any approaches in the complainant's name. For example:



You can use alerts to convey relevant information to help the Office effectively manage its interactions with complainants. As a general rule, alerts should be created in the following situations.

Table 2.12: Suggested alert wording

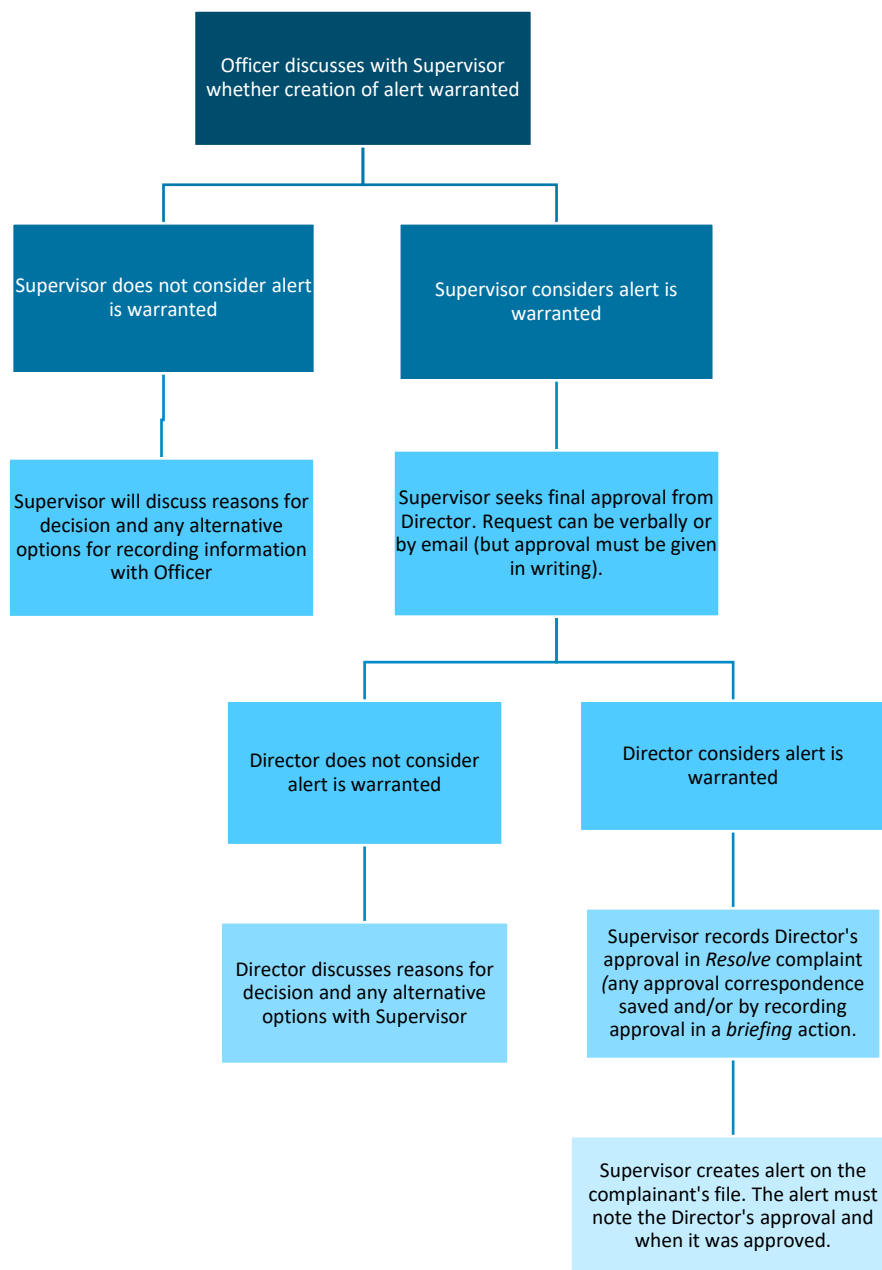
Situation	Example text
We have implemented particular supports to assist the complainant to engage with us	<i>Ms E has hearing difficulties. When telephoning her, please do so through the National Relay Service. Approved by xxx [date].</i>
We have implemented a service restriction	<i>Ms E has been restricted to contacting our Office in writing only for a period of 6 months. Ms E was notified of the restriction on 1 January 2019 (Ref: 2019-xxxxxxx). The restriction will be reviewed on or before 1 June 2019. Approved by xxx [date].</i>
We have implemented other complaint management strategies for the complainant (eg directing all communications from a complainant to one officer or not reassessing a particular complaint issue/s)	<i>Ms E's complaint about Centrelink's 2019 CDDA decision has been investigated and reviewed. She has been advised further correspondence about this matter will be filed but not responded to unless we believe it raises new issues. Approved by xxx [date].</i>

Procedure 2 Complainant contact and service

If you believe an alert should be created on a complainant’s file, discuss this with your Director. Your Director will have the final say on whether an alert is created. The approval for the Resolve alert from the Director **must** be saved on the Resolve file.

The [Unreasonable Complainant Conduct Policy](#) requires that service restrictions are reviewed every six months, but other types of alerts are not routinely reviewed. If you believe an alert on a complainant’s file is no longer warranted or appropriate you should discuss this with your Director.

The following flowchart sets out the process for creating an alert on a complainant’s file, except where the alert relates to the implementation of a service restriction. The process for creating alerts in relation to service restrictions is set out in our Office’s Unreasonable Complainant Conduct policy.



2.9 Service delivery complaints

Our Office welcomes feedback, both positive and negative. Members of the public have the right to complain about aspects of our general service delivery. Such complaints give us the opportunity to improve the service we provide.

A service delivery complaint is an oral or written expression of dissatisfaction with an aspect of the service provided by our Office. A service delivery complaint can be about:

- conduct of our staff (e.g. rudeness or lack of response)
- timeliness of our processes
- our access points (e.g. phone line, website, offices)
- probity of staff (e.g. conflict of interest, corruption).

Disagreement about the merits of a decision, such as a decision to finalise a matter, or about an assessment of facts or an evaluation of evidence, regardless of how it is expressed (e.g. whether ‘complaint’, ‘request for review’ or any other terms is used) are *not* service delivery complaints. See Procedure 14 – Reviews.

2.9.1 Call escalations

The Intake and Assessment Team, who act as our first point of contact for complainants, regularly experiences a high number of callers who express dissatisfaction with our Office. It may not always be clear whether these should be treated as service delivery complaints.

Staff in the Intake and Assessment Team can agree to escalate such callers to their supervisors in the first instance. When taking escalated calls, supervisors should consider whether it is necessary to treat the call as a formal service delivery complaint. All staff are encouraged to exercise discretion with regards to whether to escalate a call or to create a service delivery complaint.

2.9.2 Resolving service delivery complaints

Service delivery complaints may be resolved in a number of ways, including but not limited to:

- better explanation (where service standard has been reasonable in all the circumstances)
- apology
- advice that feedback will be provided to the Officer complained about
- advice about any decision to make changes our Office’s service delivery processes or policies
- either in writing or over the telephone.

2.9.2 Processing service delivery complaints

The following table sets out the process to follow if you receive a service delivery complaint:

1	Record service delivery complaint	<p>This should be recorded in a new approach with:</p> <ul style="list-style-type: none"> • ‘Commonwealth Ombudsman’ selected as the agency • ‘Service delivery’ selected as the subject <p>Clearly outline the reasons for the complaint.</p> <p>If complaint relates to ACT Ombudsman jurisdiction, clearly show this at the top of the summary screen.</p>
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2	Allocate the approach to your Director	
3	Director will assess the service delivery complaint	<p>Generally this will involve:</p> <ul style="list-style-type: none"> • where relevant, consulting with the Officer complained about • consideration of any applicable service standards/expectations. <p>If appropriate, the Director may refer the complaint to the Officer’s supervisor to action</p>
4	Outcome 1: decision that service delivery was reasonable in all the circumstances	<p>Director/SAO/supervisor will:</p> <ul style="list-style-type: none"> • notify the complainant • where relevant, notify the Officer complained about • record their decision and close the service delivery complaint.
5	Outcome 2: decision that service delivery was <i>not</i> reasonable in all the circumstances	<p>Director/SAO will:</p> <ul style="list-style-type: none"> • Direct Supervisor to: <ul style="list-style-type: none"> ○ Provide remedy to the complainant ○ Provide feedback to the Officer complained about. • Action any recommendations for changes to our Office’s service delivery policies or processes. • Record their decision and close the service delivery complaint.

Procedure 2 Complainant contact and service

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Parliamentary Complaint Handling Procedures

4. Jurisdiction

Updated: 16 September 2019

Review at: 16 September 2020

OVERVIEW	3
4.1 KEY PRINCIPLES OF THE OMBUDSMAN'S COMPLAINT JURISDICTION	4
4.2 WHICH AGENCY TOOK THE ACTION OR MADE THE DECISION?	6
4.2.1 Commonwealth Jurisdiction	6
4.2.2 ACT jurisdiction	7
4.2.3 Industry jurisdiction	7
4.3 WHO TOOK THE ACTION OR MADE THE DECISION?	7
4.3.1 Commonwealth jurisdiction	7
4.3.2 ACT jurisdiction	8
4.4 WHAT TYPE OF ACTION OR DECISION IS THE COMPLAINT ABOUT?	9
4.4.1 Overview	9
4.4.2 Judicial action	10
4.4.3 Legislative action	10
4.4.4 ACT jurisdiction – disability, health and services for young and older people	10
4.4.5 Employment related matters	11
4.4.6 Taxation matters	12
4.5 OTHER OVERSIGHT (COMPLAINT AND REVIEW) BODIES	12
4.6 PROCEDURES FOR HANDLING OUT OF JURISDICTION MATTERS	14
4.6.1 Out of jurisdiction complaints received via telephone	14
4.6.2 Out of jurisdiction complaints received via web case, email or post	15
4.6.3 Subject matter out of jurisdiction complaints	17
4.7 PROCEDURES FOR REQUESTING ADVICE FROM THE LEGAL TEAM	17

Overview

The Commonwealth Ombudsman's authority to investigate certain actions is provided in the *Ombudsman Act 1976* (Cth). Our Parliamentary complaints jurisdiction covers administrative actions of Australian Government departments and agencies, and the actions of non-government bodies that provide Australian Government services to the public ('Commonwealth service providers').

Likewise, the *Ombudsman Act 1989* (ACT) provides the ACT Ombudsman authority to investigate certain actions. The ACT Ombudsman's jurisdiction covers the administrative actions of ACT Government Directorates or agencies.

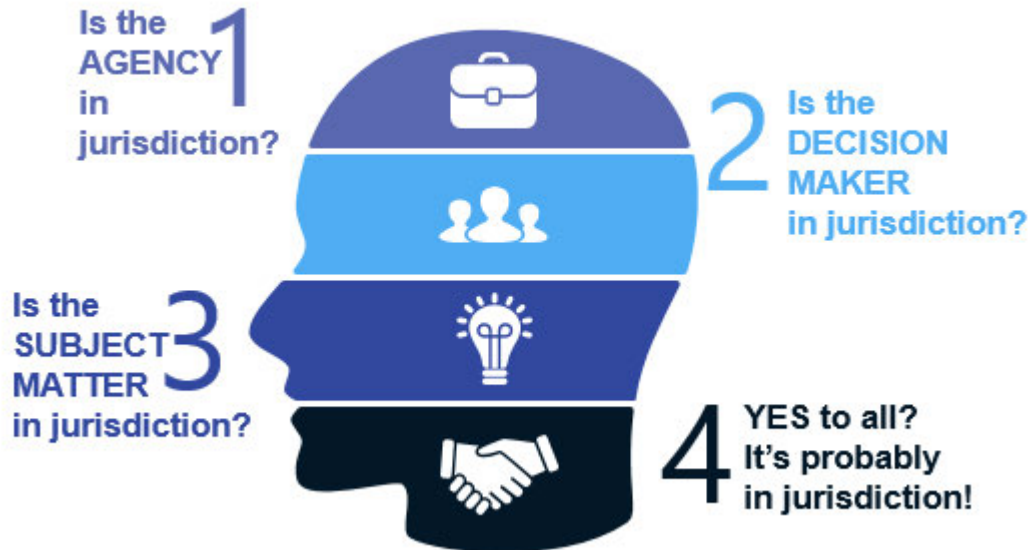
The Ombudsman's jurisdiction is established by examining three issues:

- which agency took the action/made the decision? (See section 4.2)
- who took the action/made the decision? (See section 4.3)
- what type of action/decision is the complaint about? (See section 4.4).

The Ombudsman also has functions under the *Public Interest Disclosure Act 2013* (Cth) and *Public Interest Disclosure Act 2012* (ACT). Refer to the Public Interest Disclosure (PID) team for more information on public interest disclosures.

Purpose	To explain the Office's parliamentary complaint handling jurisdiction and outline jurisdiction and legal team related processes and business rules
Workflow	Applicable at all complaint handling stages
Scope	All general rules set out in this Procedure are subject to more specific directions set out in our Office's approved policies

4.1 Key principles of the Ombudsman's parliamentary complaint jurisdiction



Is the AGENCY in jurisdiction?

To identify whether the agency complained about is within our jurisdiction, you should first refer to the Legal team's [Commonwealth](#) and [ACT jurisdiction](#) tables. Those documents are a comprehensive and up to date list of Commonwealth and ACT government departments and agencies. You can rely on whether it states the agency is or is not within jurisdiction. If it states N/A or the agency is not on the list, you should consult with your Supervisor and Director. If it remains unclear, you can seek your Director's approval to contact the Legal team.

More information about agency jurisdiction, including ACT jurisdiction, is provided at 4.2 of this Procedure.

Is the DECISION MAKER in jurisdiction?

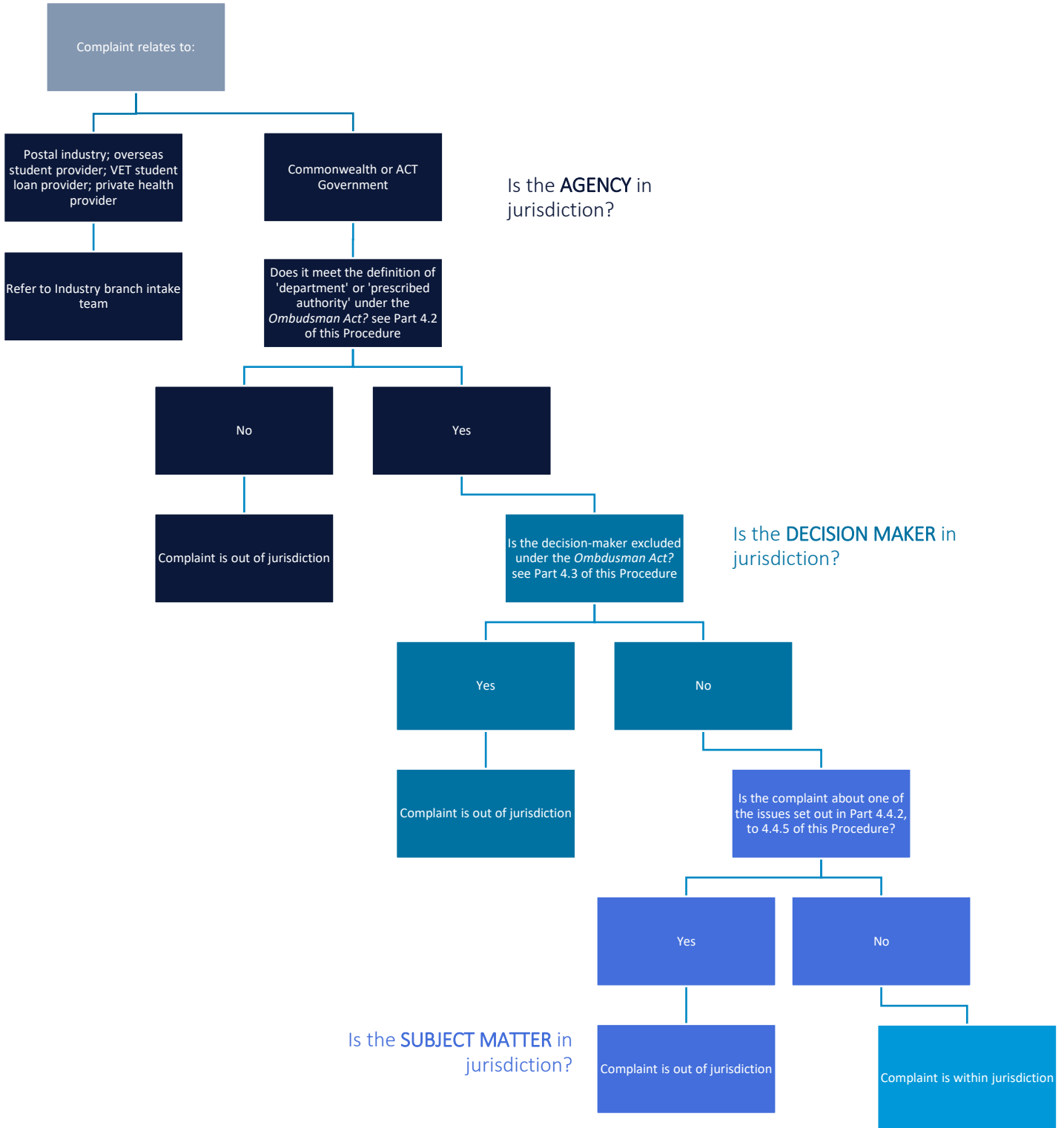
The Commonwealth and ACT Ombudsman Acts, along with the *Ombudsman Regulations 2017* (Cth), specify classes of people or decision makers that the Office cannot consider or investigate. Tables outlining these decision makers are provided at 4.3 of this Procedure.

Is the SUBJECT MATTER of the complaint in jurisdiction?

The Office can only consider complaints about certain subject matter. This goes to the fundamental issues of the complaint that the person has complained about. Primarily, as an organisation that oversees administrative action and decision making, complaints must be about a *matter of administration*. However, the applicable legislation also exempts certain types of issues (such as APS employment matters) from our jurisdiction.

It is important to understand and be alert to the nuances of the Office's subject matter jurisdiction. It is covered in depth in 4.4 of this Procedure.

Flowchart – Identifying Commonwealth and ACT jurisdiction



It is probably IN JURISDICTION

4.2 Which agency took the action or made the decision?

Which sections of the Act?	Commonwealth: Sections 5, 3, 3A, 3B, 3BA of the Ombudsman Act Ombudsman Regulations 2017 ACT: Sections 5, 3, 3A, 3B and the Dictionary of the Ombudsman Act
Who to consult?	1. Read this Procedure and the relevant legislative provision(s). 2. If unsure, ask your Supervisor and/or Director. 3. If still unsure and you have your Director's approval, seek advice from the Legal team.

4.2.1 Commonwealth Jurisdiction

Section 5 of the Ombudsman Act (Cth) authorises us to investigate administrative actions taken by departments and prescribed authorities.

Section 3 of the Ombudsman Act defines 'Department'. Sections 3 and 3A define 'prescribed authority'. The Ombudsman Regulations (Cth) should also be considered when determining whether a body is a prescribed authority – these regulations exclude and include specific bodies and persons from the Ombudsman's jurisdiction.

In summary, we are authorised to investigate actions taken by:

- Australian Government departments and their service providers (see s 3BA of the Ombudsman Act (Cth))
- Australian Defence Force
- Australian Federal Police
- Commonwealth court registries/registrar's (but judicial actions and delegated judicial actions are excluded, e.g. a Family Court registrar's delegated judicial actions)¹
- Commonwealth-controlled companies which came into existence on or after 15 March 1994
- parliamentary departments
- most prescribed statutory authorities.

In identifying government bodies, it is useful to refer to the Department of Finance's flipchart.² Some agencies are explicitly out of jurisdiction as per Regulation 6 of the Ombudsman Regulations 2017.³

¹ Please note: administrative matters are within our jurisdiction where they are not a directive of the Federal Magistrate or Judge. (See 4.3.1 of this Procedure for more detail)

² Can be found on the www.finance.gov.au website by typing into the Search field 'flipchart'.

³ Australian Security Intelligence Organisation; Commonwealth Grants Commission; Defence Force Remuneration Tribunal; Pharmaceutical Benefits Remuneration Tribunal; Remuneration Tribunal; Shire of the Cocos (Keeling) Islands.

4.2.2 ACT jurisdiction

Section 5 of the *Ombudsman Act 1989* (ACT) authorises us to investigate actions taken by agencies. In the Dictionary to the *Ombudsman Act 1989* (ACT), an agency means an administrative unit or a prescribed authority. ‘Prescribed authority’ is also defined in the Dictionary.

Section 3 should also be considered when determining if a body is within our jurisdiction.

4.2.3 Industry jurisdiction

The Ombudsman has jurisdiction to receive and consider complaints about certain industries – postal industry, overseas student providers, VET student loan providers and private health insurance providers. These matters are dealt with by the Industry Branch in the Office. If you receive a complaint about one of these industries or providers, you should refer it to Industry Branch’s Intake to assess.

4.3 Who took the action or made the decision?

Which sections of the Act?	<p>Commonwealth:</p> <p>Sections 5 of the Ombudsman Act</p> <p>ACT:</p> <p>Sections 5, 3A, 3B of the Ombudsman Act</p>
Who to consult?	<ol style="list-style-type: none"> 1. Read this SOP and the relevant legislative provision(s). 2. If unsure, ask your supervisor and/or Director. 3. If still unsure, seek advice from the Legal team.

4.3.1 Commonwealth jurisdiction

The individuals or institutions that are outside our jurisdiction are outlined below.

Person/institution	Excluded by	Scope	Any exceptions
Parliament	S 5(2)(aa)	All actions that form part of the proceedings of Parliament, including Committee matters.	-
Ministers	S 5(2)(a)	We are not authorised to investigate actions and decisions taken by Ministers.	<p>We can investigate decisions made by public servants under Ministerial delegations. We can also investigate actions taken by departments in relation to Ministerial decisions and advice to Ministers.</p> <p>Note: bring these matters to the attention of the relevant Director before deciding whether or not to investigate the complaint.</p>
Judges and Justices	S 5(2)(b)	We cannot investigate actions taken by a Justice or Judge of a court created by Parliament.	-

Person/institution	Excluded by	Scope	Any exceptions
Action by Officers exercising a judicial power	S 5(2)(ba)	We cannot investigate actions by officials exercising a power of the court e.g. Registrar of the Federal Court when exercising a power of the Court.	Important note: this depends on the type of action/decision rather than the person exercising it. For example, not all actions of the Registrar of the Federal Court are out of jurisdiction – the Registrar’s administrative actions are in jurisdiction.
Court-like bodies	S 3	Any Commonwealth body that can take evidence on oath and is required or expressly permitted to include a Judge among its members, e.g. Fair Work Commission.	There may be very limited jurisdiction about actions of certain people in the agency e.g. the General Manager or Registry staff.
Magistrate or Coroner	S 5(2)(c)	The Ombudsman is not authorised to investigate action taken by a magistrate or coroner for the ACT, the Territory of Christmas Island or the Territory of Cocos (Keeling) Islands, or a person who holds office as a magistrate in a state or the Northern Territory.	-
Bodies specified in the <i>Ombudsman Regulations 2017</i> ⁴		Even when a body is otherwise within jurisdiction, the Regulations provide that it may be specifically excluded from jurisdiction (e.g. ASIO).	-

4.3.2 ACT jurisdiction

In the ACT, the Ombudsman is excluded from investigating actions taken by certain persons under s 5 of the Ombudsman Act (ACT). The more common ones are listed in the following table. Please read the section carefully and consult with the Legal team if you are unsure.

Person/institution	Excluded by	Scope	Any exceptions
Ministers	S 5(2)(a)	We are not authorised to investigate actions and decisions taken by Ministers.	We can investigate decisions made by public servants using Ministerial delegations. We can also investigate actions taken by directorates in relation to Ministerial decisions and advice to Ministers.
Judges and Registrars	S 5(2)(b)	We cannot investigate actions taken by a judge or the associate judge of the ACT Supreme Court. We also cannot investigate actions taken by the registrar or a deputy registrar of the Supreme Court of the Magistrates Court when	This does not exclude the actions of the registrar or a deputy registrar when they are performing administrative functions.

⁴ Regulation 6 of the *Ombudsman Regulations 2017*: Auditor-General; Australian Government Solicitor; President of the Defence Force Remuneration Tribunal; President of the Remuneration Tribunal; Director-General of Security; Inspector-General of Intelligence and Security

Person/institution	Excluded by	Scope	Any exceptions
		performing a function of a judicial nature.	
Magistrate or coroner for the ACT	S 5(2)(c)		-
Tribunals	S 5(2)(d)	A member of a tribunal or a member of the staff of a tribunal when exercising the tribunal’s deliberative functions.	-
ACT Human Rights Commission	S 5(2)(i)	A member of the commission or a staff member of the commission, in the exercise of the commission’s deliberative functions.	-

4.4 What type of action or decision is the complaint about?

Which sections of the Act	<p>Commonwealth:</p> <p>Sections 5 of the Ombudsman Act</p> <p>ACT:</p> <p>Sections 5 of the Ombudsman Act</p>
Who to consult?	<ol style="list-style-type: none"> 1. Read this SOP and the relevant legislative provision(s). 2. If unsure, ask your supervisor and/or Director. 3. If still unsure, seek advice from the Legal team.

4.4.1 Overview

The Ombudsman’s jurisdiction is intentionally very broad. It should not be approached narrowly or pedantically.

Botany Bay Council v Ombudsman (NSW Court of Appeal):

“[The Ombudsman’s] powers are, as they ought to be, extremely wide. They are not powers which this Court should read down. They are beneficial provisions designed in the public interest for the important object of improving public administration and increasing its accountability, including to ordinary citizens... [A] large power is intended. The words of the Ombudsman Act should be given ample meaning.”

‘A matter of administration’:

Generally, the Ombudsman investigates actions which relate to a matter of administration (s 5 of *Ombudsman Act 1976* (Cth) and *Ombudsman Act 1989* (ACT)). A ‘matter of administration’ is not defined in either Act. But:

- it is not legislative and judicial action (see below)
- the concept of ‘administration’ covers a broad range of activities—for example, the decisions or actions of staff, implementation of departmental policies, and agency policy-making.

When deciding if complaints about policy issues are within our jurisdiction, consider this distinction:

- Approaches about the content and direction of 'high level' Government policy are generally outside our jurisdiction.
- Approaches about any departmental policies developed to implement the Government's legislated and announced policies are within our jurisdiction. The exception is when departments are implementing a Ministerial decision or providing advice to Ministers about the content and operation of a policy.

4.4.2 Judicial action

The Ombudsman is expressly precluded from investigating actions of court/tribunal members and others (e.g. registrars) where they are exercising the powers of the court or powers of a judicial nature (s 5(2)(ba) of the *Ombudsman Act 1976* (Cth) and s 5(2)(b), (c) and (d) of the *Ombudsman Act 1989* (ACT)).

The types of approaches about courts and tribunals which normally fall within our jurisdiction are approaches about the administrative processes of their registries.

If you are unsure, check the jurisdiction of approaches about court or tribunal registries with the Legal team.

4.4.3 Legislative action

In general, we cannot commence an investigation of a complaint for the purpose of assessing or reviewing the correctness of a legislative provision. In very limited circumstances we may investigate issues related to reasonableness of the law and legislative matters where a rule or provision of an enactment may be unreasonable, unjust, oppressive or improperly discriminatory, however these are exceptional circumstances and should only be used following consultation with a Director, SAO and Legal team.

4.4.4 ACT jurisdiction

Disability, health and services for young and older people

Section 5(2)(o) of the *Ombudsman Act 1989* (ACT) prevents the Ombudsman from investigating action taken by an agency for the purposes of providing (or purporting or refusing to provide) a disability service, a health service, a service for children and young people, or a service for older people.⁵

This includes:

- providing, or failing to provide when requested, health advice or a health service
- a service for children or young people (e.g. education, accommodation or rehabilitation services) unless it relates to reportable conduct**
- a service for older people (e.g. respite care, personal care or home maintenance services)
- a health service or a health practitioner (e.g. a service provided by a hospital, medical practice, doctor, nurse, allied health professional or vet)
- a service for people with disabilities (e.g. home help provided to an individual with substantial reduce mobility).

These exclusions relate to general complaint handling under the *Ombudsman Act 1989* (ACT) only. Complaints about these issues should be referred to the ACT Human Rights Commission

⁵ This does not apply to action taken in relation to a reportable allegation or reportable conviction.

4.4.5 Employment related matters

The Ombudsman is not authorised to investigate employment-related matters regarding employees of the public service or a prescribed authority (s 5(2)(d) of the *Ombudsman Act 1976* (Cth) and s 5(2)(l) of the *Ombudsman Act 1989* (ACT)). Employment related matters are described as including (note this list is not exhaustive):

- an employee's duties, position or pay
- the way an employee is supervised
- a promotion or non-promotion of an employee
- the discipline of an employee
- a decision to dismiss, terminate, retrench or retire an employee.

Actions of an agency (including rehabilitation programs, medical appointments, return to work plans following a Comcare claim being accepted) in circumstances where the agency is acting in its capacity as a rehabilitative authority under the *Safety, Rehabilitation and Compensation Act 1988* (Cth) and not as the employer, are employment matters and therefore out of jurisdiction.

The exclusion does not apply to actions that:

- occurred before the person was employed
- occurred after the person ceased to be employed (although it may be impossible to investigate where an action relies on something that happened during employment)
- are no more than incidentally related to employment, such as the payment of compensation or superannuation (but not actions related to return to work programs, light duties etc.)
- action arising out of dealings between a Commonwealth agency and a labour hire company which has made an employee available to the agency, but not action relating to the employment of the contracted employee
- FOI complaints brought by agency employees who are seeking access to their personnel records (including amendment requests).

Another body such as the [Merit Protection Commissioner](#), the [Fair Work Commission](#) and/or the [Fair Work Ombudsman](#) may review some employment actions. The availability of other avenues for review is a factor in determining whether to investigate a matter. However the absence of other review avenues alone is not generally sufficient reason for investigating a matter.

Public Interest Disclosures regarding employment:

The Commonwealth and ACT Ombudsman may become involved in employment actions when dealing with a matter under the *Public Interest Disclosure Act 2013* (Cth) or the *Public Interest Disclosure Act 2012* (ACT).

Defence employment related matters:

The Ombudsman has a role as Defence Force Ombudsman to deal with employment actions taken in relation to members of the Australian Defence Force. However, the member will be asked to make a 'redress of grievance' with the Department of Defence about the employment related matter before our Office will consider their complaint.

The Defence Force Ombudsman does not have jurisdiction in relation to employment actions taken in relation to APS employees of the Department of Defence, or Cadets, because they are not members of the Australian Defence Force.

Australian Federal Police (AFP) employment related matters:

The Ombudsman may have jurisdiction in relation to AFP employment matters (including ACT policing) where the complaint relates to action taken by an AFP appointee in relation to information given to another AFP appointee that raises an AFP conduct or practice issue.

In practice, if the person made a complaint to the AFP's Professional Standards, it is likely that the complaint will be within our jurisdiction as the actions and decisions of AFP Professional Standards are within our jurisdiction. All complaints that have gone through PRS are employment matters as they relate to a possible breach of the professional standards and open appointees to employment related sanctions.

Complaints about the AFP regarding employment matters which do not go through the Professional Standards area may not be within jurisdiction. You should consult with your supervisor about these cases and carefully consider whether the exception at s 5(4) of the *Ombudsman Act 1976* (Cth) applies.

4.4.5 Taxation matters

The Ombudsman is not authorised to investigate matters of tax administration, as they are matters that can be investigated by the [Inspector-General of Taxation](#) (s 6D of the *Ombudsman Act 1976* (Cth); s 7(1)(a) or (b) of the [Inspector-General of Taxation Act 2003](#) (Cth)).

There are some matters relating to the Australian Taxation Office (ATO), which do not relate to the administration of taxation, which our Office is authorised to investigate (s 6D(2) of the *Ombudsman Act 1976* (Cth)).

However, we may investigate tax administration matters where the matter is transferred to our Office from the Inspector-General of Taxation (IGT), or the complaint is also a PID or a complaint about the handling of a PID under the *Public Interest Disclosure Act 2013*, or the complaint is a matter of administration under the *Freedom of information Act 1982* (s 6D(2) of the *Ombudsman Act 1976* (Cth) (for example, the application of an FOI policy or the handling of an FOI application).

If a tax administration complaint is made to our Office we are required to consult with the IGT on which agency is best suited to investigate. Generally, where the complaint relates to conduct under legislation that the ATO has the power to administer, the IGT will prefer to consider it.

If you are unclear whether the matter is something our office can investigate, please contact the Legal team.

4.5 Other oversight (complaint and review) bodies

There are a number of in jurisdiction Commonwealth bodies whose functions include dealing with complaints, reviewing agency decisions or regulating an industry or some form of conduct. These agencies are independent of the agencies or businesses whose actions they oversee and they have specific statutory powers that enable them to carry out their functions.

4.5.1 Policy for complaints about oversight bodies

Where the Ombudsman has jurisdiction to investigate the actions of such a body, the Ombudsman has a policy where it would generally decide not to investigate certain actions, for example:

- decisions by a body about whether a matter falls within its complaint priorities
- decisions of an expert body on a matter within its area of responsibility and expertise (e.g the Office of the Australian Information Commissioner; the Australian Securities and Investments Commission)
- the way a tribunal member conducted a hearing or the decision made following a consideration of available material

- determinations which affect the way in which an industry or an individual business does something.

This policy recognises Parliament has given a particular responsibility to these bodies, and provided them with appropriate powers and mechanisms for judicial or merits review. It recognises that investigation by this Office would not be warranted where a matter has been properly reviewed by a body entitled to do so. **This policy is not to be applied inflexibly.** It is appropriate and legally necessary for Ombudsman delegates to consider on a case-by-case basis whether to investigate, but the policy should be given considerable weight. There will be instances where investigation may be appropriate, for example:

- an incurable failure to deal with the issue before the body
- a process that is markedly and unreasonably unfair or oppressive
- an administrative systemic issue which is impacting the work of the body
- a decision that is on its face outside the realm of what might be considered to have any reasonable basis.

Our Office may, unless there are other reasons not to do so, investigate routine administrative actions (such as replying to complaints, issuing tenders) taken by one of these bodies. Staff need to be aware that decisions of courts and the AAT are not within the Ombudsman's jurisdiction.

Note that this policy has been [formalised and published](#) online in relation to ASIC complaints.

4.5.2 Commonwealth oversight and regulatory agencies

Oversight agencies:

- Auditor-General
- Australian Commission for Law Enforcement Integrity
- Australian Public Service and Merit Protection Commissioners
- Inspector-General of Intelligence and Security
- Inspector-General of the ADF
- Inspector-General of Taxation
- Office of the Australian Information Commissioner

Regulatory agencies:

- Australian Communications and Media Authority
- Australian Competition and Consumer Commission
- Australian Maritime Safety Authority
- Australian Prudential Regulation Authority
- Australian Pesticides and Veterinary Medicines Authority
- Australian Radiation Protection and Nuclear Safety Agency
- Australian Securities and Investments Commission
- Australian Transaction Reports and Analysis Centre
- Civil Aviation Safety Authority
- Food Standards Australia New Zealand

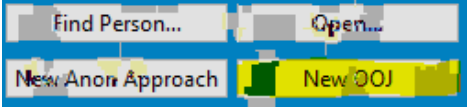
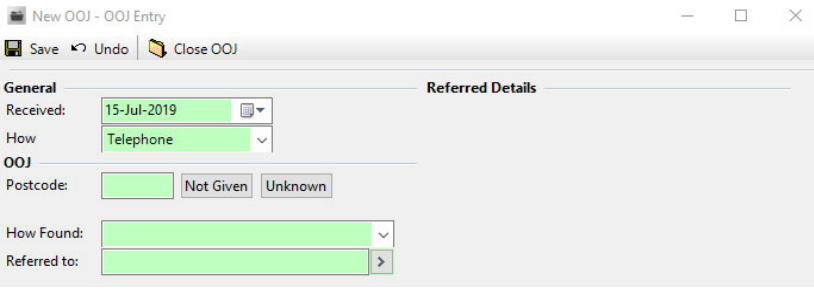
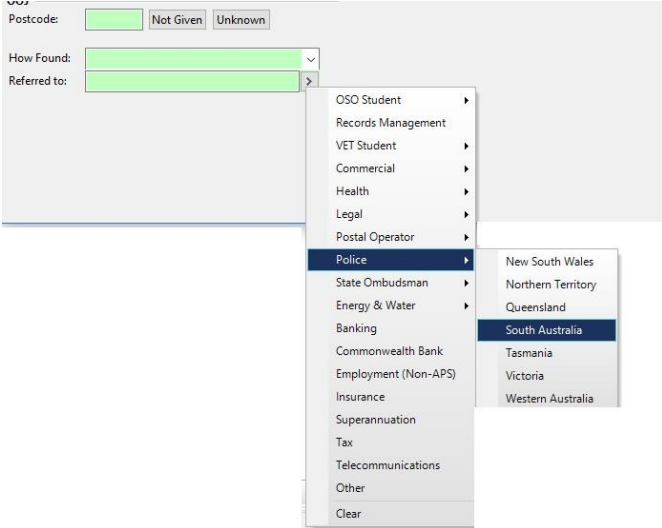
This list is not exhaustive but includes those agencies we most often receive complaints about. Regulatory functions may also be within a department (e.g. the Therapeutic Goods Administration is part of the Department of Health).

4.5.3 ACT government oversight and regulatory agencies

- ACT Human Rights Commission (including the Children and Young People Commissioner, the Health Services Commissioner and the Public Advocate)
- ACT Integrity Commissioner
- ACT Judicial Council
- Commissioner for Sustainability and the Environment

4.6 Procedures for handling out of jurisdiction matters

4.6.1 Out of jurisdiction complaints received via telephone

<p>1</p>	<p>Agency out of jurisdiction complaints during telephone registration.</p>	<p>Once you have identified that an incoming telephone complaint is regarding an agency that is OoJ, select the Corporate OoJ function within Resolve to record the complaint.</p> <p>This option allows you to quickly close the complaint without creating a new approach, while also correctly referring the complainant to a more appropriate organisation.</p>
<p>2</p>	<p>From your Resolve Home Screen, click the <i>New OoJ</i> button.</p>	
<p>3</p>	<p>Complete the green fields (noting the record will default to 'received by telephone' on the current day's date). Note that you do not need to obtain or provide the complainant's contact details (except for their postcode) to complete a Corporate OoJ.</p>	 <p>Make a selection in the <i>Referred to</i> field. This will provide relevant referral contact details.</p> 

4	<p>A complete record will have all green fields completed and include the <i>Referred Details</i> from your selection.</p>	
5	<p>Finalise contact.</p>	<p>Advise the caller that the matter is outside of this Office’s jurisdiction and provide the appropriate referral organisation and its contact details.</p> <p>Finalise the call with the complainant. Select <i>Close OOJ</i> to finalise the Corporate OOJ.</p>

4.6.2 Out of jurisdiction complaints received via web case, email or post

1	<p>Register complaint as per parts 1-3 of process table 1 in Procedure 5 – Receipt and Registration.</p>
2	<p>Once you have identified that an incoming web case or written complaint is regarding an agency that is OOJ, create a new Resolve approach.</p> <p>If you are unclear whether the agency is in jurisdiction, refer to 4.2 of this Procedure.</p>
3	<p>From the <i>Person Record</i> screen, click the <i>New Approach</i> button.</p>
4	<p>Complete the green fields to reflect the method of contact and date on which the written correspondence was received (noting the record will default to ‘How Received’ by telephone on the date the approach is created).</p> <p>Record the agency as <i>OOJ- Out of Jurisdiction</i> and update the <i>Sensitivity</i> field if required (noting it will default to <i>Not Sensitive</i>).</p>

<p>5</p>	<p>Complete the <i>Initial Approach Details</i> to summarise the OoJ complaint as outlined by the complainant.</p> <div data-bbox="336 302 1150 703" style="background-color: #e0ffe0; padding: 10px;"> <p>Reference number and date lodged N/A</p> <p>Details of Complaint Mr Simpson has informed our Office:</p> <ul style="list-style-type: none"> • He has a complaint about a private telecommunication provider. <p>Desired Action or Outcome</p> <ul style="list-style-type: none"> • To dispute his monthly bill. <p>Steps taken to Resolve Complaint</p> <ul style="list-style-type: none"> • Unclear <p>PCT Action</p> <ul style="list-style-type: none"> • Complaint about private telecommunication provider is OoJ. • OoJ referral to the Telecommunication Industry Ombudsman (TIO) email sent to Mr Simpson. • Complaint closed. </div>
<p>6</p>	<p>Make a selection in the <i>Subject</i> field. This will provide the relevant contact details for the appropriate oversight body.</p> <div data-bbox="256 804 1098 1010" style="border: 1px solid #ccc; padding: 5px;"> <p>General Details</p> <p>Subject: Telecommunications</p> <hr/> <p>Telecommunication Industry Ombudsman PO Box 276, Collins Street West, Melbourne, VIC 8007 Toll Free: 1800 062 058 Fax: 1800 630 614 www.tio.com.au</p> </div>
<p>7</p>	<p>Notify the complainant of your assessment by contacting them via telephone or by drafting and sending an email or letter.</p> <p>If notifying the complainant via telephone, <i>Right click</i> on the <i>Actions</i> box of the approach screen and select <i>Caller > Telephone Conversation with Caller</i> action. Document a summary of your telephone conversation in this action and select <i>Complete Action</i> once complete. Go to step 9.</p>
<p>8</p>	<p>To draft a written response <i>Right click</i> on the <i>Actions</i> box of the approach screen and select an <i>OOJ Referral</i> under <i>Decision Letters</i> and select the letter that best reflects the complaint referral.</p> <div data-bbox="248 1368 1034 1671" style="border: 1px solid #ccc; padding: 5px;"> </div> <p>To create a letter document and template select <i>OK</i> and draft the correspondence using the live document found in the <i>Documents</i> tab under the <i>Outgoing Documents</i> field.</p> <p>To create and send an email template select <i>Cancel</i>. Open the <i>OOJ Referral</i> action and select the <i>Tasks</i> button to generate an OoJ email template which will be sent via Email Watcher.(d) Select the appropriate template using the listed tasks and select <i>Create</i>. Draft the correspondence in the Microsoft</p>
<p>8</p>	<p>Close the approach by selecting <i>Close Approach</i> at the top of the approach screen.</p>

4.6.3 Subject matter out of jurisdiction complaints

Subject matter out of jurisdiction complaints are handled in the same way as a decision not to investigate a complaint. That is, they are processed as if the decision were a 's 6 Discretion not to investigate'. Refer to Procedure 8.2 for how to complete this process.

When finalising the complaint, select an Issue String to reflect that the issues were out of jurisdiction.

4.7 Procedures for requesting advice from the Legal team

1	Discuss the need for legal assistance with your Director	You should do this by email. Do not attach it to your Resolve complaint record.
2	Consider how soon you need the legal advice	If the matter is urgent, it may be appropriate to contact the Legal team by phone. See the Legal services policy
3	Draft your request for legal advice	Requests for legal advice should be made in writing to legal@ombudsman.gov.au Requests should include the following information: <ul style="list-style-type: none"> • sufficient background and context to the request for advice • all relevant documentation • a timeline of events, and • a copy of any legal advice that the business area has previously received on the same or similar matters.
4	Once you receive the advice	You should link the objective file that contains the legal advice to the complaint record in Resolve You must not store the legal advice in Resolve or tell the complainant or agency that you have sought or obtained legal advice without express permission from the Legal Team

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Parliamentary Complaint Handling Procedures

5. Receiving and registration

Updated: 19 December 2019

Review at: 19 December 2020

Procedure 5 Receiving and registration

OVERVIEW	3
5.1 RECEIVING COMPLAINTS	3
5.1.1 Complaint channels	3
5.1.2 Receiving complaints – non-intake staff	4
5.2 REGISTERING COMPLAINTS	4
5.2.1 Person records	5
5.2.2 Existing and multiple person records	5
5.2.3 Complaint files	6
5.2.4 Cross-referencing complaints	6
5.2.5 Co-callers and OBOs	6
5.2.6 Process for registering a web complaint	7
5.2.7 Process for registering a telephone complaint	8
5.2.8 Process for registering other complaint channels	10
5.3 INTAKE ASSESSMENT OF COMPLAINTS	10
5.3.1 Decision – complaint should be finalised	10
5.3.2 Decision to refer a complaint for further assessment	11
5.3.3 Process for referring complaints	11
5.3.4 Referral to Early Resolution Level 2 officers	11
5.3.5 Live phone complaint transfer process – intake officers	12
5.3.6 Live phone complaint transfer process – ERLOs	13
5.4 ESCALATION TO SUPERVISOR	14

Overview

All contacts to the office, including parliamentary complaints, need to be registered. In most cases, these are received by a dedicated intake team in the first instance however at times other staff will receive and register complaints. Regardless of who receives the complaint, that person has to receive the contact, register it in Resolve, conduct an initial assessment and either finalise it or refer it on for further assessment.

This Procedure explains how to receive, register and assess complaints to ensure that they are processed efficiently and accurately.

Purpose	Explain how to receive, register and undertake an initial assessment of contacts and parliamentary complaints
Workflow	<i>Previous Step:</i> Procedure 4 - Jurisdiction <i>Next Step:</i> Procedure 7 – Assessing and deciding complaints Procedure 12 – Deciding complaints
Scope	Does not cover the use of systems used to receive complaints.

5.1 Receiving complaints

5.1.1 Complaint channels

The majority of parliamentary complaints are received directly by telephone or via the Office's [online complaint form](#). However, we also receive complaints through a number of other channels.

Telephone complaints are generally received directly by an intake team, however at times they may be received by other staff during the course of another complaint. All other complaints are triaged by an intake Site Supervisor and allocated to an intake officer for action.

Table 5.1: Complaint channels.

Complaint type	How received
Telephone	People call 1300 362 072 or designated specialist lines (Indigenous and ACT phone numbers). Calls progress through an Interactive Voice Response system before answer by an intake staff member.
Web complaint form	Online complaint forms are lodged and a Resolve record is automatically created using the information in the form.
Email ¹	Emails that arrive to the <i>ombudsman@ombudsman.gov.au</i> mailbox are digitally inspected by Resolve's <i>Email Watcher</i> functionality to determine if there is an open case to which the email can be automatically attached. If not, it will create a <i>Contact Case</i> , which will appear under the Contacts tab on the Resolve Home Screen.

¹ Please note: email is one of the least efficient ways for us to receive a complaint. For this reason, we do not publicly advertise the *ombudsman@ombudsman.gov.au* mailbox nor promote the availability of this channel. We will, however, receive and assess any emails received.

Complaint type	How received
Fax	Received directly to the <i>ombudsman@ombudsman.gov.au</i> mailbox with a <i>Contact Case</i> created.
Letter	Received by the mail team in Canberra or a State office and scanned into Resolve as a New Document in the <i>Unallocated Public Contact</i> tab.
Social media	The communications team will monitor the Office's Facebook and Twitter accounts and will refer any identified contacts or complaints to the <i>ombudsman@ombudsman.gov.au</i> mailbox
In person	We can receive complaints in person in several ways: <ul style="list-style-type: none"> • when a member of the public presents at an Office location (whether unannounced or for an agreed appointment) • during outreach activities such as community events or visits, or • during detention or other inspection activities.

5.1.2 Receiving complaints – non-intake staff

Sometimes, officers who are not in an intake team will receive complaints. For example, a person may make a complaint directly to you:

- by email to your individual work address or another team mailbox
- during outreach activities such as community events or visits
- during detention or other inspections
- written on forms or surveys
- when a person visits the office
- during a meeting with an advocate.

It may not be appropriate to take a person's individual complaint through one of these channels. In these circumstances, it is appropriate to refer them to the usual channels set out above. However, if you do take the complaint, you **must** do the following:

1. **Obtain** the person's contact details, including their full name and preferred contact information. If the person does not want to provide these details, you should still refer the complaint to the intake team and advise the person that we may be unable to take action on the complaint (see Procedure 2.2.5).
2. **Advise** the person that we will assess their complaint. You must not advise them that we will investigate.
3. **Send** the information to the intake team's email address (IAT@ombudsman.gov.au) within **two** working days.

5.2 Registering complaints

Registering a complaint in Resolve involves two steps:

1. Creating a *Person Record*
2. Creating a complaint file (an *Approach*)

The order in which you will create a person record and a complaint file will vary, depending on how you receive the complaint. The process for registering a web complaint is set out at [5.2.6](#). This incorporates email, fax and letter complaints. The process for registering a telephone complaint is set out at [5.2.7](#). All other complaint types are registered as outlined at [5.2.8](#).

5.2.1 Person records

Person records contain personal information about a complainant, including:

- the person's name and contact details (including any alias or preferred names)
- any requirement for an interpreter or translator
- any adjustments to the way the Office will provide services to the person, where the person has a disability (see [Procedure 2.3.1 and 2.8](#))
- if they identify as Aboriginal or Torres Strait Islander
- any restrictions the office has placed on the services it provides to the person (see [Procedure 2.7 – 2.8](#))

5.2.2 Existing and multiple person records

A person should only ever have one person record in Resolve. This ensures that all information about a person, and any complaints they have made to the office, is accessible from a single location.

When you are registering a complaint, you **must** always check if the person has an existing person record in Resolve before creating a new one.

Searching existing/multiple person records

To search for an existing person record:

1. Use the *Find Person* function on the Resolve home screen, or the search function next to the *Caller* bar on an open Approach.
2. Enter the person's email or telephone number (04XX XXX XXX or (0X) XXXX XXXX) as the search criteria. You should only search using one criteria at a time.
3. Click *Find Now* – any existing person records with matching details will show.
4. If no records show, repeat the search using an additional search criteria.

It may not always be clear whether the complainant has an existing person record. For example, two people may have the same name, but may not be the same person. The table below sets out the general rules for identifying an existing person record. If you are unsure, you should discuss with your site supervisor.

Table 5.2: Identify multiple person records.

Matching criteria	Enough to constitute a matched person record?
Name and DOB	No
Name and Address	No
Name and mobile phone number	Yes
Name and email address	Yes
Name and two other pieces of identifying information	Yes

Complaints by email – Email Watcher

Email Watcher in Resolve monitors all email correspondence to the office through the ombudsman@ombudsman.gov.au inbox and conducts an automatic search of the information contained in the email (e.g. reference numbers, email address) to determine whether it relates to an existing complaint.

Where Email Watcher identifies that the email relates to an existing complaint, it will attach the email to the relevant complaint file in Resolve. If it cannot identify that the email relates to an existing complaint, it will create an unmatched Contact Case in Resolve for assessment by an intake officer.

Email watcher does not create new person records or register complaints.

Merging existing/multiple person records

If you find that multiple person records already exist for one complainant, you should make a request to HELPDESK using [this template](#) for the records be merged.

The template email will ask you to identify which record you would like to keep in Resolve and which record/s you would like to merge and delete. It is important that any work you do while waiting for the merge to be completed is on the record you want to keep.

5.2.3 Complaint files

Complaint files are called *Approaches* in Resolve. A complaint file contains details of a complaint, including:

- who made the complaint and a summary of the complaint details
- information about the actions taken and decisions made by the Office in relation to the complaint, and
- copies of any correspondence sent and received in relation to the complaint.

5.2.4 Cross-referencing complaints

If the person making the complaint has made a previous complaint about the same issue/s, this should be recorded on the complaint file. This helps to ensure that any officer who assesses the complaint is aware of all the information that may be relevant to the complaint.

To cross-reference a previous complaint with a new complaint:

1. In the complaint file, select the *Cross References – New* in the *Parties/Xrefs* tab
2. Enter entire complaint number (i.e. 2019-123456) and click *Find*
3. Select the relevant complaint.

This will create a banner on the *Main Approach Screen* which notifies officers that the case has been cross-referenced with another case.

5.2.5 Co-callers and OBOs

If two or more people are making a complaint together (co-callers), or a person is making a complaint on behalf of another person (OBO), this should be recorded on the complaint file. For more information about co-callers and OBO complaints, see [Procedure 2.2](#).

To record a co-caller or OBO:

1. In the complaint file, select the *Cross References – New* in the *Parties/Xrefs* tab
2. Select whether the person is a co-caller, OBO or OBO organisation
3. Enter the person's surname and click *Find*
4. Select the relevant person or create a new person record (see step 6 of 5.2.6)

5.2.6 Process for registering a web complaint

1	Open the complaint file	Any web complaints allocated to you will appear in the <i>Home Screen</i> in <i>Resolve</i> . Click <i>Escalate</i> so that the approach is in Category 1.
2	Assess jurisdiction	Consider whether the agency complained about is in jurisdiction with reference to the guidance set out in Procedure 4 - Jurisdiction .
3	If the agency is <i>not</i> in jurisdiction	If you have decided the agency is not within jurisdiction, you should record this decision and follow the OoJ process set out in Procedure 4.6.2. Process ends here
4	If the agency <i>is</i> in jurisdiction	Complete all mandatory (green) sections on the <i>Main Approach Screen</i> .
5	Search for the complainant	Search for an existing person record by following the steps set out at 5.2.2 .
6	If there <i>is</i> an existing person record	If there is a single existing person record, select that person to link the record to the complaint file If there are multiple existing person records, request a person merge by following the steps set out at 5.2.2 .
7	If there <i>is not</i> an existing person record	Create a new person record: <ul style="list-style-type: none"> • click <i>New Person</i>. This will generate a <i>New Person Entry</i> • complete as many of the <i>New Person Entry</i> sections as possible. This will depend on how much information you have on hand from the written complaint. As a minimum, you must obtain information sufficient to complete the following sections: <ul style="list-style-type: none"> ○ first and surname (unless the person wishes to be anonymous) ○ date of birth ○ two contact methods.
8	Finalise the <i>Initial Approach Details</i> screen	Using the information available in the complaint record, complete the <i>Initial Approach Details Screen</i> . You should use dot points to quickly and accurately record key information. Where possible, you should include as much of the following information as possible: <ul style="list-style-type: none"> • any reference numbers that would be used by the agency to identify the person (e.g. CRN, NDIS participant number) • whether the person has lodged a complaint with the agency, including the date and any relevant reference number • any other steps the person has taken to resolve their complaint with the agency • whether the person has provided consent to transfer the complaint • any key dates and/or events • whether the complaint has been lodged on behalf of another person • the person's preferred contact method, and • what the person is seeking as an outcome to their complaint.

Procedure 5 Receiving and registration

9	Cross-reference any related complaints	If the person has made a previous complaint about the same agency and issue, cross-reference the complaint by following the steps set out in section 5.2.4 of this Procedure.
10	Cross-reference any co-callers or OBOs	If two or more people are making a complaint together (co-callers), or a person is making a complaint on behalf of another person (OBO), record this on the complaint file by following the steps set out in section 5.2.5 of this Procedure. NOTE: if OBO consent has not been provided, you must record this on the <i>Initial Approach Details</i> screen.
11	Record any adjustments or restrictions to our contact with the person	If there is: <ul style="list-style-type: none"> • Any requirement for an interpreter or translator • Any adjustments to the way the office will provide services to the person, where the person has a disability • Any restrictions the office has placed on the services it provides to the person You should record this on the <i>Initial Approach Details</i> screen. You should also consider whether it is necessary to place an alert on the person's file (see Procedure 2.8).
12	Save and assess the complaint.	s 47 Assess the complaint in accordance with Procedure 7.

5.2.7 Process for registering a telephone complaint

1	Search for the complainant	While you are on the phone to the person, search for an existing person record by following the steps set out in section 5.2.2 of this Procedure.
2	If there <i>is not</i> an existing person record	Create a new person record: <ul style="list-style-type: none"> • click <i>New Person</i>. This will generate a <i>New Person Entry</i> • complete as much of the <i>New Person Entry</i> sections as possible. This will depend on how much information you have on hand. As a minimum, you must complete the following sections: <ul style="list-style-type: none"> ○ first and surname (unless the person wishes to be anonymous) ○ date of birth ○ two contact methods ○ demographics • click <i>Save</i> on the <i>Person Entry Screen</i> • go to step 4.
3	If there <i>is</i> an existing person record	If there is a single existing person record, ensure all details in the <i>Person Entry</i> are completed and up to date and click <i>Save</i> . If there are multiple existing person records, request a person merge by following the steps set out at 5.2.2.
4	Assess jurisdiction	Consider whether the agency complained about is in jurisdiction with reference to the guidance set out in Procedure 4.
5	If the agency is <i>not</i> in jurisdiction	If you have decided the agency is not within jurisdiction, refer to Procedure 4.6.1. Process ends here.

6	If the agency is in jurisdiction	Click <i>New Approach</i> on the <i>Person Record</i> and complete all mandatory (green) sections on the <i>Main Approach Screen</i> .
7	If complaint is about an ERLO designated agency	<p>If your complaint relates to an ERLO designated agency and you decide during your conversation that you should transfer the complaint to an ERLO, go straight to step 1 of below process table 5.3.5.</p> <p>You are not required to gather specific complaint details (beyond personal details and reference numbers) prior to referring the complaint, however you must ensure that all the information that you receive is recorded and saved in Resolve so it can be transferred to the ERLO in real time.</p> <p>Process ends here.</p>
8	Complete the <i>Initial Approach Details Screen</i>	<p>Advise the complainant that you would like to ask them some questions about their complaint. For example:</p> <p><i>'I am going to ask you some further questions to determine whether I am the most appropriate person to discuss your complaint with today.'</i></p> <p>As you are gathering information, complete the <i>Initial Approach Details Screen</i>. You should use dot points to quickly and accurately record key information. Where possible, you should include as much of the following information as possible:</p> <ul style="list-style-type: none"> • any reference numbers that would be used by the agency to identify the person (e.g. CRN, NDIS participant number) • whether the person has lodged a complaint with the agency, including the date and any relevant reference number • any other steps the person has taken to resolve their complaint with the agency • whether the person has provided consent to transfer the complaint • any key dates and/or events • whether the complaint has been lodged on behalf of another person • the person's preferred contact method, and • what the person is seeking as an outcome to their complaint.
9	Cross-reference any related complaints	If the person has made a previous complaint about the same agency and issue, cross-reference the complaint by following the steps set out in section 5.2.4 of this Procedure.
10	Cross-reference any co-callers or OBOs	<p>If two or more people are making a complaint together (co-callers), or a person is making a complaint on behalf of another person (OBO), record this on the complaint file by following the steps set out in section 5.2.5 of this Procedure.</p> <p>NOTE: if OBO consent has not been provided, you must record this on the <i>Initial Approach Details</i> screen.</p>

11	Record any adjustments or restrictions to our contact with the person	<p>If there is:</p> <ul style="list-style-type: none"> • Any requirement for an interpreter or translator • Any adjustments to the way the office will provide services to the person, where the person has a disability • Any restrictions the office has placed on the services it provides to the person <p>You should record this on the <i>Initial Approach Details</i> screen. You should also consider whether it is necessary to place an alert on the person's file (see Procedure 2.8).</p>
12	Escalate, save and assess the complaint.	<p>Click <i>Escalate</i> so that the approach is in Category 1. Click <i>Save</i> on the <i>Main Approach Screen</i>.</p> <p>Assess the complaint in accordance with Procedure 7.</p>

5.2.8 Process for registering other complaint channels

The process to register complaints received by all other channels is a combination of the telephone and webcase process. You should create a new complaint as covered in steps 1-3 and 6 of [5.2.7](#). Finish the registration process of steps 8 onwards of [5.2.6](#).

5.3 Intake assessment of complaints

Once you have registered a complaint, the next step is to assess it and determine how to action the complaint.

Assessment of a complaint at the intake stage is an assessment of whether the complaint should be:

- finalised, or
- referred to another team for further assessment, or
- referred to an Early Resolution Level 2 officer.

Procedure 7 explains how to identify issues and assess and decide what to do with parliamentary complaints. You should ensure you have read Procedure 7, however due to the limited assessment role of intake teams not all sections will be relevant to the day to day work of intake functions.

Instead, at the intake stage, complaints are assessed against certain applicable discretions (see [5.3.1](#)) or they are referred for further assessment ([5.3.2](#))

5.3.1 Decision – complaint should be finalised

As outlined in Procedure 7, section 6 of the *Ombudsman Act 1976* (Cth) and *Ombudsman Act 1989* (ACT) provide many discretions to decide not to investigate a complaint. At the intake stage, the most common and applicable discretions are that the complainant has not complained to the agency or the agency has not finalised its assessment of the complaint, or that the complaint has accessed or could access an internal or external review pathway.

Table 5.3: Common discretions not to investigate used at intake stage.

Scenario	Example
The complainant has not made a complaint to the agency.	The complainant has had some contact with the agency about their issue/s, but has not lodged a formal complaint in accordance with the agency's procedures.
The complainant has made a formal complaint to the agency, but that complaint is still within the agency's service standard.	The complainant lodges a complaint with the agency and contacts our Office the following day.
The complainant has a structured review pathway available to them.	The person disagrees with a decision made by the agency and is able to seek an internal or external review of that decision. Instead, they contact our Office about the decision.

5.3.2 Decision to refer a complaint for further assessment

If, at the intake stage:

- you are satisfied that the complaint is in our jurisdiction, and
- you do not intend to exercise any of the discretions set out in 5.3.1 above to finalise the complaint,

You should refer the complaint for further assessment. There are conventions of how certain complaints or issues are handled. If you are unsure to where a complaint should be referred, consult your supervisor.

5.3.3 Process for referring complaints

1	Ensure <i>Initial Approach Screen</i> is completed	You are not required to provide a full summary of the complaint or complete all areas on this screen. You should provide any key information you considered and/or you wish to draw to the attention of the next assessing officer. You are not required to document reasons for your decision to refer the complaint. Ensure any vulnerabilities are cleared stated on the main summary screen.
	Escalate	Escalate the complaint to category 2.
3	Notify Complainant of Complaint Referral	Select Caller > Write to Caller action item and generate a "Referral of Complaint within OCO" letter or email. Once this document is amended in accordance with date of complaint and associated agency, send to the complainant. Complete the action when this task is done.
4	Allocate to the relevant team	Click <i>Assign to</i> tab in Resolve and select the appropriate parliamentary complaint handing team to allocate the complaint to.

5.3.4 Referral to Early Resolution Level 2 officers

For some complaints, we can facilitate the immediate transfer of a telephone complaint from an intake officer to a trained Early Resolution Level 2 officer (ERLO). In practice, this means an intake officer receives a telephone complaint and, on assessing that the complaint meets the requirements for ERLO assessment, can transfer the complaint to the ERLO without completing the full registration and assessment process. It then allows the ERLO to

Procedure 5 Receiving and registration

gather and assess the information from the complainant at ‘first touch’. This produces a more timely and efficient response to the complaint.

This process only applies to certain designated agencies. At the moment, the only designated agency is Centrelink. As a general rule, you should use the phone transfer process for **all** complaints about those agencies that you would otherwise refer to the Early Resolution team for further assessment. ERLOs **must** accept the call.

You should not use the phone transfer process:

- to de-escalate a call or manage unreasonable complainant conduct, or
- where there is a potential s 35A disclosure issue (see Procedure 3.5.5)

Technical matters or coaching should not be discussed during the handover of a call from intake to an ERLO. If you have concerns about a complaint that was transferred, you should discuss this with your supervisor after the call.

5.3.5 Live phone complaint transfer process – intake officers

1	Register complaint	Follow steps 1-7 of 5.2.7 .
2	Explain transfer to complainant.	<p>Advise the caller of your decision to transfer to ERLO. Suggested wording:</p> <p><i>‘I would like to refer your complaint to a Complex Complaint Officer given the issues that you have raised. This officer will speak to you further about your complaint. I will now be transferring you to the relevant officer, this will take a few minutes while I arrange for the transfer of your call and the information that you have provided. Please hold.’</i></p> <p>NOTE: sometimes a complainant may be limited in how long they can spend on the phone (e.g. if they are calling from prison, hospital or have limited phone credit). In these cases, you should end the call and call the complainant back before commencing the transfer process. If the complainant cannot remain on the phone for a transfer, you should action the complaint in line with the web complaint set out at 5.2.6.</p>
3	Ensure you have completed the <i>Main Approach Screen</i>	<p>Place the caller on hold and complete the <i>Main Approach Screen</i>. You should aim to spend no more than 5 minutes completing the record. You need to:</p> <ul style="list-style-type: none"> • Ensure you have completed the <i>Main Approach Screen</i> and <i>Initial Approach Screen</i> in accordance with steps 8 in 5.2.7. • <i>Escalate</i> the Approach to <i>Category 2</i>. • Allocate the approach to <i>Allocations Early Resolution</i>.
4	Prepare a briefing email for the ERLO	<p>Prepare an email to send to the ERLO when you transfer the call. This should include brief information about the complaint and the Resolve reference number. Cut and paste or screen shot the complaint information on the <i>Main Approach Screen</i> into an email.</p>

5	Transfer the call to the ERLO	<p>Using the Desktop software, click <i>Transfer</i> and enter the name <i>CLINK ER Queue</i> – the call will be transferred to the next available ERLO.</p> <p>Once the ERLO is identified, send the briefing email to the ERLOs work email. Provide a quick briefing to the ERLO about the complaint. This should take less than one minute and should include a summary of the complaint issues, any high level issues and any crucial information for the management of the complaint. For example:</p> <p><i>‘Hi, I have Mr Smith on the phone. His complaint is about a delay in relation to his Newstart Claim. He does not receive an income and has made multiple complaints to DHS C&F without a response. I have sent you a summary of the details including the approach number. Putting him through now.’</i></p> <p>NOTE: this is a hand-over conversation only. It is not a time for detailed discussion or for the ERLO to ‘vet’ the transfer of the call.</p>
6	Complete the transfer	<p>After your hand-over conversation, click <i>Complete Transfer</i>. This transfers the call from the IAO to the ERLO</p> <p>NOTE: if the phone call ‘drops out’ or ‘cuts out’ during the ERLO transfer process, it is the responsibility of the intake officer to call the complainant back immediately and re-commence the transfer process.</p>

5.3.6 Live phone complaint transfer process – ERLOs

1	Open the briefing email and introduce yourself to the complainant	<p>With the briefing email open, introduce yourself to the complainant. You should thank them for waiting and confirm the call has been transferred to the right person. For example:</p> <p><i>‘Hello Mr Smith, my name is Susan. I am the officer assessing your complaint. Thank you for waiting. The previous officer [refer by name] advised me you have a complaint relating to Centrelink and delays affecting your claim for Newstart Allowance. Could you tell me more about...’</i></p> <p>NOTE: you are not required to confirm the caller’s identification unless you or the intake officer have concerns regarding their identity.</p>
2	Re-allocate the complaint to yourself	<p>Once the complaint becomes visible in the <i>Allocation Early Resolution</i> screen and allocate to yourself and click <i>Save</i>. Ensure it has been escalated to <i>Category 2</i>.</p>

3	Obtain information from the complainant	Open a <i>Telephone Conversation with Caller</i> action to record the notes of your conversation. Where relevant and if not previously recorded, obtain the following information: <ul style="list-style-type: none"> any reference numbers that would be used by the agency to identify the person (e.g. CRN, NDIS participant number) whether the person has lodged a complaint with the agency, including the date and any relevant reference number any other steps the person has taken to resolve their complaint with the agency consent to transfer the complaint or OBO consent any key dates and/or events whether the complaint has been lodged on behalf of another person the person's preferred contact method what the person is seeking as an outcome to their complaint.
4	Decide what action to take on the complaint	Consider whether you are able to make a final decision, based on the information you have obtained from the complainant. You may decide: <ul style="list-style-type: none"> not investigate the complaint transfer the complaint refer the complaint for investigation, or that you require further information to assess the complaint.
5	Action your decision	Advise the complainant of your decision and <ul style="list-style-type: none"> if you have decided not to investigate the complaint, action your decision in accordance with Procedure 8.2. if you have decided to transfer the complaint, action your decision in accordance with Procedure 8.3. If you have decided that you require further information to assess the complaint, advise the complainant that you will be in contact with them in due course. Conduct an assessment in accordance with Procedure 7.6.

5.4 Escalation to supervisor

It may be appropriate to escalate a complaint to your supervisor when:

- the complainant requests to speak to a supervisor
- you identify a potential conflict of interest (see Procedure 7.1.1).

If the complainant raises urgent issues, including those that may warrant an s 35A release of information, you **must** raise these issues **immediately** with your supervisor. This all this applies to all complaints regardless of how you became aware of the threat or issue, or what the complaint is about.

More information about responding to threats of harm is available in the Office's [Policy and Procedures for Responding to Risks of Harms and Threats to Others](#). Procedure 3.5.5 addresses procedures for making a release of information under s 35A.

Procedure 5 Receiving and registration

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Parliamentary Complaint Handling Procedures

7. Assessing complaints and deciding a course of action

Updated: 19 December 2019

Review at: 19 December 2020

OVERVIEW	3
7.1 CONFLICTS AND PRIORITY	5
7.1.1 Conflict of interest	5
7.1.2 Priority	5
7.1.3 Accessibility and alternative servicing	7
7.2 PROCESS TABLE – CONDUCTING A PRE-ASSESSMENT	7
7.3.1 Framework to identify the issues in a complaint	8
7.3.2 Accurately record the issue string for every issue	8
7.3.3 Are any of the issues also a tip-off?	9
7.3.4 Identify systemic issues	9
7.3.5 Process table: Searching IOIs	11
7.4 GATHER ENOUGH INFORMATION TO DECIDE THE NEXT STEP	11
7.4.1 The complainant	12
7.4.2 Internal information – SMS and specialist teams	12
7.4.3 Research	13
7.4.4 Seeking information from a third party	13
7.4.5 Preliminary inquiry	13
7.5 DECIDE WHAT ACTION WE WILL TAKE	14
7.5.1 Decision not to investigate	14
7.5.1.1 Complaint not previously raised with agency	15
7.5.1.2 Agency is still considering the complaint	16
7.5.1.3 Internal review available	16
7.5.1.4 Could be, or could have been, considered by a Court or Tribunal	17
7.5.1.5 Has been, or is being, considered by a Court or Tribunal	18
7.5.1.6 Complainant refuses to clarify in writing	19
7.5.1.7 Older than 12 months	19
7.5.1.8 Frivolous, vexatious, not in good faith	20
7.5.1.9 Not warranted in all the circumstances	20
7.5.1.10 Insufficient interest	21
7.5.1.11 Commercial activity	22
7.5.2 Transfer the complaint	22
7.5.3 Investigate	24
7.6 PROCESS TABLE – ASSESSING AND DECIDING COMPLAINTS	25
Appendix A – Basis for transfer – statutory transfers	28
Appendix B – How the OCO responds to systemic issues.	30

Overview

The first step you need to complete after receiving or being allocated a complaint is to assess it and decide the most appropriate action to take. All parliamentary complaints must be assessed, although the process will differ depending on what stage the complaint is at. For example, an intake officer is only expected to assess for jurisdiction or referral back to an agency, in which case a complaint can be finalised, otherwise it should be referred to another officer for further assessment.

The [Ombudsman Act 1976 \(Cth\)](#) and [Ombudsman Act 1989 \(ACT\)](#) (the ACT Act) provide that we must investigate all complaints unless one of the statutory grounds not to investigate is met. One of these grounds is that investigation is not warranted having regard to all the circumstances. In practice, this gives us broad discretion to determine the most appropriate way to handle the complaint, including to formally investigate or to utilise the other tools at our disposal.

Conducting a thorough assessment ensures the issues raised by the complainant are fully considered and results in better quality and more transparent decision-making. This Procedure explains how to undertake your assessment and decision-making process.

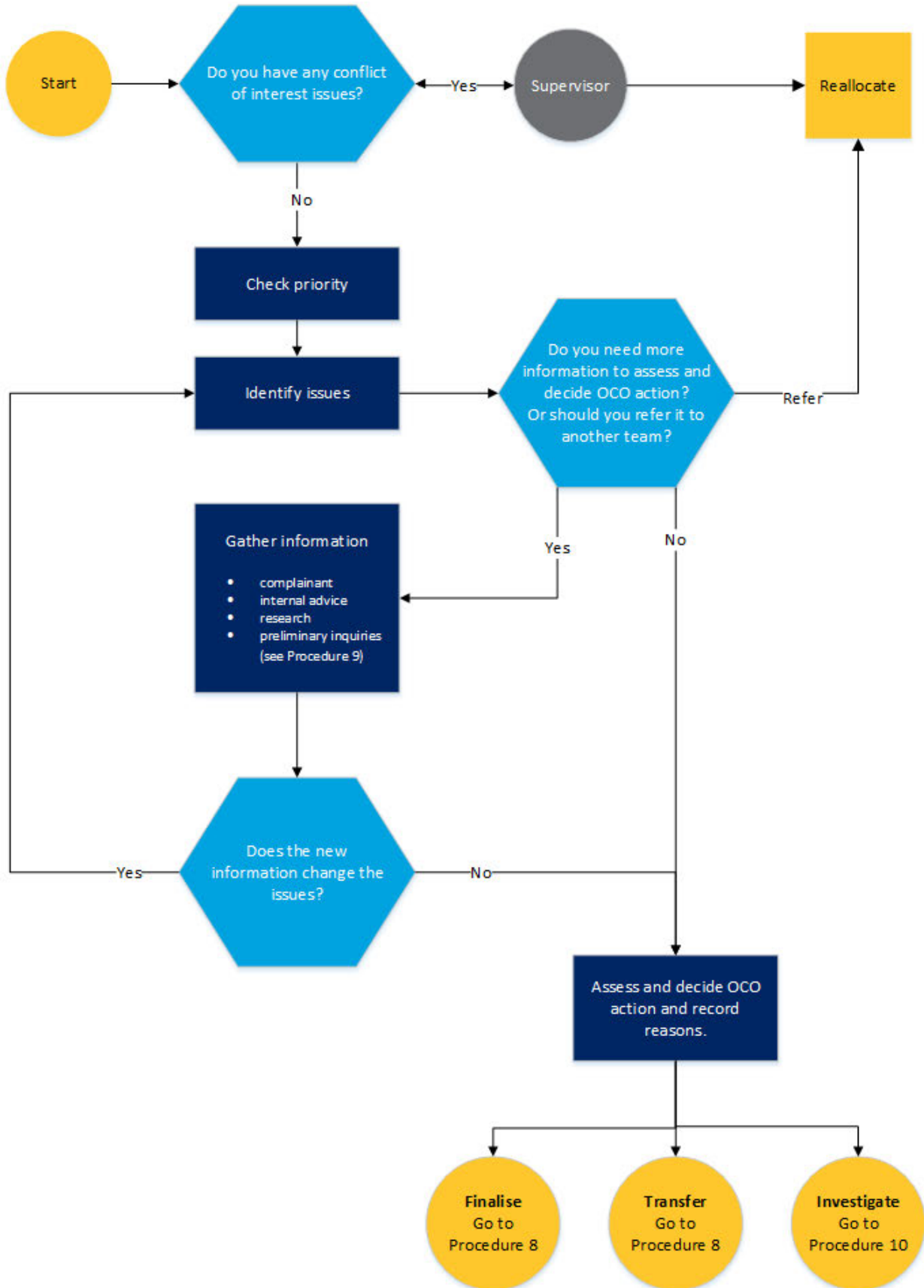
Resolving complaints early

The process of resolving complaints early, while adhering to the Ombudsman Act, is a guiding principle of how our Office handles complaints. A key step in our assessment process is identifying where the issues raised in a complaint are suitable for early resolution. Early resolution mean identifying and implementing a proportionate and fit for purpose response to a complaint at the earliest point possible. It recognises that in many complaints there are avenues other than formal investigation or other dispute resolution techniques that allow for a prompt outcome to be reached. Early resolution allows for efficient and effective complaint resolution and promotes expedient and effective use of public resources.

Our complaints management system is structured so that the option to resolve a complaint early is considered in most complaints. Consideration is given at all stages to the most appropriate complaint-handling option and the complaint allocated accordingly.

Purpose	To explain how to assess complaints, identify issues and how and when to obtain additional information. To explain what decisions you can make and how to determine what decision you should make.
Workflow	<i>Previous Steps:</i> Procedure 5 - Receiving and registering complaints. <i>Next Steps:</i> Procedures 8, 9 and 10 – Actioning your decision.
Scope	It does not explain how to implement your decision. This is covered in Procedures 8, 9 and 10.

Flowchart - assessing and deciding complaints



7.1 Conflicts and Priority

Prior to commencing a substantive assessment of your complaint, you need to conduct two pre-assessment steps, to determine if a conflict arises or whether the complaint should be prioritised over others.

7.1.1 Conflict of interest

While conflicts of interest are rare, it is important that they are identified and mitigation steps implemented so that your decisions can be seen by both complainants and agencies to be impartial and independent.

All staff are bound by s 13(7) of the [Public Service Act 1999](#), which requires us to 'disclose, and take reasonable steps to avoid, any conflict of interest (real or apparent)' in connection with our duties. The Australian Public Service Commission provides more information about the [obligations on staff regarding conflicts of interest](#).

Our [Conflict of Interest Guidelines](#) outlines how to identify and respond to conflicts of interests. You are expected to have read and understood that document prior to handling complaints.

The first step after receiving a new complaint is to identify if you personally have a conflict of interest in relation to the complainant, agency or subject matter. In most cases, you will know upon reading the complaint if you have a conflict on reading the complaint particulars. However you may identify further into your complaint that you have a conflict. Regardless of when you identify the conflict, you are expected to immediately take steps to mitigate the conflict.

If you believe there could be a conflict of interest—for you or one of your colleagues—speak to your supervisor.

7.1.2 Priority

We aim to respond to all complaints within our service standards (see Procedure 2.1). Usually, this would mean dealing with complaints in the order we receive them, although this is not necessarily always the case. There are a number of factors that may give a complaint a higher priority or require escalation, through urgency, sensitivity or vulnerability.

Identifying these issues allows us to assess and evaluate the risks attached to a complaint and implement steps to address those risks. There are many options to address such circumstances which largely depend on the facts of the case but may include:

- targeted case allocation
- internal escalation and/or consultation
- expedited complaint handling, and
- extra time to allow a complainant to engage with us.

When identified, you must consider the urgency, sensitivity, vulnerability or accessibility consideration and record how you considered it and what action – if any – you took.

You must notify your manager of any urgency, sensitivity or vulnerability in circumstances where:

- you have proposed action that is out of the ordinary or conflicts with our usual complaint handling procedures, or
- you are concerned about the impact that our involvement in the complaint may have on the complainant.

Urgency

While all complaints should be finalised as quickly as possible, a small number of complaints that we receive are particularly urgent and should be given priority. You should record this clearly in Resolve including why. Factors that may mean a complaint is urgent include:

- the immediate wellbeing of the complainant, e.g. economic hardship, health and wellbeing or homelessness
- decisions that would be difficult to reverse, e.g. deportation, termination of a job in Defence¹
- the likelihood that evidence will be lost if action is not taken immediately
- the likelihood that delays will make it more difficult to achieve a resolution
- issues determined internally as a high priority
- an agency's willingness to stay (or delay) implementing a decision while we further consider or investigate a complaint.

Sensitivity

There are a number of factors that can result in a complaint being more sensitive than others, including:

- from a member of Parliament
- about which there has been Ministerial involvement
- about a high public or political profile of a person or issues, or in relation to which there is or may be media interest
- from a potential whistle-blower
- from someone making a potential public interest disclosure (PID) or PID handling complaint
- from someone in a correction or detention facility.

Vulnerability

The categories for what constitutes a vulnerability are intentionally broad. This does not mean that every complainant who fits a vulnerability indicator warrants different or urgent treatment – in many cases this will not be necessary. However the following indicators mean that it is best practice to give active consideration to how we service that complainant and if adjustments are warranted. A vulnerability may include, but is not limited to:

- disability or illness (physical, intellectual or psychiatric disability, mental health issues, acquired brain injury, addiction, severe illness)
- if the person is Aboriginal or Torres Strait Islander (especially if remote)
- age – under 18 or elderly
- language and/or literacy
- personal crisis e.g. bereavement, other recent trauma (such as traumatic diagnosis, relationship breakdown or physical injury, or other issues causing emotional distress)

¹ Note: we don't generally have jurisdiction over employment matters, but the Defence Force Ombudsman jurisdiction is one area in which we do, and we do get urgent complaints relating to imminent termination action.

- homelessness or risk of homelessness
- family or other violence
- geographically or socially isolated, or
- any other factors that may impact the ability of the complainant to engage with the agency complained of, or understand the actions required of them.

7.1.3 Accessibility and alternative servicing

In some cases, the above factors may not require prioritisation of a complaint, but may lead us to provide alternative servicing arrangements to meet the complainant's identified needs or preferences.

For more information, refer to Procedure 2.3 on Accessibility.

7.2 Process table – Conducting a pre-assessment

The below table sets out the process you should follow prior to conducting your assessment of a complaint.

1	Review the information on the complaint file	This should include: <ul style="list-style-type: none"> • the information recorded in the <i>Initial Approach Details</i> screen • any correspondence in the <i>Documents</i> tab • any cross-referenced complaints in the <i>Parties/XRefs</i> tab • any relevant previous complaints the person may have made.
2	Conflict of interest	Consider whether there is a conflict of interest. If you believe there could be a conflict of interest – for you or one of your colleagues – you should speak to your supervisor.
3	Prioritisation assessment	Consider whether the complaint should be prioritised due to urgency, sensitivities or vulnerability. Any decision to prioritise a complaint due to urgency, sensitivities or vulnerability should be clearly recorded on Resolve using a <i>Briefing</i> action, or within your assessment of the complaint. Ensure you include an explanation of any risks associated with the urgency, sensitivity or vulnerability and how you intend to address those risks.
4	Conduct your assessment	In accordance with Process table 7.6

7.3 Identify the issues in the complaint

A complaint issue can usually be phrased as a question. An example of some issues you might identify in a complaint are:

- **Decision-making** – Did the agency consider all relevant information?
- **Process** – Is there unreasonable delay by the agency in making the decision? Did the agency follow its own processes and procedures in this situation?
- **Complaint-handling** – Did the agency respond to the complaint?

7.3.1 Framework to identify the issues in a complaint

A good starting point is what the complainant has told you they are concerned about and what they want to achieve.

However, this alone should not define the issues. It is important you conduct an independent review and assess the issues independently of what the complainant told you.

This assessment is a comparison **between what has happened** and **what should have happened**. Identifying the legal requirements and agency discretion questions provides a framework for deciding what should have happened. This in turn defines the relevant factual questions.

Legal requirements:

- What does the law require? Did the agency act lawfully?
- What should have happened?
- Legal questions are answered by looking at **the law**.

Agency discretion:

- What options or choices did the agency have? Did it consider all the options? Did it make a good choice?
- Discretionary questions are answered by looking at any **relevant policies/procedures** and considering the **principles of good administration**.

Factual:

- What happened?
 - who, what, where, when, why?
- Did the complainant engage with options available to them to progress their issue?
- Was the complainant aware of the options? Do they still have options available to resolve the issue?
- Factual questions are answered by looking at **the evidence**.

Once you have identified the relevant questions, you should consider if you can already satisfactorily answer any or all questions. The questions that do not have satisfactory answers will form the core issues of the complaint.

In many cases, identifying the issues in a complaint may be straightforward – the complainant may make it explicit, there may be only one or two issues of concern and there is sufficient information in the complaint for you to fully understand the problem. However this is not always the case, for example where the complainant provided voluminous or unclear information containing many intermingled issues.

The issues identified at this stage can evolve over the course of the complaint.

7.3.2 Accurately record the issue string for every issue

In Resolve, *Issue Strings* record four categories of data about a complaint (issue, cause, action taken and outcomes). We use issue strings to understand our complaint work at the macro level, perform trend analysis, prioritise and allocate resources where they are most needed and report to Parliament and the public. For these reasons, issue strings must be recorded accurately. Accurate reporting is a core part of our reputation as an Office.

Once you have identified the issue/s in the complaint create an Issue String about each issue. You can change the issue in the Issue String later if you identify that it does not correctly reflect the issues in the complaint.

Refer to Section 12.1 in Procedure 12 for more information about recording issue strings.

7.3.3 Are any of the issues also a tip-off?

A 'tip-off' complaint is one in which a person raises an issue relevant to an agency, and while the agency and/or our Office may well take action to address it, neither we nor the agency would be able to tell a complainant what action it is taking or has taken. Generally, this is due to privacy considerations, but may also be due to public interest, sensitivity or policy reasons.

Tip-off complaints can arise in the following situations:

- A person has made a tip-off to an agency providing information about another person's alleged wrongdoing and want to know if it has been actioned (i.e. a tip off that a person is unlawfully collecting welfare benefits).
- A person is in a multiparty arrangement and wants to know what action the agency has taken against the other party (i.e. Child Support collection action).
- A person was involved in a tender or funding arrangement and want to obtain assurance the process has been appropriately conducted (i.e. an unsuccessful grant or tender applicant seeking information about the process).
- A workplace relations allegation that is within the Ombudsman's jurisdiction (i.e. pre-employment allegations of wrongdoing during a recruitment process).

A complainant may want us to find out whether the agency's action or inaction involves poor public administration.

For privacy reasons, we cannot inform the complainant of the detailed outcome of our inquiries, but we can tell the complainant that we are satisfied that the agency's actions are reasonable and in accordance with their processes, or that we have concerns and have expressed them to the agency.

Tip-off complaints often warrant us taking some action to verify what the agency has done, such as a preliminary inquiry (Procedure 9) or an investigation (Procedure 10).

7.3.4 Identify systemic issues

What is a systemic issue?

As stated in Procedure 1, a *systemic issue* is:

likely to affect a class of persons beyond any person who lodged a complaint or raised a concern. Several complaints of the same type or a single complaint may raise a systemic issue, provided that the effect of the issue extends beyond a single complainant.

A systemic issue is by nature a significant issue. Examples of systemic issues include:

- a pattern of agency conduct, or recurring instances of agency conduct (for example, persistent delay in meeting a statutory timeframe, poor complaint handling or defective notification letters)
- a deficiency in an individual case that is likely to be repeated in other cases (for example, an erroneous interpretation of legislation, wrong advice in an agency manual, or an error by an individual officer that reflects poor training), and
- an issue that has been discussed in our public reports, whether or not we have made a recommendation.

Identify, then communicate and record

Regardless of the action taken on a complaint, it is important that you identify systemic issues in the complaints you receive. This includes new or emerging and known systemic issues.

The 'issues of interest' (IOI) functionality on Resolve records systemic issues, including emerging systemic issues. An IOI records how the issue will be dealt with and who has responsibility for taking action. A list of current IOIs can also be found on the office's [intranet](#).

An IOI can be created at any stage of complaint assessment or investigation. For more information, see the [Issues of Interest Framework](#) and the [IOI Guide](#).

Communication and recording are essential for effective management of systemic issues. Good communication about systemic issues allows:

- you to more effectively manage your caseload
- the Office to create agreed responses, so our response to the same systemic issue is consistent across complainants
- the Office to identify trends and strategically prioritise and allocate resources so we can achieve systemic improvements in public administration.

Recording accurate data about systemic issues:

- gives us an accurate overall 'snapshot' of maladministration and allows trend analysis
- allows us to allocate our resources appropriately to improve public administration.

For these reasons, you should:

- **Keep abreast of known systemic issues** relating to the agencies you regularly handle complaints about.
- **Identify known systemic issues**, and record them in Resolve.
- **Use existing Issue Strings and (IOIs)** and engage with the relevant SMS and strategic representatives.
- **Identify possible new and emerging systemic issues** and discuss with relevant SMS.
- If you are not already aware of the new systemic issue and there is a subject matter specialist (SMS) for the agency concerned, in the first instance consult with the SMS within your branch then, where appropriate, consult staff in the relevant strategy team. The SMS (or strategic representative) should be able to advise you if there is an agreed Office strategy in place to address the issue or else take the issue to the relevant strategy team at SMS meetings (see also Appendix B – How the OCO responds to systemic issues).
- If there is not an SMS network or the agency concerned does not have a specialist strategy team, you can search the IOIs on Resolve for the agency concerned (see below) to see if there is an IOI on the issue. If unsure, consult with your supervisor regarding whether the issue is significant enough to warrant monitoring it through an IOI and / or taking action on the individual complaint.

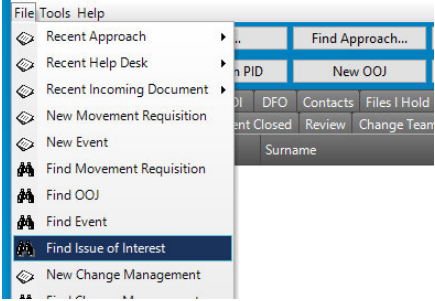
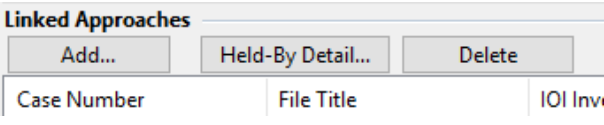
Refer to 7.5.3 for the factors you should consider when deciding whether to investigate a systemic issue.

Collaboration between CME and Strategy Branch

When a systemic issue is identified as warranting action, the relevant strategy team (if there is one) should be informed and their input considered as part of the investigation of the complaint (generally managed by the

investigating officer). Decisions about the sharing of investigations or systemic issue work should always involve engagement between the Directors of the teams involved.

7.3.5 Process table: Searching IOIs

1	Search IOI	<p>Select <i>Find Issue of Interest</i>. This is accessed through the File menu at the top left of the Resolve screen.</p> 
2	Enter parameters for the IOI search	<p>Enter the applicable search parameters regarding the agency and issue of your interest. Review the results to see if any match the issue of your complaint.</p> <p>If you know the IOI number for a specific IOI, you can search by that number.</p>
3	Link complaint to IOI	<p>To link to the case, open the relevant IOI. At the bottom of the IOI there will be the list of linked complaints. Select <i>Add</i> and add the Resolve number for your relevant complaint.</p> 
4	Notify IOI assigned officer	<p>In the IOI Action tab, add a <i>Briefing</i> action and ensure it is assigned to the IOI owner.</p> <p>In the <i>Briefing</i>, advise that you have added the case and the case number and briefly outline why you linked it to the IOI.</p>

7.4 Gather enough information to decide the next step

Having reviewed and considered the information on the complaint record, you should turn your mind to whether you require further information to finalise your assessment. If you already have enough information, you can skip this step and go to 7.5. The process of identifying issues may lead you to conclude that you need further information.

Further information, when required, can be obtained from any one or a combination of the following sources:

- the complainant
- internal information, including operational guidance in place for common or emerging issues
- research, including information agencies publicise on their websites
- a third party, or
- the agency (through a preliminary inquiry).

7.4.1 The complainant

If you require further information from a complainant, you should contact the complainant according to the relevant process set out in Sections 2.4 - 2.6 of Procedure 2.

7.4.2 Internal information – SMS and specialist teams

Operational approaches

From time to time, the office will develop an ‘operational approach’ to provide guidance about how to action common or emerging issues. Operational approaches may be team or branch specific. Any current operational approaches will be circulated within teams or may be on the intranet.

Subject Matter Specialists (SMS)

Subject matter specialists (SMS) are officers who have particular knowledge, skills or expertise. This may be one or two aspects of a single portfolio or it may be across several portfolios. Often there will be several SMS for an agency. This SMS network will attend meetings with representatives from the strategy team and will share that information, as required, to their teams.

SMS can provide practical and timely ad hoc advice in relation to complaints about their area of expertise. They can also provide assistance in relation to drafting correspondence to agencies (such as preliminary views, questions under s 8, or s 12(4) comments) or brainstorming (e.g., providing a further perspective to help you to decide how to action the complaint).

The advice of a SMS should assist your understanding of issues and suggested responses, but does not supplant the advice of your supervisor.

You should contact an SMS within your Branch before requesting advice from a strategy team. You can find a [list of SMS](#) in Objective. Before approaching an SMS, it is helpful to consider:

- what type of assistance you require
- what information the SMS is likely to request or need, and
- whether the matter is urgent.

Other specialist teams

Before asking another team for advice you should consider whether the information can be obtained from an SMS) or IOI, and seek approval from your supervisor (or your Director when you are seeking advice from the Legal team).

Table 7.1: Internal specialist teams

Team	Information
Legal team	The Legal Services Policy sets out the circumstances where you can (or must) seek legal advice. This includes advice in relation to: <ul style="list-style-type: none"> • interpretation of an agency’s policies or legislation, and • whether your complaint is in jurisdiction.
Strategy teams	Information specific to particular agencies including: <ul style="list-style-type: none"> • programs and schemes administered by the agency • work the agency is doing to address systemic issues, and • work Strategy is doing to address systemic issues.

ACT teams	Information about the ACT jurisdiction and priorities of the Office in that sector
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7.4.3 Research

There are multiple places where information can be obtained to assist your assessment of your complaint. This list is not exhaustive, but regularly used research avenues includes:

- previous complaints in Resolve (e.g. consider searching closed cases from that agency or cases on a relevant IOI)
- agency websites and published documents or reports
- legislation ([ComLaw](#) and [AustLii](#))
- the intranet (particularly resources published by the Strategy branch)
- agency procedural guidance provided to our Office and circulated through SMS networks or in your team
- internet searches, including media reports (the Strategy branch conducts media monitoring of systemic issues and may be able to assist)
- case law such as tribunal reasons or court judgements (generally available on [Austlii](#))
- in limited circumstances, textbooks or other published materials.

7.4.4 Seeking information from a third party

Seeking information from a third party is covered in more detail in Procedure 3.5.4.

You may wish to seek information from a third party in circumstances such as:

- seeking general information from an organisation, i.e., contacting a different organisation for information about its review process, or
- contacting an organisation or person with the complainant's consent to obtain relevant information.

In circumstances where you need to disclose information about the complainant to the third party, you may require the complainant's consent to do so. Refer to 3.5.4 for more information about when consent is required.

7.4.5 Preliminary inquiry

If you need information from an agency and cannot obtain it from operational documents available to us, the agency's website or other publicly available means, you may need to conduct a preliminary inquiry.

What is a preliminary inquiry?

A preliminary inquiry is a one-off inquiry made of an agency during the assessment of a complaint to determine whether or not to investigate the complaint. Preliminary inquiries are authorised by s 7A of the *Ombudsman Act 1976* (Cth) and s 8 of the *Ombudsman Act 1989* (ACT). Before conducting preliminary inquiries, you **must** familiarise yourself with the [Preliminary Inquiries Policy](#). Unlike other aspects of the Office's complaint handling, the use of preliminary inquiries is governed by an Office wide policy. To conduct a preliminary inquiry, follow Procedure 9.

Purpose of a preliminary inquiry

Preliminary inquiries are a useful tool to obtain information to allow for better decision making. Preliminary inquiries could be used to:

- obtain documents or correspondence
- identify if a complaint or issue is within jurisdiction
- seek confirmation that a complaint has been lodged with an agency and whether it has been finalised
- obtain policy or procedure that is not available to the public
- ask whether a decision has been made or when it will be finalised
- follow-up agency action after a complaint transfer.

Inappropriate use of preliminary inquiries

You should not use a preliminary inquiry when it was clear that investigation is warranted, or where it is clear that investigation is not warranted. A preliminary inquiry should not be used to 'fish' for information that is not otherwise needed in order to make a decision.

7.5 Decide what action we will take

Once you have fully assessed your complaint, including obtaining any further information, there are three decisions available to you:

- decide **not to investigate** the complaint because no further action is warranted
- **transfer** the matter to the agency or another organisation (and therefore finalising without investigation), or
- decide to **investigate**.

Regardless of what decision you make, you **must** assess and record your decision in accordance with [7.6](#).

Multiple issues in one complaint

If you have identified several different issues in your complaint, you can take different actions on those issues. For example, of three issues, you may decide not to investigate two issues, but one issue may warrant investigation.

In some cases, a decision to investigate one or more issues may result in you deciding to also investigate an issue which would not warrant investigation by itself. For example, if two issues in a complaint warrant investigation and a third issue may be resolved through a transfer, it may be appropriate to include the third issue as part of the investigation.

However, this should not extend to investigating issues where it is not warranted or inappropriate. For example, if an issue could be reviewed by a court or tribunal it should not be investigated purely because another issue in the same complaint is being investigated.

7.5.1 Decision not to investigate

Section 6 (other than s 6(2)) of the [Ombudsman Act 1976](#) provides that the Ombudsman has a broad discretion not to investigate complaints. The same authority is provided in s 6 of the [Ombudsman Act 1989 \(ACT\)](#).

The decision not to investigate can be reached at any time, including after a preliminary inquiry has been conducted. Further, the same provisions apply to decide not to investigate issues further – that is, they can be used to finalise investigation.

It is important to note that the Ombudsman has delegated some decisions only to Executive Level staff. The [delegation instrument](#) sets out all current delegations.

Which discretion will apply to each issue?

The legislation provides many discretions not to investigate. Some discretions are used regularly and others only in exceptional circumstances.

There are two principles to apply when deciding what discretion to apply to each issue:

1. Each issue requires a decision, and therefore if you are not investigating, **each issue requires a valid discretion not to investigate** (although the same discretion may apply to multiple issues).
2. The **most relevant discretion** should be used, even if another discretion may also apply.

Table 7.2: Discretions not to investigate

Reason	Provision (Cth)	Provision (ACT)	Procedure reference
Complaint not previously raised with agency	6(1A)	6(2)	7.5.1.1
Agency hasn't resolved / is still considering the complaint	6(1B)	6(3)	7.5.1.2
Other review available	6(4)	6(7)	7.5.1.3
Courts and tribunals	6(2), 6(3)	6(6)	7.5.1.4 , 7.5.1.5
Complainant refuses to clarify in writing	7(2)	7(2)	7.5.1.6
Older than 12 months	6(1)(a)	6(1)(a)	7.5.1.7
Frivolous, vexatious, not in good faith	6(1)(b)(i)	6(1)(b)(i)	7.5.1.8
Not warranted in all the circumstances	6(1)(b)(iii)	6(1)(b)(iii)	7.5.1.9
Insufficient interest	6(1)(b)(ii)	6(1)(b)(ii)	7.5.1.10
Commercial activity	6(12)	N/A	7.5.1.11

7.5.1.1 Complaint not previously raised with agency

S 6(1A) - Where a person has not complained to the department or authority concerned, the Ombudsman may, in his or her discretion, decide not to investigate the action until the complainant so complains to the Department or authority

We would normally use this discretion and require the complainant to complain to the agency first where:

- a person has not yet complained to the department or authority concerned
- we believe they have the capacity and ability to do so
- we believe it is reasonable to ask them to do so, and
- we consider that the agency will properly consider the complaint

It is reasonable for us to expect an agency to try to resolve a problem with the complainant before we become involved.

In certain circumstances, we may have concerns about using this discretion due to:

- barriers to the complainant effectively taking up their complaint with the agency (e.g. ability to articulate the problem or to put it in writing for the agency; cultural or language difficulties; etc.)
- the nature of the complaint (e.g. is the matter urgent or likely to impact the complainant negatively in the short term; is it something the agency is unlikely to be able to resolve; is the matter so urgent, complex or sensitive that the Ombudsman should be involved?), or
- the complaint-handling record of the agency (e.g. where our experience shows the agency has a poor history of dealing with complaints, the particular complainant or the particular issue).

In these circumstances, a complaint transfer or an investigation may be warranted (refer to [7.5.2](#) and [7.5.3](#) of this Procedure).

7.5.1.2 Agency is still considering the complaint

s 6(1B) - Where a person ...has complained to the Department or authority ... the Ombudsman may, in his or her discretion, decide not to investigate the action unless and until the complainant informs the Ombudsman that no redress has been granted or that redress has been granted but the redress is not, in the opinion of the complainant, adequate

Use of this discretion can prevent premature investigation when the agency is already considering the complaint.

We do not usually investigate where a complaint about the matter has already been made to the agency concerned but that agency has not yet responded. We generally wait until the agency has finalised the matter. An exception would be where we believe there has been an unreasonable delay – a transfer or investigation may be appropriate.

Before deciding not to investigate, you **should**:

- satisfy yourself that the agency is addressing the complaint (e.g. has the complainant received any acknowledgement or timeframe for response?). If you are unsure, you may want to make a preliminary inquiry of the agency.
- invite the complainant to contact us again if they are dissatisfied with the response or do not receive one within a reasonable timeframe.

Note: s 6(1C) provides that the Ombudsman shall investigate if, in the opinion of the Ombudsman there is no remedy provided by the agency to such a complaint within a reasonable time or the remedy is inadequate. If you consider this provision applies you should consult with your supervisor.

7.5.1.3 Internal review available

s 6(4) - Where the Ombudsman is of the opinion that adequate provision is made under an administrative practice for the review of action of the kind complained of

If the agency has an effective internal review mechanism that the complainant has not yet accessed to address the issue complained about, we do not usually investigate. The internal review mechanism might be established under legislation or by the agency itself.

There are very few circumstances in which we would investigate a complaint about an issue where there is an agency review method available.

However, if there are accessibility, sensitivity or vulnerability issues we may transfer the complaint or conduct a preliminary inquiry to help facilitate the internal review, or ensure it has commenced. Complainants should be aware that they can complain to us again after the internal review has been finalised (unless there is an external review mechanism – see below).

You can only use this discretion where the internal review process can consider and address the issue complained about. For example, if a person's complaint is about an agency's process rather than the decision itself, the process issue is unlikely to be part of an internal review process and may be appropriate for us to investigate.

This provision would also cover external review (other than by a court or tribunal).

7.5.1.4 Could be, or could have been, considered by a Court or Tribunal

s 6(3) - Where the Ombudsman is of the opinion that a complainant has or had a right to cause the action complained of to be reviewed by a court or tribunal but has not exercised that right, the Ombudsman may decide not to investigate the action or investigate it further if the Ombudsman is of the opinion that, in all the circumstances, it would have been reasonable for the complainant to have exercised that right

If a complainant has not pursued their right to review of an action or decision by a court or tribunal, we can decide not to investigate if we consider that it would have been or would be reasonable for them to exercise that right. 'Tribunal' means a tribunal set up under an Act.

With all discretions not to investigate, using this authority on one issue does not prevent us investigating related actions of the agency that could or would not be considered by the court or tribunal. If you do investigate another issue, it is very important to clearly explain to the complainant in writing what you are and are not investigating. You should also consider whether it is more appropriate to wait until the court or tribunal review is finalised before investigating, although this is not a requirement for us to do so.

This discretion **cannot** be exercised on the basis that a complainant has a right to seek judicial review of the administrative action under the [Administrative Decisions \(Judicial Review\) Act 1977](#). Paragraph 10(1)(b) of the ADJR Act provides that any right to seek judicial review of the administrative action under that Act must be disregarded when considering whether to not to investigate a complaint. In other words, we *cannot* decide not to investigate a complaint, on the basis that a person has the right to seek judicial review in a federal court.

We operate on a general presumption that the complainant should pursue a matter to a tribunal, if they have that right. The parliament has established those tribunals as specialist review bodies and, where the issue complained of sits within the purview of the court or tribunal, we should not seek to circumvent that intention.

However, s 6(3) requires us to make an assessment that 'it would have been reasonable for the complainant to have exercised that right'. For example, if a complainant was not informed by the agency that merits review at a tribunal was available and the tribunal refused an extension of time application, we may consider investigating.

We should generally not make an assessment of the likely outcome of a court or tribunal appeal and make our decision based on that pre-assessment. However, in limited cases, we may assess that a tribunal or court may uphold the agency's decision, but that it would lead to an unreasonable or unjust outcome. In these cases, we may consider investigating the complaint or addressing it as a systemic issue. These are exceptional cases and the relevant Director should be consulted before deciding to investigate such a complaint.

7.5.1.5 Has been, or is being, considered by a Court or Tribunal

s 6(2) - Where the complainant has exercised, or exercises, a right ...to be reviewed by a court or by a tribunal constituted by or under an enactment, the Ombudsman shall not investigate, or continue to investigate... the action unless the Ombudsman is of the opinion that there are special reasons justifying the investigation of the action or the investigation of the action further

Unlike the provisions discussed in this section so far, **this provision is not a discretion**. When a complainant has had an action or decision reviewed by a court or tribunal, or it is currently being reviewed, we **cannot** investigate or continue to investigate unless there are special reasons justifying the investigation of the action. Please note that for this provision to apply, the court or tribunal must be set up by or under legislation.

Our authority in this situation is only to assess and decide whether there are special reasons to investigate. We are not in a position to review the decision of the court or tribunal.

This provision can be confusing but is a key limitation on our work. It is important that staff understand the circumstances where we may be able to investigate a complaint.

Only staff at EL1 and above have the delegation to decide that special reasons exist which justify an investigation. If you are below EL1 level then you should refer the matter to an EL1 or Director in your Team.

A case that has been or is being reviewed by a court or tribunal includes:

- applications currently being considered by a court or tribunal
- finalised decisions, and
- applications that have been withdrawn or settled (however reasons for withdrawal may be relevant to assessing 'special reasons').

It does not cover situations where merely the option to go to a court or tribunal exists (this situation is covered by s 6(3), see 7.2.1.4) and does not apply to cases where someone other than the complainant brought the matter before the court or tribunal (for example, the Director of Public Prosecutions).

Special reasons are inherently difficult to define but **would not** include circumstances where the complainant disagrees with the decision under review; argues the agency misled the court/tribunal; or where the complainant alleges the court/tribunal was biased. In these instances it would be more appropriate for the complainant to appeal the court or tribunal's decision.

Special reasons may include situations where the court or tribunal cannot or did not address issues we could address. Take special care to ensure that our processes do not conflict with, or possibly amount to a contempt of, a court's process or prejudice the capacity of any party to manage its part of the litigation. An allegation of a breach by an agency of the Commonwealth's Model Litigant policy may constitute a special reason but discuss this situation with your Director and the Legal Team.

If a complainant fails to obtain compensation after taking civil action in the courts, and we believe there nevertheless has been an administrative shortcoming, we may decide there is a special reason to pursue it, even though a court has reviewed the same action. For example, this may arise where a discretionary payment through Act of Grace or CDDA may be available. We may also consider investigating in the case where a court or tribunal has dismissed an application but has suggested that some relevant matter (e.g. an anomalous effect of legislation adverse to the applicant) be raised with the Ombudsman.

7.5.1.6 Complainant refuses to clarify in writing

S 7(2) - Where a complaint is made orally, the Ombudsman may at any time require the complainant to reduce the complaint to writing and, where the Ombudsman makes such a requirement of a complainant, the Ombudsman may decline to investigate the complaint, or to investigate the complaint further, until the complainant reduces the complaint to writing

While we receive complaints orally and in writing, the Act permits us to require that a complainant put their complaint in writing and to decline to investigate until the complaint is provided in writing. This provision should only be used when we cannot understand the complaint effectively without receiving it in written form. It is primarily used at the registration stage where the oral information is voluminous, unclear or inconsistent.

The complainant should be advised of the requirement to provide the complaint in writing and what form and information is needed to allow us to assess it. They should also be advised that no further action will be taken unless and until a written complaint is received.

Accessibility consideration: If the client is unable to prepare a written complaint, it may be appropriate to suggest they seek assistance to do so. Refer to Section 2.3 in Procedure 2. Subject to their circumstances and the resources required, we may be able to assist with this if they make an appointment to attend our Office.

7.5.1.7 Older than 12 months

s 6(1)(a) - if the Ombudsman is satisfied that the complainant became aware of the action more than 12 months before the complaint was made to the Ombudsman

This discretion recognises that when significant time has elapsed since the complainant became aware of the administrative action, it becomes increasingly unlikely that a meaningful outcome can be achieved. This discretion applies to reflect the entrenched principle of 'finality' in the Australian legal system. Further, when an investigation would be dependent on the memory of participants, where relevant officers or records may no longer be available, or when an action has been irretrievably overtaken by later events, investigation may be futile.

While we may decline to investigate a decision or action on the basis of the passage of time since the complainant was aware of it, there will be many circumstances where it will not be appropriate to decline to investigate *solely* on the fact that that more than 12 months has elapsed.

For example, the 12 month rule should not be used where the complainant has made every reasonable effort to resolve the matter with the agency throughout the intervening period, and approached us when that avenue failed. Similarly, it should not be used where the age of the complaint has no bearing on our ability to meaningfully consider the complaint.

If you are unsure whether to use this discretion, you should speak with your supervisor.

7.5.1.8 Frivolous, vexatious, not in good faith

s 6(1)(b)(i) - if, in the opinion of the Ombudsman, the complaint is frivolous or vexatious or was not made in good faith

This provision is not used often, and should not be used lightly. This provision is delegated to EL2 staff or above, but as a matter of Office practice, the Ombudsman or Deputy Ombudsman generally makes this decision.

This discretion can be applied to complaints lacking substance, potentially motivated by desire to cause trouble for an individual or agency, or there is documented evidence to suggest the complainant is deliberately withholding evidence. This category generally includes complainants who have contacted our Office on many occasions about the same issue.

If you consider that the complaint may be frivolous or vexatious or not in good faith, you should consider the [Unreasonable Complainant Conduct policy](#) and consult with your supervisor and/or Director. Legal advice will be required prior to making a decision under this provision.

In less serious cases, determining that investigation is not warranted is a more appropriate course of action.

7.5.1.9 Not warranted in all the circumstances

s 6(1)(b)(iii) – ... the Ombudsman may, in his or her discretion, decide not to investigate the action [...] if, in the opinion of the Ombudsman: an investigation, or further investigation, of the action is not warranted having regard to all the circumstances

This discretion recognises that there will be a wide range of circumstances in which investigation is not warranted, which have not been explicitly included in s 6. Due to the broad nature of this discretion, it is used often.

When deciding whether investigation is warranted in all the circumstances, consider the following factors (which are not mutually exclusive).

Table 7.3: Circumstances where not warranted in all the circumstances may apply

Factor	Details
No indication of maladministration	The agency's action or decision was correct or there is nothing wrong with what the agency did (and this is apparent from the information already available without the need to formally investigate).
Lack of specific details	Where allegations of a general nature are made that do not outline an individual complaint and more specific details are not provided despite reasonable requests.
No substance	Where, from our knowledge and experience, a complaint does not appear to raise any real or meaningful issues for consideration.

Factor	Details
Lack of meaningful or viable outcome	<p>Where it is unlikely that a meaningful, beneficial or additional outcome will be achieved, including where the agency has already provided a reasonable outcome or the outcome that the complainant is seeking cannot be achieved.</p> <p>It may be that an outcome could be achieved but it is not sufficient to justify investigation.</p> <p>NOTE: this situation can be subjective to the complainant's view and circumstances, and staff should assess the possible outcome and the complainant's desired outcome in the context of their experiences and the detriment experienced.</p>
Investigation unlikely to be effective	Where an investigation is unlikely to assist in resolving the issue. Generally used where it is unlikely any beneficial evidence would/could be obtained or a complainant appears unlikely to accept evidence supporting an alternative view.
Systemic issues (see also 7.3.4)	<p>If the only issue is a known systemic issue and no meaningful outcome is available to the individual complainant, we would not normally investigate and would address through other action on a strategic/systemic basis instead (e.g. agency liaison).</p> <p>Exceptions: where the complaint is about a small agency and/or it is unlikely another complaint on the issues will be received, investigation may be warranted. However the complainant's expectations should be managed regarding the possibility of an outcome.</p>
Trivial matter	Where the complaint concerns a trivial issue, decision or action or the desired outcome is minimal or inconsequential. For example, a complaint about punctuation in government letters or financial losses of very small amounts (e.g. the cost of a postage stamp or cost of a single phone call).
Policy or internal priority considerations and resources constraints	<p>The Ombudsman's policies and priorities can be taken into account. Sometimes it is an Office position not to investigate the complaint issue, or we have a particular handling strategy for complaints of that type that has been communicated to staff. However, even if the policy suggests that the complaint should not be investigated, you should still consider whether it would be unjust or unfair to apply the policy in the circumstances of the complaint.</p> <p>Further, the resources of the Ombudsman are limited and do not extend to investigating every complaint issue received. Priority should be given to issues or complaints where an outcome may reasonably be achieved and/or improvements in public administration may be realised.</p>
Significance	The significance of the matter to the complainant and the public interest.

7.5.1.10 Insufficient interest

s 6(1)(b)(ii) - if, in the opinion of the Ombudsman, the complainant does not have a sufficient interest in the subject matter of the complaint

As a general principle, a complainant needs to be *directly affected* by the action or decision that they are complaining about. When they are not, and are not authorised to act on behalf of someone who is, this discretion may apply.

'Directly affected' could include, for example, possibly suffering some damage to property rights, having direct business or economic interests or, in some cases, having direct social or political interests (e.g. as the office bearer of a community body).

A person whose interest is based solely on being a citizen, resident, taxpayer or member of the public would not usually have a sufficient interest in an administrative action.

However, such a complaint may be considered to be a valid 'tip off' complaint. That is, it raises genuine concern about an agency's administrative actions or practice that we should consider investigating as part of our broader oversight and assurance role – even if it doesn't directly impact the complainant or we cannot or should not inform the complainant of the details of our action. In such situations, this discretion generally should not be applied.

Insufficient interest does not prevent us from investigating the matter using the Ombudsman's own motion power under s 5(1)(b). For more information, see Procedure 13 and refer to Appendix B.

7.5.1.11 Commercial activity

s 6(12) - If the Ombudsman forms the opinion that action in respect of which a complaint has been made relates to a commercial activity of a Department or prescribed authority, the Ombudsman may decide not to investigate the complaint, or to cease investigating the complaint

This provision may apply to actions or decisions that relate to the commercial activity of an agency. Accordingly, disputes or disagreements should be resolved through appropriate commercial means.

We only consider a limited range of circumstances as commercial activity, and therefore this discretion is not regularly used. If you consider it applies to your complaint, you should consult with your supervisor.

In general, commercial activity may cover complaints about business or commercial activities of agencies as relates to the delivery of the core service functions, such government agency engaging an IT contractor or a dispute about a lease of a government premises.

It does not normally cover tender or grant processes (that is, it is open to us to investigate complaints about these processes), and we would generally consider if the processes were administratively fair and reasonable to determine whether investigation is warranted in the circumstances.

The discretion should not be applied to commercial agreements entered as part of an agency's delivery of its policy programs (e.g. an employment provider complaining about government audit activity).

Please note: this provision cannot be used as a basis not to investigate the actions of contracted service providers. Under s 3(4B) and 3BA of the Commonwealth Act, the actions of a service provider contracted by a government agency is taken to be an action by the agency who contracted the provider, and thus within our jurisdiction. Please note the ACT Act does not have a similar provision.

7.5.2 Transfer the complaint

What is a transfer?

In a *complaint transfer*, our Office prepares documentation and sends a complaint to another agency to assess and action. A decision to transfer a complaint is a decision to finalise that complaint without investigation. We can only transfer when there is a statutory basis to do so or an agreement or protocol in place with the other agency.

A complaint transfer is different to a referral to another organisation. In a *referral*, we tell a complainant about another body that may better handle their complaint. The complainant then contacts that other body.

Basis for transfer

A complaint may be transferred under a statutory provision, or under a protocol or agreement. If the agency is not listed in the legislation and there is no protocol or agreement, but you think a transfer would be beneficial, speak to your supervisor.

Table 7.4: Transfer obligations, depending on basis for transfer

Basis for transfer	Officer responsibility
Statutory provision	Transfer according to the requirements of the provision. Refer to Appendix A .
Protocol or agreement	Transfer according to the protocol or agreement. Refer to the intranet for information on existing protocols.

Mandatory transfers – Tax and Corruption

In certain circumstances the Act prevents investigation and requires us to transfer the complaint to another agency. For example:

- Complaints that allege a ‘serious corruption issue’ that could have been raised with the Integrity Commissioner must not be investigated, or investigated further, and must be referred to the Integrity Commissioner: s 6(17).
- Complaints about tax administration that should be raised with the Inspector-General of Taxation and Taxation Ombudsman must not be investigated by our office (with some exceptions): s 6D(1). See also Appendix A.

Obtaining consent to transfer

If a transfer is statute-based, whether mandatory or discretionary, you do not need to seek consent from the complainant before transferring the complaint.

For all other transfers, even where there is a protocol or agreement, the complainant’s consent is **always** required on the basis that transfer requires release of their personal information. Some complainants may refuse consent due to reluctance to allow the agency complained of to handle their matter again.

In all cases, refer to Procedure 8.3.

Decision to transfer

For mandatory transfers, there is no further consideration required. For statutory-based discretionary transfers, you should apply the following test when deciding whether to transfer:

1. *Can this agency help?* - Is there another agency that has jurisdiction to consider the complaint? Before transferring a complaint, you will need to satisfy yourself that the agency receiving the complaint will have jurisdiction to consider it. This may include reviewing standard contact protocols in place between the agency and our officer or contacting the agency to confirm they can receive the complaint.
2. *Efficient and effective* - Is the receiving agency able to more efficiently or effectively deal with the complaint than we can?

In some cases, you will be required by the relevant statutory provision to consult with the agency to determine whether transfer is warranted. Refer to Appendix A.

For non-statutory transfers, you should apply the above test and in addition, consider the following factors when deciding whether to transfer:

3. *Vulnerabilities and barriers* - Complaint transfers may be appropriate when you assess a complainant is vulnerable or impacted by barriers that inhibit their ability to make the complaint on their own. Transfers make it more likely the agency will respond quickly, and reduce concerns presented by urgency, vulnerability and sensitivities.
4. *Agency delay* - Transfers may help when a person has made a complaint to the agency, but the complaint remains unresolved.
5. *Keeping our options open* - As transferring a complaint does not exhaust the matter with our Office, the complainant is still able to return to us if the transfer is unsuccessful, at which point it may be appropriate to conduct a preliminary inquiry or to investigate.
6. *Internal guidance* - Is there [internal guidance](#) (e.g. a transfer pyramid) on complaint transfers that applies to the complaint?
7. *Does this complaint require further investigation?* Where you have assessed that further investigation is required on the complaint, this is an indication that transfer is not the appropriate outcome.

If you have decided to transfer your complaint to another agency, you must document your decision and reasons in accordance with the process table at 7.6 and then following 8.3.

7.5.3 Investigate

In an investigation, we request information from an agency in response to the issues we have identified.

This section and Procedure 10 refer to investigations commenced under s 8 of the *Ombudsman Act 1976* (Cth) and s 9 of the *Ombudsman Act 1989* (ACT). This section does not deal with an own motion investigation commenced under s 5(1)(b) of the Ombudsman Act. For more information, see Procedure 13 Investigations and refer to Appendix B.

Whether investigation is warranted

An investigation is likely to be warranted if you determine that:

- a) the issues you have identified are within jurisdiction
- b) the complainant has already complained to the agency
- c) the agency provided no redress or the complainant considers the redress inadequate
- d) it is more appropriate for the Ombudsman to deal with the complaint than to transfer or refer it elsewhere
- e) there are no reasons why you should decide not to investigate
- f) you need to contact the agency to resolve the complaint and a preliminary inquiry is not appropriate
- g) there is an identifiable outcome which could reasonably be achieved through investigating, and
- h) the investigation is a reasonable use of our resources.

If your proposed investigation is entirely or partly related to a systemic issue, you need to assess whether an investigation is the most appropriate way to achieve an outcome. This is because there are more avenues to achieve outcomes for systemic issues than a complaint about a single issue. You should consider Appendix B while assessing your systemic issue.

If the only issue is a known systemic issue and no meaningful outcome is available to the individual complainant, we would not normally investigate and would address through agency liaison or other avenues instead.

If you have satisfied the criteria, it is likely that an investigation is warranted and reasonable. Once you have decided to investigate your complaint, refer to Procedure 10. If unsure, check with your supervisor.

7.6 Process table – Assessing and deciding complaints

The below table sets out the process you should follow when assessing and deciding a complaint that has been allocated to you. It should be completed on every complaint, regardless of what decision you have made.

Ensure you have followed the pre-assessment process set out at [7.2](#) before commencing your assessment.

1	Open an <i>Assessment</i> action on the approach file	TIP: A third party should be able to read your <i>Assessment</i> action and understand what the complaint is about without having to examine any other Resolve screens or documents
2	Identify the issues in the complaint	Record each issue in your <i>Assessment</i> action. The level of detail included will vary depending on the type and complexity of the issues in the complaint.
3	Record an issue string for every issue	Procedure 12 – Finalising complaints sets out the process for recording issue strings.
4	Consider whether any of the issues is also a tip-off complaint	In circumstances where an issue is also a tip-off complaint, you will generally require further information to verify what the agency has done. Consider whether this information should be obtained by: <ul style="list-style-type: none"> • A preliminary inquiry (Procedure 9) • An investigation (Procedure 10)
5	Consider whether any of the issues are systemic issues	You can search systemic issues on Resolve by following the steps set out in section 7.3.5 of this Procedure.
6	Further information: complainant	Consider whether you require further information from the complainant to complete your assessment. You should contact the complainant in accordance with the information set out in Section 2.4-2.6 of Procedure 2.
7	Further information: SMS	Consider whether you require advice from an SMS to complete your assessment You can contact an SMS by phone, email, informally or by requesting a meeting. Any advice from an SMS should be recorded on the complaint file in a <i>Request Internal Advice</i> action, or within your <i>Assessment</i> action.
8	Further information: research	Consider whether you need to conduct any research. You should record any research you have conducted in a <i>Research</i> action. Ensure you include: <ul style="list-style-type: none"> • A reference to the source of the information • Where relevant, a link to the source
9	Further information: third party inquiry	Consider whether you require further information from a third party. In any circumstances where external contact has been made to a party that is not the complainant or agency complained of, use the <i>Contact with Third Party</i>

10		action. Include complete details of who was contacted, when and the details of what was discussed.
	Further information: preliminary inquiry	Consider whether you require information from the agency that could be obtained through a preliminary inquiry. If so, you must follow the process set out in Procedure 9.
11	Decide what action to take in relation to each issue	<p>After assessing the information, decide on what action you will take in relation to <i>each</i> issue. That is, whether you will:</p> <ul style="list-style-type: none"> • Not investigate the issue • Transfer the issue • Investigate the issue <p>Your decision must be recorded in the <i>Assessment</i> action, or a <i>Decision</i> action. Ensure you explain the basis of your decision, including:</p> <ul style="list-style-type: none"> • Any consideration given to urgency, sensitivities, vulnerability, or accessibility issues • Any relevant law and/or policy • Where relevant, any discretion not to investigate that you applied • Whether any of the issues are tip-offs or systemic issues

Approval Date					
Date of Review					
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Appendix A – Basis for transfer – statutory transfers

There are provisions within the *Ombudsman Act 1976* (Cth) and *Ombudsman Act 1989* (ACT) that **empower or require us to transfer complaints to specific agencies**.

Table 1: Legislative provisions for transfer of complaints to specific agencies.

Agency	Provision (Cth)	Provision (ACT)	Consultation
Discretionary transfers			
Australian Communications and Media Authority	6(4D-4E) & 6(6-8)	N/A	
Australian Public Service Commissioner	6(9-11)	N/A	
Parliamentary Service Commissioner	6(11A-11C)	N/A	
Australian Federal Police Commissioner	6(20-21)	N/A	
ACC	6A	N/A	
Integrity Commissioner	6B	N/A	Note below under Mandatory Transfers
Information Commissioner	6C	N/A	<p>We must consult the Information Commissioner about complaints that either:</p> <ul style="list-style-type: none"> could have been made to the information Commissioner regarding privacy or freedom of information matters, or. have been subject to a completed investigation by the Information Commissioner: s 6C(2).
Australian Small Business and Family Enterprise Ombudsman	6E	N/A	
ACT Statutory office-holders	N/A	6A	
ACT Commissioner for Sustainability and the Environment	N/A	6B	
ACT Human Rights Commission	N/A	6B	
Mandatory transfers			
Inspector-General of Taxation	6D	N/A	We must consult the Inspector-General of Taxation about complaints that are partly about tax

			administration to determine whether the whole complaint should be transferred: s 6D(4).
Integrity Commissioner	6(17)	N/A	Where the Ombudsman forms the opinion a complaint involves a <i>significant corruption issue</i> that could have been referred to the Integrity Commissioner or could be more conveniently or effectively dealt with by the Integrity Commissioner.

Appendix B – How the OCO responds to systemic issues.

Possible OCO responses to a systemic issue

The Office's possible responses to a known systemic issue include:

- undertaking further monitoring of the issue either through complaint investigations, other inspection work or in the course of other forums (such as meetings) with the agency concerned
- checking Resolve's issues of interest functionality to identify whether the issue has previously been identified, or whether there are similar issues in other agencies or jurisdictions
- drafting a s 12(4) comment or suggestion
- drafting a letter to the agency to raise the issue and seek further information, signed by a SAO, the Deputy Ombudsman or Ombudsman
- requesting a briefing from the agency on the specific issue (and consider at which level to approach will be most effective)
- drafting an issues paper which might include highlighting the issue, providing examples through case studies and making suggestions or recommendations for addressing the problem
- including the issue in a quarterly report from the Ombudsman to the head of the agency
- reporting on the issue in our annual report
- preparing a formal report under s 15
- conducting an own motion investigation (see Diagram B-1 below)
- issuing a press release
- reporting on the issue on our website.

Strategic Policy Board process

In addition to considering general strategic matters affecting the Office, the [Strategic Policy Board \(SPB\)](#) also assesses what action the Office will take on systemic issues. The SPB considers systemic issues against the Office's current strategic priorities and proposed projects, as well as available resources, to determine whether they should be pursued and in what time frame.

Criteria to apply when determining whether to do an own motion inquiry.

Systemic issues: assessment framework

What criteria should we apply to determining when to do an own motion inquiry?

Phase 1: Issues Monitoring	Phase 2: Assessment Criteria	Phase 3: Options												
<p>Sources of information</p> <p>Internal information</p> <ul style="list-style-type: none"> Complaints data Issues of interest records Findings from investigations &/or inspections Feedback from regular agency liaison meetings Stakeholder feedback – round tables, communities of practice, other engagement <p>External/public information</p> <ul style="list-style-type: none"> Policy & administrative reforms Other inquiries – Parliamentary, Productivity Commission, ANAO Decisions of courts & tribunals Media coverage Academic papers/research Senate Estimates hearings, agency Annual Reports <p>Outputs</p> <p>Briefings on key agencies/roles to Strategic Policy Board:</p> <ul style="list-style-type: none"> Every 6 – 12 months, with schedule determined 6 months in advance 10 minute presentations, followed by 10-20 minute discussions Written material, if needed, no more than 1-2 pages Identify trends & systemic issues Recommend issues for further investigation 	<p>Potential own motion investigation issues to be assessed against the following criteria</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="background-color: #4F81BD; color: white; padding: 5px;">Impact</td> <td style="padding: 5px;">What change will result from the investigation? Is it measurable?</td> </tr> <tr> <td style="background-color: #4F81BD; color: white; padding: 5px;">Scope</td> <td style="padding: 5px;">Is the issue within our jurisdiction? Does it align with our strategic objectives? Are other agencies investigating this issue? If so, what value will we add?</td> </tr> <tr> <td style="background-color: #4F81BD; color: white; padding: 5px;">Significance</td> <td style="padding: 5px;">Is it a systemic issue? How important is the issue to our stakeholders? How many people are likely to be affected? What is the impact on them?</td> </tr> <tr> <td style="background-color: #4F81BD; color: white; padding: 5px;">Vulnerability</td> <td style="padding: 5px;">What is the impact on: <ul style="list-style-type: none"> Aboriginal and Torres Strait Islander peoples? People with disability? People from CALD backgrounds? Other vulnerable people? </td> </tr> <tr> <td style="background-color: #4F81BD; color: white; padding: 5px;">Risk</td> <td style="padding: 5px;"> <ul style="list-style-type: none"> What are the risks of investigating or not investigating? </td> </tr> <tr> <td style="background-color: #4F81BD; color: white; padding: 5px;">Resources</td> <td style="padding: 5px;"> <ul style="list-style-type: none"> What resources do we need? What resources are available? What other issues/work will be delayed or cease? </td> </tr> </table>	Impact	What change will result from the investigation? Is it measurable?	Scope	Is the issue within our jurisdiction? Does it align with our strategic objectives? Are other agencies investigating this issue? If so, what value will we add?	Significance	Is it a systemic issue? How important is the issue to our stakeholders? How many people are likely to be affected? What is the impact on them?	Vulnerability	What is the impact on: <ul style="list-style-type: none"> Aboriginal and Torres Strait Islander peoples? People with disability? People from CALD backgrounds? Other vulnerable people? 	Risk	<ul style="list-style-type: none"> What are the risks of investigating or not investigating? 	Resources	<ul style="list-style-type: none"> What resources do we need? What resources are available? What other issues/work will be delayed or cease? 	<p>Options for progressing an investigation following Strategic Policy Board decision</p> <p>Investigation options:</p> <ul style="list-style-type: none"> Own motion investigation (section 5 (b)) Section 15 report Research paper or issues paper Media release <p>Alternative options:</p> <ul style="list-style-type: none"> Section 12 (4) comment or suggestion Write to agency raising issue & asking how it intends to address issue Organise forum with relevant agencies to raise issue & explore options for addressing it? <p>Outputs</p> <p>Strategic Policy Board record of decision, capturing:</p> <ul style="list-style-type: none"> Whether to progress an investigation Priority of issue/investigation Agreed option (investigation or alternative) for progressing issue <p>Next steps</p> <p>Depending on the option chosen:</p> <ul style="list-style-type: none"> Seek formal Ombudsman endorsement of s 5(b) or s 15 options Agree establishment of project team Seek Strategic Policy Board's agreement of project plan, with clearly defined objective, scope & timeframe Provide monthly updates to Strategic Policy Board
Impact	What change will result from the investigation? Is it measurable?													
Scope	Is the issue within our jurisdiction? Does it align with our strategic objectives? Are other agencies investigating this issue? If so, what value will we add?													
Significance	Is it a systemic issue? How important is the issue to our stakeholders? How many people are likely to be affected? What is the impact on them?													
Vulnerability	What is the impact on: <ul style="list-style-type: none"> Aboriginal and Torres Strait Islander peoples? People with disability? People from CALD backgrounds? Other vulnerable people? 													
Risk	<ul style="list-style-type: none"> What are the risks of investigating or not investigating? 													
Resources	<ul style="list-style-type: none"> What resources do we need? What resources are available? What other issues/work will be delayed or cease? 													

Parliamentary Complaint Handling Procedures

8. Actioning your decision: Not investigating and complaint transfers

Updated: 16 September 2019

Review at: 16 September 2020

OVERVIEW	3
8.1 ASSUMPTIONS	3
8.2 NOT INVESTIGATING A PARLIAMENTARY COMPLAINT	3
8.3 COMPLAINT TRANSFER TO THE AGENCY COMPLAINED OF – BY AGENCY ARRANGEMENT	5
8.4 COMPLAINT TRANSFER TO THE AGENCY COMPLAINED OF – LEGISLATIVE TRANSFERS	7

Overview

Procedure 7 covered when you might decide not to investigate a complaint, including to transfer it to another agency. This Procedure explains how to implement your decision not to investigate a complaint, including when you decide to transfer a complaint to another agency. This Procedure assumes you have read Procedure 7.

This Procedure does not address decisions to conduct a preliminary inquiry or decisions to investigate. Procedures 9 and 10 explain the process for those decisions.

Purpose	To explain how to implement a decision not to investigate a complaint
Workflow	<p><i>Previous Step/s:</i> Procedure 4 - Jurisdiction Procedure 8 – Determining a course of action</p> <p><i>Next step:</i> Procedure 14 – Finalising complaints</p>
Scope	Only addresses the process to decide not to investigate a complaint or transfer a complaint to another agency. Does not cover when or why to make that decision.

8.1 Assumptions

Prior to commencing these processes, you are required to:

- ✓ have read Procedure 7 and assessed your complaint
- ✓ have documented your assessment
- ✓ made a decision to not investigate or to transfer the complaint to another agency
- ✓ be aware of your timeliness expectations (we commit to make 90% of decisions not to investigate within 30 days and 85% of transfers to take place within 14 days).

These processes also apply if you have conducted a preliminary inquiry and decided investigation is not warranted.

8.2 Not investigating a parliamentary complaint

1	Ensure your decision has been clearly recorded	See Procedure 7.
2	Quality check your decision	<p>If required, undertake quality checking. The recommended way for this to occur is to refer the open <i>Assessment</i> or <i>Decision</i> action to the colleague for review. Once the action is reviewed, the action is referred back to you to consider.</p> <p>Subject to the input of your supervisor or peer, revise your proposed decision. Once finalised, close the action.</p>
3	Notify the complainant of your decision	For all decisions, open <i>s (6) Discretion – Commonwealth</i> or <i>s (6) Discretion ACT</i> action. You can notify the complainant by telephone or in writing. Generally, contacting by telephone is the most efficient method and provides the complainant the immediate opportunity to respond or seek more information.

4		<p>Resolve can generate a template letter in the documents tab. If you are going to communicate the decision by letter (either by post or attached to an email), click <i>OK</i> to generate the letter.</p> <p>Otherwise, if you intend to notify by telephone, or in the body of an email, you should click <i>cancel</i>. Resolve will not generate a template.</p> <p>You should follow the principles of Procedure 2 regarding appropriate communication.</p> <p>When you communicate your decision, you must:</p> <ul style="list-style-type: none"> • explain the role of the Office • state the decision • explain the reasons for the decision • advise the complaint has been closed • invite the complainant to contact you regarding the decision (you do not need to provide a timeframe for them to do this by).
	If you notify the complainant by telephone	<p>If you contact by phone, ensure you accurately record the conversation in a <i>Telephone conversation with caller</i> action (see Table 2.5 in Procedure 2).</p> <p>You should ensure you offer the complainant the opportunity to ask questions or express dissatisfaction.</p> <p>If the complainant asks for a written record of the telephone conversation, this should be provided. This can be a brief summary of the core issues and decision made.</p> <p>If they are unhappy with the decision after you have responded to their questions or concerns, refer to Procedure 14 regarding providing advice about internal review options.</p>
	If you notify the complainant in writing	<p>Draft your email or letter to include key information. Refer to Procedure 2.5 for advice on written communication. The Standard words document may provide useful words or paragraphs to include in your decision.</p>
	Seek quality checking or peer review of your email/letter	<p>Whether you are required to undertake quality checking of your decision will depend on arrangements with your supervisor. If quality checking is required, send your draft letter or email to your supervisor or colleague to check.</p>
	Finalise the complaint	<p>Procedure 12 – Finalising complaints sets out the process for finalising complaints</p>

Complaint transfers

8.3 Complaint transfer to the agency complained of – by agency arrangement

1	Ensure your decision has been clearly recorded.	See Procedure 7.
2	Consent to transfer	<p>Complainants are asked whether they consent to our Office transferring their complaint during their initial complaint contact. The response will be recorded in the <i>Initial Approach Details</i> screen.</p> <p>If your complainant has consented, you can move to step 4 of this process. If no consent has been given, we cannot transfer the complaint (however if there is sensitivities or vulnerabilities a preliminary inquiry or investigation may be warranted).</p> <p>If the complainant was not asked to consent, did not consent or their response is unclear, you should contact them (preferably by phone) to clarify their concerns about the transfer and explain why you consider a transfer is the best way to resolve their complaint. If you decide the only alternative course of action is to not investigate the complaint, you should advise the complainant of this and follow the process set out at 9.2.</p>
3	If you need to contact the complainant by phone to obtain consent.	<p>If the complainant consents to the transfer to the agency, you can use this phone call to finalise the complaint with them. You must advise and obtain from them:</p> <ul style="list-style-type: none"> • That you have decided to transfer the complaint and the current complaint will be closed. • The issues and information you are transferring and any actions you will suggest the agency consider taking. • Their preferred contact details and availability (noting these may not be able to be met). • The timeframe that the agency will contact them by and method of contact (including if it may be a private number). • The complainant’s ability to contact this Office again if the transfer does not resolve the issue or no response is received. <p>Ensure you accurately record the contact using a <i>Telephone conversation with caller action</i> as per table 2.5 in Procedure 2.</p>
4	Consider any transfer arrangement/ protocols between our Office and the agency	
5	Draft transfer correspondence to agency	<p>All complaint transfers should be actioned by email. If our Office has a transfer arrangement in place with an agency, the transfer protocol for that arrangement may include a template for complaint transfers.</p> <p>In the absence of a template, a transfer email should include the following information:</p>

	<ul style="list-style-type: none"> • the complainant’s details. Generally name, telephone number/s and applicable reference number. Date of birth and address may also be used • a brief summary of the complaint • advice that we have decided not to investigate the complaint • a request that the agency contact the complainant, including a timeframe for that contact to occur by. The timeframe for contact will depend on our Office’s transfer arrangements with the agency • any suggestions about issues to discuss or possible solutions to the complaint • advice that the complainant has been informed that they can return to the Ombudsman if unhappy with the response or if the agency did not respond • any relevant documents. This generally doesn’t mean providing all documents provided to us (unless the complainant specifically consented or requested it). • any contact arrangements the complainant has asked for (e.g. they’re unavailable on Friday mornings) • your contact details.
<p>For example:</p> <p>Our reference: 2019-123123</p> <p>Dear [agency]</p> <p>We have received a complaint from [complainant] (agency reference number). [Complainant] told our Office:</p> <ul style="list-style-type: none"> - [insert brief details of complaint] - ... <p>I have decided not to investigate [complainant]’s complaint. I am writing to bring this matter to your attention as it seems that it may be appropriately addressed through your usual complaint handling process. [Complainant] has agreed to the transfer of this complaint.</p> <p>Subject to your views, it appears this complaint may be addressed by [agency] contacting [complainant] to discuss this matter and provide him/her with relevant information or clarification. This may include:</p> <ul style="list-style-type: none"> - (for example) Confirming receipt of his/her complaint and providing a timeframe for the finalisation of the complaint. <p>We have advised [complainant] that [agency] will contact him/her by [generally 5 working days]. I have invited [complainant] to contact this Office again if the matter is not resolve or no contact from [agency] is received.</p> <p>[Complainant]’s contact details are:</p> <p>Phone:</p> <p>Address:</p> <p>Their preferred contact is [add any relevant contact preferences].</p> <p>Please do not hesitate to contact me if you have any questions about this transfer.</p> <p>Yours sincerely</p>	
<p>6</p>	<p>Seek quality checking of your decision</p> <p>Whether you are required to undertake quality checking of your decision will depend on arrangements with your supervisor. If quality checking is required, send your draft email to your supervisor or colleague to check.</p>
<p>7</p>	<p>Send transfer correspondence to agency.</p> <p>Once the transfer correspondence is complete, you should email the transfer to appropriate agency contact. The email address for transfers should be advised on the relevant agencies intranet page.</p>

8		<p>Open a <i>s(6) Discretion – Commonwealth</i> or <i>s(6) Discretion ACT</i> action and include that a transfer was sent to a particular agency, the date it was sent. Close the action.</p> <p>Save a copy of the transfer correspondence in the <i>Documents tab</i> under <i>Outgoing Documents</i>.</p>
	Notify the complainant	<p>If you have the complainant’s consent and have not previously advised the complainant of your decision you must do so now.</p> <p>If you do so by phone, provide the information outlined in Step 3.</p> <p>If you do so by email, the below is a standard template to use in advising of the transfer decision. When you have drafted your transfer decision, you may seek quality checking through peer review. Once the email is finalised, send it to the complainant and save the email in the <i>Documents tab</i> under <i>Outgoing Documents</i> with a comment through properties describing the document.</p> <p>Reflect that you have sent the email using the <i>Write to Caller</i> action (but press <i>cancel</i> when the pop up window shows). Include the date the email was sent and any peer review which occurred of the email. Close the action.</p>
	For example:	<p>Our reference: 2019-123123 Dear [Complainant] I refer to your complaint about [agency]. I have decided that, in the first instance, the best means of resolving your complaint is for our Office to transfer it to [agency]. I have outlined your complaint to [agency] and asked that you are contacted by [date]. Please note, [agency] may attempt to call you on a private (blocked) number. If you do not hear from [agency] within [agreed timeframe] or you remain dissatisfied with its response, you are welcome to contact our Office again on 1300 372 072 or via our online form and we will consider further action at the time. I have closed this complaint file. Yours sincerely</p>
9	Finalise the complaint	Procedure 12 – Finalising complaints sets out the process for finalising complaints.

8.4 Complaint transfer to the agency complained of – legislative transfers

This process applies to when we transfer complaints to other bodies under *Ombudsman Act 1976* (Cth) and *Ombudsman Act 1989* (ACT) (as opposed to when we transfer complaints through an administrative arrangement agreed with the agency). The relevant transfer provisions are covered at Procedure 7.

1	Ensure the complaint refers to a complaint that requires transfer	<p>Tax Administration Action (and not yet considered by the Inspector-General of Taxation ('IGT')).</p> <p>Freedom of Information (FOI) outcome or processing (and not yet considered by the Office of the Australian Information Commissioner ('OAIC')).</p> <p><i>Note: Complaints can be partially about the above and would still require a partial transfer.</i></p>
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<p>5</p>	<p>Send transfer correspondence to agency.</p>	<p>Once the transfer correspondence is complete, you should email the transfer to appropriate agency contact. The email address for transfers are as follows:</p> <ul style="list-style-type: none"> Complaints about Tax Administration Actions should be sent to: service@igt.gov.au Complaints about FOI outcome/processes should be sent to: enquiries@oaic.gov.au <p><u>If IGT:</u></p> <p>Open the action <i>Tax Transfer > Transfer to IGT – All</i> or <i>Tax Transfer > Transfer to IGT – Partial</i>. Save a copy of the transfer correspondence in the <i>Documents tab</i> under <i>Outgoing Documents</i> with a comment through properties describing the document.</p> <p>Once attached you should close off the action.</p> <p><u>If OAIC:</u></p> <p>Open the action <i>Contact with Third Party</i>. Save a copy of the transfer correspondence in the <i>Documents tab</i> under <i>Outgoing Documents</i> with a comment through properties describing the document.</p>
<p>6</p>	<p>Inform the complainant of the transfer</p>	<p>If you do so by email, the below is a standard template to use in advising of the transfer decision. When you have drafted your transfer decision, you may seek quality checking through peer review.</p> <p><u>If IGT:</u></p> <p>Create a <i>Write to Caller</i> action. Send the complainant the email through Resolve. Close the <i>Write to Caller</i> action and the <i>Notify caller of Transfer</i> action.</p> <p><u>If OAIC:</u></p> <p>Create a <i>Write to Caller</i> action. Send the complainant the email through Resolve. Close the <i>Write to Caller</i> action.</p>
<p>OAIC transfers:</p> <p>Our Ref: XXXXX Dear XXXX</p> <p>I refer to your email dated XXXX about the XXXX regarding your Freedom of Information (FOI) request. I am writing to inform you that we have transferred your complaint about XXXX's handling of your FOI request to the Office of the Australian Information Commissioner (OAIC). The OAIC incorporates the functions of the Privacy Commissioner and the Freedom of Information Commissioner. It is the role of OAIC to investigate complaints about the processing of Freedom of Information requests. You should direct all future correspondence about your FOI request to the OAIC. The contact details can be found here.</p> <p>For this reason your complaint with our Office will be closed.</p> <p><i>Unless you are responding to a request for information made by the Office, within the timeframe specified, please do not reply to this email. If your complaint is closed and you have new information to provide, you can submit a new complaint using the online complaint form. If you would like information about how the Office assesses complaints, head to the website for more information.</i></p> <p>Yours sincerely,</p>		

	<p>IGT transfers: Our ref: XXXX Dear XXXX Thank you for your correspondence received on XXXX in which you complain about the actions of Australian Taxation Office (ATO). In relation to your complaint about the ATO the Commonwealth Ombudsman is unable to assist you with your complaint. From 1 May 2015, most complaints about the Australian Taxation Office (ATO) and the Tax Practitioners Board (TPB) must be directed to the Inspector-General of Taxation (IGT). For more information about the role of the Commonwealth Ombudsman please see www.ombudsman.gov.au. The Ombudsman Act 1976 requires the Ombudsman to transfer to the IGT complaints relating to tax administration. We have transferred your complaint to the IGT. The IGT will contact you directly in due course. If you need to contact the IGT in the meantime, you may do so on 1300 448 829 or by following the links on the IGT’s website: www.igt.gov.au For the reasons outlined above, your complaint file will be closed. <i>Unless you are responding to a request for information made by the Office, within the timeframe specified, please do not reply to this email. If your complaint is closed and you have new information to provide, you can submit a new complaint using the online complaint form. If you would like information about how the Office assesses complaints, head to the website for more information.</i> Yours sincerely [Signature Block]</p>													
9	Record issue strings	Use the issue strings set out below. Make sure you change the cause as applicable.												
	<p>IGT transfers:</p> <table border="1" data-bbox="236 1115 1477 1189"> <thead> <tr> <th data-bbox="236 1115 676 1144">Issue</th> <th data-bbox="676 1115 1107 1144">Cause</th> <th data-bbox="1107 1115 1477 1144">Outcome</th> </tr> </thead> <tbody> <tr> <td data-bbox="236 1144 676 1189"> OOJ Issue > Tax administration action</td> <td data-bbox="676 1144 1107 1189">Not Applicable</td> <td data-bbox="1107 1144 1477 1189">Transfer to Agency > Transferred to Agency</td> </tr> </tbody> </table> <p>OAIC transfers:</p> <table border="1" data-bbox="236 1285 1477 1359"> <thead> <tr> <th data-bbox="236 1285 612 1314">Issue</th> <th data-bbox="612 1285 986 1314">Cause</th> <th data-bbox="986 1285 1477 1314">Outcome</th> </tr> </thead> <tbody> <tr> <td data-bbox="236 1314 612 1359"> FOI Personal Access > Primary decision</td> <td data-bbox="612 1314 986 1359">Deficient Decision > Wrong</td> <td data-bbox="986 1314 1477 1359">Advised to pursue elsewhere > Transfer to the OAIC (s6C OMB Act)</td> </tr> </tbody> </table>		Issue	Cause	Outcome	OOJ Issue > Tax administration action	Not Applicable	Transfer to Agency > Transferred to Agency	Issue	Cause	Outcome	FOI Personal Access > Primary decision	Deficient Decision > Wrong	Advised to pursue elsewhere > Transfer to the OAIC (s6C OMB Act)
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10	Close the complaint	Procedure sets out the process for closing complaints.												

Approval Date	16 September 2019				
Date of Review	16 September 2020				
Contact Team	Education, Coordination and Review				
Document ID	A1761647				
Version Control					
Version	Amended by	Review Date	Brief Description of Change	Approved by	Date

Parliamentary Complaint Handling Procedures
12. Closing complaints

Updated: 28 October 2019

Review at: 28 October 2020

OVERVIEW	3
12.1 Issue strings	3
12.2 Process table – Closing complaints	6
APPENDIX A - OUTCOMES/REMEDIES	7
Where complaint issue/s are being addressed through means other than investigation	7
Where you have made preliminary inquiries or investigated the complaint	7

Overview

Where you have decided investigation or further investigation of a complaint is not warranted, you will need to close the complaint. This Procedure explains the process for closing complaints including accurately and effectively using issue strings and closing complaints in Resolve.

Purpose	Explain the process to complete issue strings and close a complaint.
Workflow	Previous Step: Procedure 8 – Actioning your decision: Not investigating and complaint transfers Procedure 9 – Actioning your decision: Preliminary Inquiries Procedure 10 – Actioning your decision: Conducting investigations
Scope	Does not cover notifying parties or making decisions to finalise a complaint.

12.1 Issue strings

Before closing your complaint in Resolve you must update the issue strings on the complaint to include the action taken and an outcome. An issue string is what we call the overall recording of *issue*, *cause*, *action taken* (please note: this field is labelled ‘outcome’ in Resolve) and *outcome* (please note: this field is labelled ‘Remedy’ in Resolve).

Issue strings are the main way that our Office can easily track what issues the complaints we receive are about, what’s gone wrong, what we did and what we’ve achieved. It is very important that issue strings are clear and accurate so we can easily identify systemic issues and correctly report on our work.

Issue >	...	Non-programme Service > Complaints service
Cause >	...	Deficient Decision > Delay
Outcome >	...	No further investigation > Appropriate remedy provided
		This is the Primary Issue <input checked="" type="checkbox"/>
Prompts	Remedy/Comments	COMBi
Remedy	<div style="border: 1px solid #ccc; padding: 5px;"> <p>Remedy</p> <ul style="list-style-type: none"> <input type="checkbox"/> Act of Grace payment <input type="checkbox"/> Other financial remedy <input checked="" type="checkbox"/> Action expedited <input checked="" type="checkbox"/> Agency apology <input type="checkbox"/> Agency undertook to reconsider matter <input type="checkbox"/> Decision changed <input type="checkbox"/> Better explanation - by agency <input checked="" type="checkbox"/> Better explanation - by Ombo <input type="checkbox"/> Change to policy/practice/law <input type="checkbox"/> Other non-financial remedy </div>	
Comments		

12.1.1 Issue/Subject

The *Issue* selection reflects the identifiable program related issue/s that the complainant has complained about or that you have identified in your assessment. For complaints closed at category 1, this is called a *Subject* and you can only choose one for each complaint.

Each distinct, identifiable issue should have its own issue string however you need to select one as the primary issue. A primary issue may be the main issue you have identified, or the main issue to the complainant.

The list of available issues you can choose from is specific to the agency that the complaint is about. Major agencies generally have a comprehensive selection of issue string while the options for smaller agencies might be only minimal. There may be comments in the Prompts section which provide guidance to staff about whether to use the issue string.

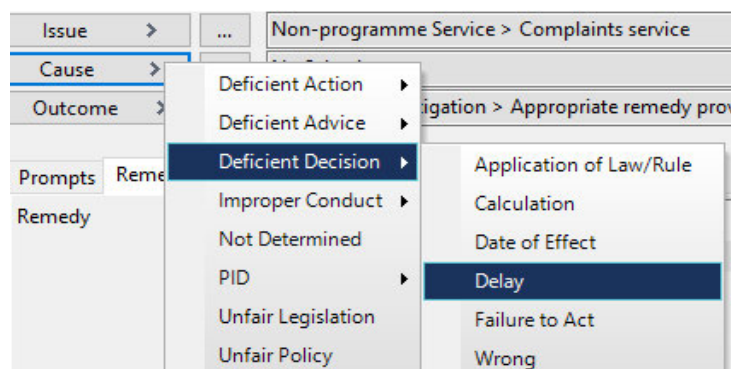
The available issues are managed by the relevant strategy team or main subject matter specialist. If you cannot find an appropriate or adequate issue string to reflect the issue/s in your complaint, you should choose the closest option but add a comment explaining the actual issue. You should then notify your supervisor or the strategy team or subject matter specialist so they can consider whether adding an issue string is required.

You must add at least one issue string with at a minimum one *Issue* selected to progress a complaint to an investigation.

12.1.2 Cause

The *Cause* selection reflects the administrative problem complained about. *Cause* is broad and reflects all aspects of government decision making or actions, and is not limited by our jurisdiction. The *Cause* options are the same for every agency and all stages of complaints – whether investigated or not. They should be applied consistently across all agencies.

For category 1 complaints, only first level options on the drop down selections are available (e.g. the list starting with Deficient Action below).



12.1.3 Action taken (Outcome in Resolve)

Action taken (field is titled 'outcome' in Resolve) means what we did to resolve or otherwise respond to a contact to our Office. Our Office has agreed definitions for what action taken is. Different types of contacts to our Office may have different available actions, which can include:

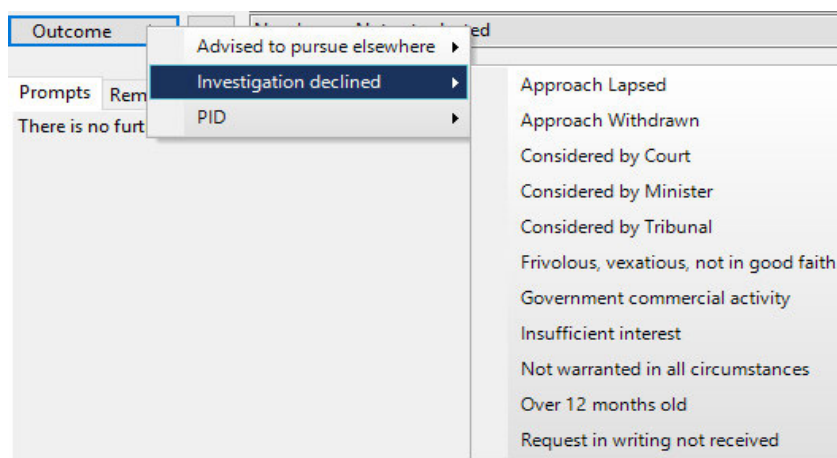
- conducting a formal investigation
 - resulting in a report
 - resulting in comments to the agency
 - finalised without comments or suggestions to the agency

Procedure 12 Closing complaints

- conducting an assessment of a matter
 - resulting in a decision (such as on an FOI review application)
 - resulting in a recommendation to the agency (such as for a reparation payment relating to abuse in Defence)
- assessing a complaint and finalising without a formal investigation, with or without making preliminary inquiries of an agency
- referral back to the agency or organisation about whom the complaint is made
- referral to another agency or complaint-handling body
- in relation to program specific matters—carrying out the relevant statutory process
- in relation to enquiries
 - providing the information sought
 - otherwise responding to the request.

For some actions, further selections allow us to include a reason for the action we took. The options available change slightly according to the stage or category of the complaint.

For example, the options available on a complaint that hasn't been investigated relate to why the investigation was declined while the outcomes for a complaint which has been investigated relate to why the investigation was finalised. Investigated complaints also have the option of 'Appropriate remedy provided' which is not available for other complaints.



12.1.4 Outcomes (Remedy in Resolve)

An *outcome* is the end result of a contact to our Office in relation to an issue (in Resolve this field is labelled 'remedy'). Outcomes vary depending on the type of contact and what we did with the complaint, and can include:

- rectifying the situation for a person (such as restoring a payment; waiving a debt; a different decision; a better explanation from the agency; an apology)
- assistance or advice for a person (such as referral to a more appropriate avenue; a better explanation by us on review rights; advice on how to make a complaint; an agency considering a matter in a more timely manner)
- outcomes which reflect our role as independent and impartial (such as independent assurance that the agency's decision was lawful and reasonable)
- outcomes for the broader community (such as changes to an agency's policies or practices)

Appendix A to this Procedure lists the outcomes and provides guidance on when it may be appropriate to use them. You should note that you can and should record more than one outcome where appropriate.

12.2 Process table – Closing complaints

1	<p>Commence and/or complete the issue strings</p>	<p>For category 1 complaints, complete the <i>General Details</i> fields consistent with the advice at 12.1.</p> <p>For category 2 complaints, select ‘New Issue’ at the bottom left of Resolve. Complete the Issue string fields consistent with this Procedure. If there is more than one distinct issue in the complaint, create an issue string for each issue and designate one as the primary issue. Select OK to save each issue string.</p> <p>For investigated complaints, update the existing issue strings to reflect the action taken and outcomes of the investigation. If extra issue strings need to be added (e.g. for issues you didn’t investigation), create and complete the new issue strings.</p> <p>Ensure all issue strings are completed as you cannot close the complaint when there are incomplete issue strings.</p>												
	<p>Category 1 General Details options:</p> <div style="border: 1px solid #ccc; padding: 5px; margin-bottom: 10px;"> <p>General Details</p> <p>Subject: Carer payment > Claim</p> <p>Cause: Deficient Decision</p> <p>Outcome: Advised to pursue elsewhere > Agency complained of</p> </div> <p>Adding an issue string:</p> <div style="border: 1px solid #ccc; padding: 5px; margin-bottom: 10px;"> <p>Issues and Outcomes</p> <p><input type="button" value="New Issue"/> <input type="button" value="Delete Issue"/></p> <p>Issue</p> </div> <p>Completed issue string:</p> <table border="1" style="width: 100%; border-collapse: collapse; font-size: 10px;"> <thead> <tr> <th style="width: 33%;">Issue</th> <th style="width: 33%;">Cause</th> <th style="width: 33%;">Outcome</th> <th style="width: 1%;"></th> </tr> </thead> <tbody> <tr> <td> Carer payment > Claim > Primary...</td> <td>Deficient Decision > Wrong</td> <td>Advised to pursue elsewhere > Agency complained...</td> <td>Cor</td> </tr> <tr> <td> Carer allowance > Claim > Primary...</td> <td>Deficient Decision > Wrong</td> <td>Advised to pursue elsewhere > Agency complained of</td> <td></td> </tr> </tbody> </table>		Issue	Cause	Outcome		Carer payment > Claim > Primary...	Deficient Decision > Wrong	Advised to pursue elsewhere > Agency complained...	Cor	Carer allowance > Claim > Primary...	Deficient Decision > Wrong	Advised to pursue elsewhere > Agency complained of	
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Carer payment > Claim > Primary...	Deficient Decision > Wrong	Advised to pursue elsewhere > Agency complained...	Cor											
Carer allowance > Claim > Primary...	Deficient Decision > Wrong	Advised to pursue elsewhere > Agency complained of												
<p>Ensure no open actions or checked out documents</p>	<p>The complaint cannot be closed if there are open actions. Documents should be checked in as a matter of good practice.</p>													
2	<p>Close case</p>	<p>You can close the complaint by selecting ‘Close approach’ at the top of the Resolve complaint screen. Resolve will confirm the case is closed and it will disappear from your case list to your Recent Closed tab.</p>												
3														

Appendix A - Outcomes/remedies

Where complaint issue/s are being addressed through means other than investigation

Outcome	Example
Remedy provided by the agency without Ombudsman intervention	<i>The agency apologised to the complainant prior to them coming to the Ombudsman.</i>

Where you have made preliminary inquiries or investigated the complaint

Outcome	Example
Better explanation by Ombudsman	<i>The complainant has been waiting 12 months for their Partner (provisional visa). We provide them information that it may take longer and refer them to the website and the global processing times.</i>
Better explanation by agency	<i>The complainant doesn't understand why their income support payment is so low. After we started our investigation, DHS contacts the complainant to explain about estimated income and how the complainant's income estimate has affected their payment rate.</i>
Action expedited	<i>The complainant has been waiting for a review of his NDIA plan for many months. As a result of our investigation/ preliminary inquiries or during our investigation, NDIA contacts the complainant and arranges the planning meeting.</i>
Agency apology	<i>The complainant made a complaint to Access Canberra. The complainant was 'lost' and no action was taken. During our investigation, the agency apologised to the complainant.</i>
Agency undertook to reconsider the matter	<i>The agency made a decision but have decided to remake that decision. The outcome may not necessarily be different.</i>
Decision changed	<i>A BVC holder was repeatedly denied work rights despite financial hardship. As a result of or during the investigation the Department of Home Affairs changed its decision as it had failed to take account of relevant information.</i>
Change to policy/practice	<i>The complainant couldn't understand one of the letters sent to them by the Department of Employment, Skills, Small and Family Business. The Department agreed to redraft correspondence for all their clients.</i> <i>DHS agrees that its Operational Blueprint doesn't reflect preferred practice in a specific situation and redrafts the relevant part of the Operational Blueprint.</i>
Agency officer counselled or disciplined	<i>A Department of Home Affairs officer uses their Official ID when asking to enter a premises for personal reasons. The Department did not deal with the complainant when it was made to them, but following our investigation it confirms events and advises that the officer has been disciplined.</i> <i>Complainants should not be given much detail about this outcome as it concerns the privacy of the Officer who has been counselled or disciplined.</i>
Other non-financial remedy	<i>A Department undertakes to consult with the Minister about the need for legislative change.</i>

Payment granted	<p><i>This is to be used where the complaint is related to the delay or denial of a particular government payment and the payment is granted.</i></p> <p><i>For example, an application for Newstart is approved as a result of, or after commencing your investigation.</i></p>
Payment restored	<p><i>Centrelink cancels the complainant's age pension. The decision to cancel is undone and the payment started again as a result of, or during, your investigation.</i></p>
Payment increased	<p><i>A Carer payment was calculated incorrectly as it took into account assets that didn't exist. The complainant now receives a higher payment.</i></p>
Penalty waived or reduced	<p><i>An inmate is placed in isolation. As a result of, or during our investigation, they are able to return to their normal accommodation.</i></p> <p><i>A community development program (CDP) participant is fined for not attending their activities. Due to, or during our investigation, the financial penalty is waived.</i></p>
Debt waived or reduced	<p><i>This remedy should only be used if the decision not to pursue the debt is forever. This must not be used if the remedy is a repayment plan. It isn't important if the agency finds that the debt was properly or improperly incurred – this remedy must still be used.</i></p> <p><i>For example, the complainant has received more payments from an agency than they are entitled to. The agency recognises the debt, but decides to waive it because the overpayment was solely caused by the agency's deficient actions that were uncovered during our investigation.</i></p>
Fee refunded/ waived/ reduced	<p><i>The complainant was told to pay a fee for an FOI request. They complained to OAIC who affirmed the agency's decision and the complainant paid. During our investigation we find the decision by OAIC was not made in an administratively correct way. The fee is refunded.</i></p>
CDDA scheme payment	<p><i>Can be used where a payment has been made, or is being assessed, under a new or revisited CDDA claim.</i></p> <p><i>The complainant relied on incorrect information on the Department of Home Affairs website. Their reliance led to a loss. They complained, but their complaint was not treated like a claim for CDDA. When we engaged with the Department, they informed us they would consider the complaint a CDDA claim. No decision has been made yet.</i></p>
Act of Grace payment	<p><i>Where there is no defective administration, but an agency has decided to make an act of grace payment because Commonwealth legislation or policy resulted in an unintended consequence for the complainant.</i></p>
Other financial remedy	<p><i>This can include, but is not limited to repayment plans and decision to not recover debts (which is different from waiving or reducing them).</i></p> <p><i>Centrelink properly reduced the assets to determine the correct rate of Carer payment and pays the complainant back for the period when the rate was too low.</i></p>
No remedy	<p><i>Before using this option, please discuss with your supervisor – usually another outcome will better capture what has occurred.</i></p>

Approval Date					
Date of Review					
Contact Team					
Document ID					
Version Control					
Version	Amended by	Review Date	Brief Description of Change	Approved by	Date

GUIDANCE – COMMONWEALTH AGENCIES COMPLAINT PROCESSING QUICK GUIDE

ENDORSED NOVEMBER 2024

About this document	
Purpose	This Guidance document outlines the steps to follow when processing, recording and assessing complaints about Commonwealth agencies.
User/s	This Guidance document is for use by the Complaints Assessment Team. It is also for the awareness of the Early Resolution Team, and the Investigations Branch.
Publication/release to other sites	This Guidance document is being released to the VOLT platform, which is internal to the Office of the Commonwealth Ombudsman. It has not been published on an external website and is not intended for external publication.
Outcome	Staff of the Complaints Assessment Team will correctly assess and action Complaints about Commonwealth agencies.
Version number	1.0
Consultation	Director, Early Resolution, Complaints Branch Director, ACT & Commonwealth Investigations, Investigations Branch
Approved/endorsed by	Director, Complaints Assessment Team
Date approved/endorsed	November 2024
Next review date	November 2025
Contact team	Complaint Handling Support Unit

Contents

Assess	3
1. Establish Jurisdiction	3
2. Requesting information.....	3
3. Does complainant want to change an Agency decision?	3
4. Has the complainant exhausted the Agency’s formal complaints process and received an outcome?.....	4
Decide	4
1. S6 discretion not to investigate.....	4
2. Refer the complaint for further assessment	4
Close	5
1. Issues of Interest	5
2. Issue Strings.....	5
Scripts	5
1. Out of Jurisdiction (OOJ)	5
2. S6 - Complaint pathway script	5
3. S6 – Review pathway script.....	5
4. Refer for further assessment script.....	6
Common Commonwealth Agency Issues	6
1. Complaints about the Australian Taxation Office (ATO).....	6
2. Complaints about APS employment.	6
3. Complaints about Privacy.....	6
4. Complaint about Freedom of Information (FOI) or amending personal information held by an agency.....	6
5. Compensation for Detriment caused by Defective Administration (CDDA)	6
Templates	7

Commonwealth Agencies Complaint Processing Quick Guide

Assess		
1. Establish Jurisdiction	<p>On the phones ask:</p> <ul style="list-style-type: none"> • What State or Territory are you calling from? • What Agency are you complaining about? <ul style="list-style-type: none"> ○ Please check – Agency Index: Commonwealth Jurisdiction ○ And Agency Index – ACT Ombudsman Jurisdiction <p>If the agency is not in the Commonwealth agency index or in ACT Agency index, it is possible the agency complained about is out of jurisdiction and this should be verified with your supervisor.</p> <p>Out of jurisdiction matters include:</p> <ul style="list-style-type: none"> • State government agencies (excluding ACT) and local council/government matters. • Private businesses, phone companies, insurance companies, banks etc. <p>Please see list of complaint handling bodies for OOJ complaints here.</p>	<p>Agency in Jurisdiction: Go to next step</p> <p>Agency not in Jurisdiction: Go to Scripts – OOJ</p>
2. Requesting information	<p>On the phone ask:</p> <ul style="list-style-type: none"> • What is the outcome you are hoping for? • Can you provide approximate dates of when things happened? • What is your complaint reference number? • Where applicable, can you please provide us with the details (or copies of) the complaint made? • Are you acting or wanting to act on behalf of a another person? <p>For web cases – go to Guidance – How to make Requests for Information from complainants: Complaints Assessment Team.</p>	
3. Does complainant want to change an Agency decision?	<p>The complainant may provide evidence of a Decision by using the following key words:</p> <ul style="list-style-type: none"> • Decision letter. • Internal review/outcome. • Rejection/denial. • Review outcome. • Appeal. • Reviewable decision. 	<p>Yes:</p> <p>If Phones go to – Scripts – S6 review pathway.</p> <p>If Web cases, go to – Decide – S6 discretion not to investigate.</p> <p>No – go to next step.</p>

Commonwealth Agencies Complaint Processing Quick Guide

<p>4. Has the complainant exhausted the Agency's formal complaints process and received an outcome?</p>	<p>The complainant may supply evidence of exhausting their complaint pathway by providing:</p> <ul style="list-style-type: none"> • Complaint reference number • Date complaint lodged; dates when key issues/events/actions occurred? • A copy (or summary) of their complaint lodged. • A copy (or summary) of the agency's response • A clear explanation of why they are unhappy with the agency's response. 	<p>Yes - go to - Decide - Refer the complaint for further assessment.</p> <p>No: Phones go to - Scripts - S6 complaint pathway script.</p> <p>Web cases, go to - Decide - S6 discretion not to investigate.</p>
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Decide

<p>1. S6 discretion not to investigate</p>	<p>Before closing a complaint, it is important to exercise your judgement to determine whether it is reasonable to apply a discretion under section 6. You must consider all the circumstances, including any vulnerabilities present, the subject matter of the complaint and the department or agency it concerns.</p> <p>When the complainant:</p> <ul style="list-style-type: none"> • Disagrees with a decision, most Agencies have a review pathway available to them followed by an appeal to the Administrative Review Tribunal. Apply for a review - Administrative Review Tribunal • Has not lodged a formal complaint, or not waited for the Agency's response to their complaint (Agencies may have differing timeframes) and you have exercised your judgement to determine if reasonable to apply a discretion under section 6. <p>You may consider closing (S6) their case go to the following template: Section 6 Commonwealth - No complaint lodged with the agency for all written referrals.</p> <p>Following a S6 decision - go to Close - Issues of Interest and Issue strings. Resolve: Add Action > Decision Letters > S(6) Discretion - Commonwealth</p>
<p>2. Refer the complaint for further assessment</p>	<p>Referrals to ERT and Investigations must be assessed using the Guidance - Allocation Guidance: Complaints and Investigations</p> <p>Go to - Scripts - Refer for further assessment.</p> <p>Send the Acknowledge Approach - Complaint Progress (Commonwealth) template in the Guidance - Quality Checking Standards in the Complaints Assessment Team for all written referrals.</p> <p>Resolve: Add Action > Caller > Acknowledge Approach > Acknowledge Approach</p>

Commonwealth Agencies Complaint Processing Quick Guide

Close	
1. Issues of Interest	Add Issue of Interest (IOI) if required. See IOI List . Resolve: Issues of Interest tab > Add > search for IOI number
2. Issue Strings	Select the most accurate Issue Strings. Issue: Matters raised by the complainant. Cause: Complainant’s view of what caused the issue. Outcome: Where the complainant was referred/or Complaint Officer’s discretion.
Scripts	
1. Out of Jurisdiction (OOJ)	<p><i>“Based on the information you have provided, it would appear that we are not able to assist with your complaint. Please contact (xxxxxx) who are better placed to help with your issue.”</i></p> <p>Or</p> <p><i>“While we do our best to provide a referral where a complaint is outside our jurisdiction, this is not always possible and there are limits to what we can suggest. In most cases we suggest speaking with the body your complaint is about to enquire about the appropriate complaint pathway”.</i></p>
2. S6 – Complaint pathway script	<p><i>“In most cases, we may decide not to investigate where a formal complaint has not been reviewed by the Agency; they are in the best position to resolve your issue. (give contact details for Agency).”</i></p> <p><i>“The Agency will generally respond to complaints within (give timeframe if known) and may attempt to call you on a private number. If you have not received a response, you should follow up with the Agency in the first instance.</i></p> <p><i>If you remain dissatisfied with the response or you don’t receive one, you are welcome to contact us again. At this time, we may be able to assess whether the Agency has appropriately considered and responded to your complaint.”</i></p>
3. S6 – Review pathway script	<p><i>“We assess administration issues of government agencies, for example, how the Agency has handled your complaint. We cannot compel the Agency to change its decision.”</i></p> <p><i>“If you are unhappy with an Agencies decision, it is open to you to request a review by the agency. ”</i></p> <p><i>“If you remain dissatisfied with the internal review decision, you may be able to lodge an appeal to the Administrative Review Tribunal (ART) for an independent review of the decision. We cannot compel and agency to review or change their decisions, the ART has these powers, and can</i></p>

Commonwealth Agencies Complaint Processing Quick Guide

	<p>send decisions back to the Agency to be reconsidered or changed. You can contact the ART on online at www.art.gov.au or call 1800 228 333."</p>
<p>4. Refer for further assessment script</p>	<p>"I am sending your case for further assessment; I am unable to give a timeframe for it to be allocated to a case officer. A case office will contact you when your case is allocated to them. Please let us know if there are any developments with your case or your issue is resolved."</p>
<p>Common Commonwealth Agency Issues</p>	
<p>1. Complaints about the Australian Taxation Office (ATO)</p>	<p>Complaints about tax administration are out of our jurisdiction.</p> <p>The ATO is the government's principal revenue collection agency. It is responsible for the tax, excise, and superannuation systems in Australia.</p> <p>Complaints relating to tax administration are handled by the Inspector - General of Taxation - Taxation Ombudsman.</p> <p>Most complaints about the ATO and Tax Practitioners Board (TPB) are to be referred to the Inspector-General of Taxation. IGTO - Inspector General of Taxation</p>
<p>2. Complaints about APS employment</p>	<p>The Office is unable to consider this matter as it is not within jurisdiction. While the Commonwealth Ombudsman's Office handles complaints about the administrative actions of Australian Federal Government agencies, under our legislation, we are unable to consider most matters regarding APS employment.</p> <p>We suggest you contact the Fair Work Ombudsman or the Australian Public Service Commission to enquire about your further options.</p>
<p>3. Complaints about Privacy</p>	<p>If their complaint about an agency is privacy related, we would suggest they contact the Office of the Australian Information Commissioner (OAIC).</p>
<p>4. Complaint about Freedom of Information (FOI) or amending personal information held by an agency</p>	<p>The Office of the Australian Information Commissioner (OAIC) can consider complaints about FOI decisions made by a Federal Agency. This is called an Information Commissioner Review. The OAIC's website advised complainants to request an internal review to the agency in writing about its FOI decision.</p> <p>Complainants may also ask an agency to amend personal information held by an agency. The OAIC has a role to seek to change government held personal information under the FOI Act. Complainants can apply for a Information Commissioner Review, if dissatisfied with the agency's response.</p>
<p>5. Compensation for Detriment caused by Defective Administration (CDDA)</p>	<p>With CDDA complaints, the normal review rights are not available, although we do have a specific role, according to the Department of Finance Guidelines in reviewing unsuccessful claims. We do not provide advice on writing claims.</p> <p>If the complainant is unhappy with a CDDA decision, in the first instance, they can contact their Claim Manager, who can reconsider the decision. The complainant can then come to us, with the decision letters (original and Claim Manager's), and we can consider it.</p>

Commonwealth Agencies Complaint Processing Quick Guide

Templates

S6 Commonwealth: No complaint lodged with the Agency

Our Ref: xxx-xxxxx

Dear [Name]

I'm writing to you about the complaint you made to the Ombudsman's office on [date] about [agency] regarding (short 1 or 2 sentence summary of the complaint).

I have considered your complaint and decided not to investigate it.

I have made this decision as it would appear based on the information provide, you have lodged a complaint with the [agency]'s complaint handling area. We generally decline to investigate a complaint before it has been raised with this area. We find in taking this approach with an agency is sometimes able to resolve the complainant's concerns directly using its own internal process, which we encourage. The contact details are:

[insert agency name]

Website: [insert agency website]

Phone: [insert agency phone number]

[delete the following paragraph if required]

Please note, the standard timeframe for a response to a complaint from [agency] is X business/days. In most cases we would ask that you wait for that amount of time to pass to see if [agency] is able to resolve your complaint.

As this option is open to you to pursue, I will close your complaint file. However, if lodging a formal complaint with [agency] does not resolve the issue, you are welcome to return to our Office via our [online complaint form](#).

If you do return to contact us, please provide the following information:

- The date you lodged your complaint about with [agency]
- Your complaint reference number if you received one.
- A copy (or details) of the response you received from [agency]
- The outcome you are seeking by approaching our office.

Decision

As you can lodge a formal complaint the [agency], our Office will not be investigating your complaint. I have finalised my assessment of your complaint and it has now been closed. However, if you follow [agency]'s complaint process and are dissatisfied with the outcome, you are welcome to return to us.

If you disagree with my decision, you are welcome to contact me on 1300 362 072 to discuss your concerns. You can also request a review by completing our online form at [Request a review of your complaint outcome | Commonwealth Ombudsman](#).

You should request a review within 3 months of being told about our decision. Your review request should clearly identify why you believe the decision was wrong and provide any additional supporting information or evidence. You can find additional information about our review process on our website [here](#).

Your Personal Information

Commonwealth Agencies Complaint Processing Quick Guide

The Ombudsman’s Office uses personal information we collect from you to assist us with our handling of your enquiry. Further information about the way the Ombudsman’s office handles your personal information, including how you may access and seek correction of that information, can be found in the privacy statement available on our website www.ombudsman.gov.au

From time to time, we ask an external company to conduct surveys of people who have contacted us so we can collect feedback on our performance. Your personal information, including your contact details, demographic statistics and basic information about your complaint such as when you came to us, how you lodged your complaint, the agency you are complaining about, how long it took us to resolve your complaint, and how we resolved your complaint, may be provided to that external company. If you do not agree to this happening and do not wish to be contacted about your experience using our services, please notify us by replying to this email. If you are unable to reply to this email, contact us on **1300 362 072**.

Yours sincerely

OOJ letter template:

Our Ref: **xxxx-xxxxxx**

Dear **[Name]**

Thank you for your complaint to the Commonwealth Ombudsman made on **[date]** about **[agency]** and **[Issue]**.

The Office can assess complaints about the actions of Australian Government agencies and some private sector organisations we oversee. I have reviewed your complaint, however, your matter falls outside our jurisdiction.

We recommend you contact the body your complaint is about.

[delete the following section if unable to provide/unsure on an appropriate agency]

You may consider contacting the following agency about your complaint:

[insert agency name]

Website: [insert agency website]

Phone: [insert agency phone number]

As we are unable to investigate your complaint, I will now close your complaint file with our Office.

If you have any questions or wish to discuss further, please contact me on 1300 362 072.

Yours sincerely

Frequently referred agencies.

- State Ombudsman links:
- [Queensland Ombudsman](#)
 - [Western Australia Ombudsman](#)
 - [Victorian Ombudsman](#)
 - [Northern Territory Ombudsman](#)
 - [Northern Territory Ombudsman](#)
 - [Tasmanian Ombudsman](#)
 - [New South Wales Ombudsman](#)

Commonwealth Agencies Complaint Processing Quick Guide

	<p>Aviation/airline Complaints: Aviation Complaints</p> <p>APS Employment complaints: Fair Work Ombudsman Australian Public Service Commission</p> <p>Privacy complaints: Office of the Australian Information Commissioner (OAIIC)</p> <p>Banking/Supernation/insurance Complaints: Australian Financial Complaints Authority</p> <p>Tax: Inspector General of Taxation</p>
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