

Parliamentary Complaint Handling Procedures

10. Actioning your decision: Conducting investigations

Updated: 28 October 2019

Review at: 28 October 2020

OVERVIEW	3
10.1 INVESTIGATION OVERVIEW	3
10.1.1 Resolve investigation workflow	4
10.2 PLANNING AND COMMENCING AN INVESTIGATION	4
10.2.1 Planning	4
10.2.2 Process table - planning an investigation	6
10.2.3 Commencing an investigation.....	6
10.2.4 Drafting questions.....	6
10.2.5 Process table - commencing an investigation.....	8
10.3 RECEIVING AND ANALYSING AGENCY RESPONSES	9
10.3.1 Typical issues found in complaints.....	10
10.3.2 Process table – analysing the agency’s response.....	12
10.4 MAKING FURTHER INQUIRIES OR TAKING FURTHER ACTION.....	13
10.4.1 Options for conducting further inquiries	13
10.4.2 Process table – further inquiries	14
10.4.3 Preliminary views.....	155
10.4.4 Process table –preliminary views	16
10.5 COMPLETING AN INVESTIGATION	17
10.5.1 Providing the complainant with an opportunity to respond	17
10.5.2 Process table – notifying the complainant of your completed investigation	18
10.5.3 Notifying the agency – without comments or suggestions	20
10.5.4 Decisions to finalise an investigation – with comments or suggestions.....	20
10.5.5 Process table – making comments to agencies	21

Overview

Procedure 7 covered when you might decide to investigate a complaint. This Procedure explains how to implement your decision to investigate a complaint, including how to commence an investigation, analyse the evidence you obtain and make decisions about the investigation. This Procedure assumes you have read Procedure 7.

This Procedure does not address decisions not to investigate, to transfer a complaint or conduct a preliminary inquiry. Procedures 8 and 9 explain the process for those decisions.

All references in this Procedure to the Act refer to the *Ombudsman Act 1976* (Cth) provisions or the equivalent provisions under the *Ombudsman Act 1989* (ACT) – separate section references for ACT matters are provided only where different.

Purpose	To explain how to implement a decision to investigate a complaint.
Workflow	<p><i>Previous Step/s:</i> Procedure 4 - Jurisdiction Procedure 7 – Assessing complaints and Determining a course of action</p> <p><i>Next step:</i> Procedure 11 – Complex investigations and coercive powers Procedure 12 – Finalising complaints</p>
Scope	Only addresses the process to decide to investigate a complaint. Does not cover when or why to make that decision.

10.1 Investigation overview

Investigation is a process that follows a logical sequence aimed at establishing what happened and identifying any administrative errors or concerns with processes. It’s a process of checking, challenging and analysing.

All investigations seek to answer the following critical questions:

- What happened?
- What should have happened?
- Is there a gap between what happened and what should have happened?
- Does an agency need to take action to close that gap?

Once a complaint has been provided to us, the Office has the power to determine how we will deal with it and what the appropriate and required actions are. While you should be aware of what people are seeking from our Office, and you should explain your proposed way forward and your reasons for doing so, we are not required to investigate each issue raised in a complaint.

S 47G

10.2 Planning and commencing an investigation

10.2.1 Planning

All investigations, whether straightforward or complex, require a planned and structured approach. Before you commence an investigation you must create an 'investigation plan', which requires you to identify:

- what are the issues in the complaint
- what are the issues we intend to investigate (noting we may not investigate every issue)
- what is the proposed plan of action to address each issue
- what are the possible outcomes of the investigation
- whether the investigation is likely to take more than three months. If so, you must discuss this with your supervisor.

Investigation plans are important for a number of reasons, including that they:

- ensure that we investigate with intention and provide a reference point for the issues and goals of an investigation
- allow us to answer questions like 'have we achieved what we set out to?' and 'why did we choose to spend resources on this complaint instead of elsewhere?'
- allow any third parties reading the file to understand what you are investigating, how you intend to do it, and what you think you can achieve by doing so.

An investigation plan should fit the needs of the investigation. You should create the plan on the assumption of a standard investigation, which in most cases is 90 days. However, it does not prevent you from continuing to investigate longer than three months if you determine the need to

The following table provides guidance on how to write an effective investigation plan:

Table 10.1: Preparing an effective investigation plan

General rule	Guidance
Keep it brief	A plan should not be longer than a single A4 page, and may be substantially shorter. Depending on complexity, you may need to plan information gathering as well – you can find a template to use in the Investigator’s toolkit .
Summarise	Provide a brief or dot point summary of the matters you are investigating, in sufficient detail to identify those issues that you consider warrant investigation. You don’t need to restate information that is contained elsewhere in Resolve.
Plan your approach	<p>In most cases, an investigation commences through an email to the agency asking a series of written questions. However, in some cases it may be more appropriate to request the file instead of asking for written responses, or suggest a verbal briefing, interview or face to face meeting with the agency.</p> <p>Consider what questions you may ask the agency, and what information you may request, to investigate the identified issues. Consider whether it is necessary to make inquiries with a third party. Remember, it is important to note that facts which are in dispute and could be relevant to the outcome should not be accepted at face value. They need corroboration.</p> <p>Your questions do not need to be in final draft form, but they should indicate the information you intend to request through your s 8 (s9 ACT matters) notice.</p> <p>You should consider how an agency might respond to our questions, but you do not need to complete a detailed analysis of the anticipated response.</p> <p>You may also note what publicly available information or information already held by the Office will help you answer your questions or refine the issues.</p>
Consider outcome	<p>When identifying the possible investigation outcomes, you should consider whether the investigation might:</p> <ul style="list-style-type: none"> • result in an individual outcome for the complainant, such as payment of a claim or a better explanation of an agency’s decision • clarify whether relevant processes and policies were followed by an agency • otherwise result in an improvement of public administration. <p>You should explain, but do not need to defend, the choice to investigate.</p>
Assess the risks	<p>Consider what risks, if any, could already exist or may arise from the investigation. Where they exist, they should be identified in the plan. For example, is there a risk that documents no longer exist; that the complainant may harm themselves or others, or that the issue affects other people?</p> <p>These risks may affect how you choose to conduct your investigation or impact the questions you ask. You should address what strategies you considered or implemented to address the risks.</p>
Ensure connection	A reader should be able to clearly connect the three parts of the investigation plan. For example: if the outcome we hope to provide is a ‘better explanation’, then the issue identification section should explain ‘what is the complainant unclear about and why’, and the proposed plan should set out a mechanism by which we hope to gather information we need to clarify this lack of clarity.

10.2.2 Process table - planning an investigation

1	Ensure your analysis has been clearly recorded.	See <i>Procedure 7</i> . Ensure your assessment of the issues and how you intend to handle the complaint has been clearly recorded and at least one issue string created. Once you have decided to investigate a complaint, press the Investigate button at the right top hand corner of the screen. This will automatically generate the <i>Investigation Plan</i> case action.
	s 47G	
2	Complete the investigation plan	Refer to <i>Table 10.1</i> .
	If quality checking required	Whether you are required to have your decision quality checked will depend on arrangements with your supervisor. s 47G [Redacted]
3		s 47G [Redacted]
	If quality checking is not required	Once you have completed the Investigation Plan, s 47G [Redacted]

10.2.3 Commencing an investigation

Once your investigation has been planned and approved, the next step is to commence the investigation including notifying the agency complained of pursuant to s 8 of the Act (s 9 for ACT matters).

In most cases, this notification occurs through an email to the agency asking a series of written questions or seeking the information you identified in the investigation plan. In exceptional cases it may be warranted to send a letter to the agency. In urgent cases, you may need to ask the Director to contact the agency by phone and explain the urgency. In these cases, an email notification must be sent immediately after confirming the investigation.

When preparing your notification, you should consider *Procedure 3 – Working with Agencies* regarding the preferred terminology, understanding agency contact arrangements and what information you can tell the agency.

10.2.4 Drafting questions for an agency

Two of the aims of an investigation are to identify what occurred and what should have happened. Asking questions of an agency is a useful way to collect information and evidence to answer these core questions and test what the other party told you. While of course investigations can, and should, involve collecting any further necessary information from complaints as well, this section focusses on questions to agencies.

It is important to tailor your questions to an agency with the following principles in mind:

Table 10.2: Drafting effective questions

Do	Do not
State what the complainant told us using neutral language and ask the agency to comment on what the complainant said, along with providing the relevant supporting documents. Alternatively, ask specific questions to test the complainants account.	Assume what the complainant told us when they complained is correct or the entire story. Impartiality requires that we test what we've been told by both the complainant and the agency.
Ask clarifying questions. Keep the language in your questions neutral and seek the agencies response to the issues raised.	Assume fault or be critical of the agency if the facts or circumstances are unclear or unconfirmed and the agency hasn't yet had a chance to provide information to us.
Separate different kinds of questions i.e. 'what did happen' questions separated from 'what should have happened' questions.	Try to address more than one concept in a question.
Move from general to specific questions. For example, find out what the relevant policy was and then ask how it was applied.	Start with complex questions or those requiring assumed knowledge. However, these questions may be appropriate if there are no general question to ask (for example where public information or information already held by the office provides you all you need to know about the general).
Use open questions and neutral language. Use mitigating language when presenting arguments or conclusions e.g. '[name] states... or 'it appears...'	Use accusatory questions or questions which could be interpreted that way.
Include a very open question e.g. ' <i>is there any other relevant information we should be aware of?</i> '	Assume the agency will provide additional relevant information if it is not asked to do so.
Independently assess if the agency acted reasonably by asking yourself what happened against what should have happened.	Ask or rely on the agency's interpretation or view of what occurred – do not ask questions like <i>does the agency consider it followed its processes in this regard.</i>
Tailor your questions – ask yourself whether the question is likely to elicit a helpful answer and provide new information.	Ask questions for the sake of it or go on 'fishing expeditions'. Do not ask for information you already have access to.
Carefully and strategically use open and closed questions. Closed questions are most effective to confirm information, challenge facts or to test understanding of something. Open questions are best to obtain detailed information or understand the usual process or procedure.	Routinely ask leading or closed questions where possible. In some cases these are appropriate, but the general principle is avoid using them.

10.2.5 Process table - commencing an investigation

1	Draft your notice	<p>Your notification should include:</p> <ul style="list-style-type: none"> • confirmation that our office has decided to investigate the complaint, with reference to the relevant section of Act • a summary of the issues raised by the complainant. Be sure to use neutral language and state what the complainant told us • your requested information from the agency – normally a series of questions about the complaint • a timeframe for the agency to respond. If there is a Relationship Protocol with the agency, it’s likely a prescribed timeframe will apply. If not, the default is 28 days .For simpler inquiries, a timeframe of 21 days may, however, be appropriate. Document only requests may be appropriate for a 14 day response timeframe.
	2	Quality checking
3	Send the notification	<p>Once you have finalised your email to the agency, identify the appropriate addressee following <i>Procedure 3.2</i>. Send the email to the agency contact from your team’s group email address. s 47G</p> <p>If it isn’t clear, you may need to add a sequence number and a short description of the email.</p> <p style="text-align: center; font-size: 2em; color: red;">s 47G</p>
	4	Advise the complainant that investigation has commenced
	If you notify the complainant by telephone	If you contact the complainant by phone, ensure you record the conversation accurately in a <i>Telephone conversation with caller</i> action (see Table 2.6 in <i>Procedure 2</i>).
	If you notify the complainant in writing	<p style="text-align: center; font-size: 2em; color: red;">s 47G</p> <p><u>Standard words</u> may provide useful words or paragraphs to include.</p>

5	Seek quality checking or peer review	In accordance with your arrangements with your supervisor, obtain quality checking of your email/letter.
	Receive and save the response	In most cases, the agency will provide the response by the due date. s 47G <div style="background-color: black; height: 15px; width: 100%;"></div> <div style="background-color: black; height: 15px; width: 100%;"></div> <div style="background-color: black; height: 15px; width: 100%;"></div> <p>However, sometimes an agency will request an extension to time to respond to our notification or will not respond by the requested timeframe. In this situation, follow the process outlined in <i>Procedure 3.3</i>.</p>
6		

10.3 Receiving and analysing agency responses

It is important to critically evaluate an agency’s response to our inquiries. The below table provides guidance on how to evaluate the adequacy of an agency response. The table should be applied using common sense and may not apply to each complaint. However, in all matters, you should clear explain the path you are taking and your reasoning in your analysis action.

Table 10.3: Framework for analysing agency responses

Questions to ask when analysing a response		Finalisation <u>may</u> be appropriate	Further investigation <u>may</u> be warranted
1	Has the agency answered all the questions and provided all the documents you asked for?	-	No
2	Do the responses address the questions asked? Do they make sense and are they consistent with the information you already know?	Yes	No
3	Go back to the issues you have identified in this complaint – have they been resolved by the agency’s response?	Yes	No
4	Do you have any factual gaps in your knowledge that require further inquiries with the agency?	Yes	No
5	Do you consider that agency has acted reasonably, lawfully and in accordance with their procedure?	Yes	No
6	Are you satisfied the agency fully understands the issues?	Yes	No
7	Are there any outstanding disputes (including inconsistencies) about the facts between the complainant, our Office and/or the agency? If yes, are these disputes irreconcilable or could further inquiries or evidence resolve the dispute?	No	Yes
8	Are you left with more questions?	No	Yes
9	Are you satisfied there are no systemic issues in this complaint (see Investigator’s toolkit for a tool that can help you identify and communicate a systemic issue)?	Yes	No

10.3.1 Typical issues found in complaints

The following list is of the types of administrative issues (whether individual or systemic) that you may identify in agency’s actions and decision when analysing agency responses.

Possible deficiency
<p>Unreasonable delay</p> <p>An agency has taken too long without good cause to make a decision or take an action. A number of factors will be relevant, including: the length of time taken by the agency to deal with the issue; the nature and complexity of the issue; statutory or published time frames for dealing with an issue of that kind (if any); and the agency's explanation for the delay. An excessive delay can be unreasonable even where the agency has given a good explanation (e.g., staff absences, unexpected increase in work).</p>
<p>Inadequate advice, explanation or reasons</p> <p>The advice, explanation or reasons given by an agency, either in a particular case or more generally, are not sufficient for a reasonable person easily to understand.</p> <p>A number of factors will be relevant, including: the complexity of the issue on which an explanation or advice is being given; the person or audience to whom the explanation is given; the importance of the explanation; accessibility considerations and when and how the explanation was given. An explanation or reasons can be adequate, even if not perfect, addressing every aspect or understood by every recipient.</p>
<p>Human error</p> <p>An avoidable error or mistake by an officer caused unreasonable disadvantage or inconvenience to a member of the public. The error does not stem from any systemic weakness in the processes of the agency; it was rather an error of judgment by an individual officer that is serious enough to be classified as an administrative deficiency. However, the error was not serious enough to be classified as unprofessional behaviour.</p>
<p>Factual error</p> <p>There was a factual error or discrepancy in a decision-making process. The error was not so serious that the decision could be set aside by a court as unlawful, but the error was nevertheless serious enough that it impaired the integrity of the agency's decision-making process. Not every minor factual error will warrant raising with the agency.</p> <p>For instance, a decision by an agency to audit a person's affairs was based on faulty information which the agency should have identified. An agency could have but failed to clarify an ambiguous or obscure issue before proceeding to make an adverse decision.</p>
<p>Legal error</p> <p>An agency appears to have made a legal error of a kind that could lead to its decision or action being set aside as unlawful by a court. The administrative law grounds on which a court can set aside an agency action or decision are listed in s 5 of the <i>Administrative Decisions (Judicial Review) Act 1977</i>.</p> <p>Legal error could include that the decision was made by someone who was not an authorised decision maker or delegate. It would also apply where the decision was based in part on an irrelevant consideration (e.g. where, explicitly or implicitly, the agency considered legislation or information it should not have or the inverse, where the agency ignored a particular issue that, it was obliged by legislation to have regard to).</p>

Possible deficiency
<p>Government programs: deficiency arising from agencies' interaction</p> <p>The programs being administered either within an agency or by two or more Australian Government agencies, are not as integrated or coordinated as they could be. A member of the public was put to an unreasonable disadvantage as a consequence.</p> <p>For example, a person's circumstances fall between the eligibility requirements of two similar programs, and the person has encountered difficulty in obtaining a benefit or concession to which it seems they should be entitled or a person has been shuffled between two of more agencies or line areas in order to resolve a particular issue.</p>
<p>Procedural deficiency</p> <p>There was a flaw in the procedure adopted by an agency in making a decision or taking an action. The flaw was serious enough to be classified as a significant error, even though the decision may have been correct, factually and legally. (A systemic weakness in agency procedures would normally be considered a flawed administrative process.)</p> <p>For example, a procedural deficiency may occur where oral information given by an agency to a person on an important issue should have been but was not recorded or where the internal agency review of a matter was not as comprehensive or professional as it should have been.</p>
<p>Unreasonable / harsh / discriminatory action or decision</p> <p>An agency acted in a way that flouts the principles of good administration: for example, the agency acted in a way that was irrational, excessive, inequitable, or contrary to reason or good sense; the agency capriciously used its powers; or the agency breached the standards in antidiscrimination legislation.</p>
<p>Flawed administrative process</p> <p>This is where the administrative action taken by an agency should be classified as flawed, but doesn't fit into any of the above categories.</p> <p>For example, an error (explained or unexplained) in the automated system used by an agency had an unreasonable adverse impact on a member of the public or there was a series of minor administrative errors, which together had an unreasonable adverse impact on a member of the public.</p>
<p>Inadequate knowledge / training of agency staff</p> <p>The individual deficiency is properly attributable to a systemic weakness in the skills of the agency staff, than to the competence of an individual officer. The skill deficiency should have been apparent to the agency and could have been addressed - for example, by proper staff training, better internal manuals, or circulation of staff bulletins on recent developments.</p> <p>Care is needed here: it is to be expected that skills will vary at different levels in agencies, and that primary errors can usually be corrected by internal review and quality control within the agency.</p>
<p>Breach of duty/ misconduct by an officer</p> <p>There is evidence that an officer acted illegally or breached the <i>APS Code of Conduct</i>, and the evidence is strong enough to support the Ombudsman referring the matter to the head of an agency under s 8(10) of the <i>Ombudsman Act</i>. You must consult with Director and SAO prior to making this finding.</p>

Possible deficiency
<p>Legislation and policy: unreasonable or harsh impact or unintended consequence</p> <p>The investigation of a complaint to the office has highlighted a legislative anomaly that the Ombudsman is warranted in drawing to the agency’s attention. This is not designed to facilitate debate or disagreement with legislation or government policy, but to draw attention to the adverse and inadvertent impact of legislation or the policy on individuals. Always consult with your Director and SAO where you consider this may be present.</p> <p>An own motion investigation or s 15 report (s 18 for ACT matters) is the more appropriate forum (if any) for discussing broader policy themes in legislation.</p>
<p>Unprofessional behaviour by an officer</p> <p>There was improper conduct by an officer in dealing with a member of the public. The conduct does not warrant action under s 8(10) of the Act (or s 9(12) for ACT matters), but falls short of the standard of behaviour that can be expected of an officer.</p> <p>Unprofessional behaviour would include rudeness, discourtesy or unhelpful or disrespectful behaviour by an officer, actual or perceived bias by an officer in handling a matter, careless action leading to a breach of privacy or wilful conduct detrimentally impacting a member of the public.</p>

10.3.2 Process table – analysing the agency’s response

1	Read the agency’s response	Read the response, including all attachments, thoroughly.
2	Reconsider supporting information and consider primary sources	Seek out and consider any supporting information (e.g the documents the complainant provided) and/or primary sources (e.g relevant legislation or procedural documents such as the Guide to Social Security Law). Do not assume that the information in the agency’s response is correct or reasonable – you should verify the information provided where possible.
3	Analyse the response and determine whether further investigation is necessary	After reading the agency’s response and supporting materials (you may need to reread the information), consider the information provided above at 10.3 including the analysis matrix provided at table 10.3. Consider whether any of the possible deficiencies at 10.3.1 are, or may be, present in your case. If you are unsure, discuss the complaint with a colleague or with your supervisor. Seeking the views of others may assist you to understand the details of the complaint or to understand your views more clearly.
4	Record your analysis	Record your analysis in the <i>Analyse Agency Response</i> . Your analysis should include: <ul style="list-style-type: none"> • what evidence you considered and your assessment of that evidence • whether you consider there are gaps in the evidence or what happened and what those are • if you have any further questions, and whether you consider those questions warrant investigation • if you have identified that the agency has, or may have, done something wrong and why you think so • whether you have decided to continue or finalise your investigation.

5		<p>If you refer to specific quotes, facts or details ensure you outline where you obtained that information.</p> <p>If your arrangements with your supervisor require it or you consider it warranted, obtain quality checking of your analysis and proposed decision.</p> <p>When you have completed your analysis, close the action.</p>
	No further investigation warranted	<p>If you have decided to finalise your investigation, press the <i>Finalise Investigation</i> button on the top right corner of the Resolve case (beside the Title of the case). The action <i>s12 Inform caller of decision</i> will generate.</p> <p>Consider 10.5 of this Procedure regarding notifying the complainant of your decision.</p>
6	Further investigation warranted	Refer to 10.4.2.

10.4 Making further inquiries or taking further action

If an agency’s response is insufficient, or you need more information before deciding on your position, it’s likely you will need to conduct further inquiries with the agency or take further action on the complaint.

You might also consider making further inquiries where investigation has established there has been an error/s by the agency and a resolution cannot be reached after the initial contact with the agency. Further action may also be required to deliver the information you need to raise concerns with the agency later through a s 12(4) notification or a s 15 report (s 15(4) and s 18 for ACT matters).

A further inquiry may also be for the purpose of informing an agency of a preliminary view we have reached based on the information already received and considered. Further inquiries may also mean that your investigation extends beyond the three month timeframe. Consult with your supervisor if you consider this is foreseeable.

10.4.1 Options for conducting further inquiries

There are several ways you can conduct further inquiries in an investigation. While written questions are the default way to obtain information from an agency it’s not always the most efficient or appropriate way to obtain information. For example, for a complex case where the facts are unclear, a telephone briefing or face to face meeting can result in considerable information being shared with the opportunity to immediately clarify any unclear details.

Options for further inquiries include:

- making further written inquiries under s8 of the Act (or s9 for ACT matters) – see 10.4.2
- making preliminary views to the agency for its comments (including a CDDA reconsideration request) – see below
- organising a teleconference briefing with one or more staff from the agency
- a face to face meeting with the agency
- conducting an interview with relevant agency staff or other witnesses (see Procedure 11).

Options for further action include:

- addressing the matter systemically rather than on an individual basis (e.g. report, own motion investigation or issues paper)

- bringing the matter to Strategy or Program Delivery Branch’s attention, to address it via agency liaison, speak to your supervisor and Director.
- if the initial response is unsatisfactory, subject to Director approval, the response could be returned to the agency as inadequate or requiring revision.

10.4.2 Process table – further inquiries

1	Record your analysis	You are expected to have completed process 10.3.2 prior to completing this step.
2	s 47G	
3	Draft your request for further information	<p>Further inquiries will be made using the powers under s 8 of the Act (or s 9 for ACT matters).</p> <p>Your request should include:</p> <ul style="list-style-type: none"> • acknowledgement of the previous response • explanation that you’re seeking further information or action under the relevant section of the Act • the requested information or action • an appropriate timeframe for the agency to respond.
4	Quality checking	In accordance with your arrangements with your supervisor, obtain quality checking of your section 8 notification.
5	Send your request	<p>Once you have finalised your email to the agency, identify the appropriate addressee following <i>Procedure 3.2</i>. Send the email to the agency contact from your team’s group email address. s 47G</p> <p style="background-color: black; color: red; text-align: center; font-size: 2em; font-weight: bold;">s 47G</p>
6	Update the complainant	<p>Contact the complainant by telephone or in writing and advise that you are continuing the investigation and have sought further information or action from the agency. In general, it is best to outline what you are seeking, however this is subject to your discretion.</p> <p>You must provide a timeframe for when the information is expected from the agency and when you will next contact them.</p>

7	If you notify the complainant by telephone	s 47G
	If you notify the complainant in writing	
	Seek quality checking or peer review	In accordance with your arrangements with your supervisor, obtain quality checking of your email/letter.
	Receive the response	Subject to the information or action requested, you need to record or save the information appropriately. If it is written response, record in the same way as outlined for your initial response.
8		s 47G
		If the agency has requested an extension to time to respond or has not responded by the requested timeframe, follow the process outlined in <i>Procedure 3.3</i> .
9	Analyse the response	Analyse the agency’s response following process table 10.3.2.

10.4.3 Preliminary views

A preliminary view is sent to the agency when we have formed a view on the complaint (following one or more inquiries) and we invite an agency’s response before we finalise our conclusions.

Under s 8(3) of the Act (or s 9(4) for ACT matters), we can make inquiries in the course of an investigation. This includes inquiring about an agency’s response to our initial or preliminary views. Preliminary views give an agency the opportunity to comment on our proposed findings, providing an element of procedural fairness.

You should consider using a preliminary view where one or more of the following apply:

- the investigation has highlighted a potential misinterpretation or misapplication of legislation, policy or procedure which has consequences for how other matters should be handled
- there is an action the agency could take now which would assist us in resolving the complaint or being satisfied that the complaint should be closed
- your findings contain serious/significant criticism which we need to give the agency an opportunity to respond to under the principles of procedural fairness
- your comments may be used as the basis for a public report or issues paper
- standard questions did not elicit the expected response, recognition or (apparent) understanding from the agency

- the response from the agency may raise more issues that would need to be addressed in your s 12(4) comments/suggestions
- there may be a reason the agency will be hindered in taking on board your suggestions and they would appreciate an opportunity to work with us to nuance the findings so they may be implemented in a timely manner
- the agency is likely to strongly disagree with your comments or suggestions
- our thinking has evolved significantly since last contact with the agency or no contact with the agency has been made in relation to this complaint (e.g where a complaint was reopened following review, or assessment has determined we missed issues in the initial inquiries).

10.4.4 Process table –preliminary views

1	Consult with your supervisor	If you haven't already during your analysis step, you must consult with your supervisor prior to commencing this process.
2	s 47G	
3	Consult with subject matter specialist	If relevant, consult with your team's subject matter specialist regarding the issues you propose to raise with the agency to identify if there is any strategic or systemic information which may be relevant to your complaint.
4	Draft your preliminary views	<p>Open the Preliminary View template from the intranet (or Objective) and draft your preliminary views.</p> <p>Your preliminary views letter must include:</p> <ul style="list-style-type: none"> • The heading 'Inquiry under section 8(3) of the Ombudsman Act 1976 (Cth) - preliminary views' or 'Inquiry under section 9(3) of the Ombudsman Act 1989 (ACT) - preliminary views' • The background of the complaint including any relevant established facts of how the issue was administered by the agency • The evidence considered • The preliminary views reached and the basis for those views • Any action you are asking the agency to take, or consider taking • A request for the agency's response and a 28 day response timeframe • Your Director's signature block and appropriate Commonwealth or ACT branding. <p>Ensure your letter is saved in outdoing documents of the Resolve case.</p>
5	Seek quality checking	Obtain quality checking or peer review of your preliminary view letter.
6	Refer to your Director	<p>When your letter is ready for review and sending, prepare a written briefing for your Director s 47G. Your briefing should explain the reason for preparing preliminary views, any comments from Strategy, the subject matter specialist or your supervisor, and your request that your Director consider and send the letter.</p> <p>If your Director does not agree to preliminary views or the current form of the letter, they will refer it back to you with comments and further action.</p>

	<p>If your Director does agree to preliminary views, they will edit, sign and send the letter as an attachment to an email. s 47G</p> <p>_____</p> <p>_____</p> <p>_____</p>
--	---

10.5 Completing an investigation

Once you have completed your analysis and concluded that you do not need to further investigate the complaint, you are required to notify the complainant and the agency of your decision. This notification is required by s 12 of the Act (s15 for ACT matters).

Our Office’s usual process to advise that an investigation has been completed is to notify the complainant first and provide them with the opportunity to provide any further information or comments on our decision.¹ If the complainant disagrees, we can consider and respond to their concerns in accordance with procedure 14. If the complainant accepts the decision, or does not respond during the comment period, we can notify the agency.

If we are not providing any comments, criticisms or suggestions to the agency, the notification process is straightforward. However, if we do consider comment or suggestions are warranted we can do so through a s 12(4) (s 15(4) for ACT matters) notification to the agency.

10.5.1 Providing the complainant with an opportunity to respond

Providing individuals with an opportunity to respond to our proposed approach is part of good administrative practice, particularly where our approach is not necessarily what they were seeking.

The following table sets out the expectations when providing the opportunity to comment on our decisions to finalise complaints. There may be circumstances which mean the complainant may need more time to respond. This should be discussed with your supervisor.

Table 10.4: How and when to provide a complainant with an opportunity to comment

Circumstance	How to provide the opportunity to comment
Providing decision by telephone	Allow the complainant the opportunity to respond to your decision at the time of the call, including by providing their views or new information. Consider those views and the new information. Allow any reasonable request by the complainant for a written decision, or for a day or two to gather their thoughts and get back to you.
Providing a written decision	Provide seven days for the complainant to provide any further information. A longer period may be required if sending by post. The same timeframe applies for fully favourable decisions.

¹ The exception to this is for some s 12(4) (s 15(4) for ACT matters) comments when we write to the agency and then notify the complainant afterwards. In such cases, it is expected the complainant would have been kept up to date about the intention to write to the agency.

10.5.2 Process table – notifying the complainant of your completed investigation

1	Ensure your decision has been clearly recorded	You should have completed table 10.3.2 prior to commencing this process.
	Notify the complainant of your decision	<p>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. 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 decision and the reasons for the decision • outline the information (from both the complainant and the agency) which you considered, using as much detail as is appropriate in the circumstances (e.g. if a complainant has referred to a particular document, you may want to explicitly reference that you considered that document, while in other complaints more general language may be sufficient) • confirm your intention to finalise the investigation , • tell them if you are making comments to the agency to improve practices • invite the complainant to respond (either during the conversation or by the timeframe specified in table 10.4), and • thank them for their complaint – all complaints provide us with an opportunity to look into agency practice.
2		s 47G
3	If you notify the complainant by telephone	<p>If you contact by phone, ensure you accurately record the conversation in the s 47G (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 the complainant accepts the decision, s 47G s 47G s 47G Progress to 10.5.3.</p> <p>If the complainant does not accept your decision and provides information which convinces you that further investigation is warranted, s 47G s 47G.</p>

4		<p>If the complainant does not accept your decision and does not provide information which convinces you that further investigation is warranted, s 47G [redacted] During the call, you must discuss the complainant’s concerns about your decision and explain why you have not changed your decision. This constitutes your reconsideration (see Procedure 14). You must inform the caller of their right to request a review of the decision. Progress to 10.5.3.</p>
	If you notify the complainant in writing	<p style="text-align: center; font-size: 2em; color: red;">s 47G</p> <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>
5	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 through Resolve, and ensure Resolve reflects who conducted the quality check.</p>
6	Send the decision	<p>Send your letter/email and attach the email to the Resolve case. s 47G [redacted] [redacted] [redacted]</p>
7	Await and consider complainant response	<p style="text-align: center; font-size: 4em; color: red;">s 47G</p> <p>If the complainant does not respond by the due date, close the <i>s12 to Caller await response</i> action with the selection ‘No response received’. Move to 10.5.3.</p> <p>If the complainant responds positively to the decision, s 47G [redacted] Move to 10.5.3.</p> <p>If the complainant responds with information which convinces you that further investigation is warranted, s 47G [redacted] option. Close the action and refer to 10.4.</p> <p>If the complainant does not accept your decision and does not provide information which convinces you that further investigation is warranted, s 47G [redacted] Follow the reconsideration process outlined in Procedure 14, including advising the complainant of their right to request a review of the decision. Move to 10.5.3.</p>

10.5.3 Notifying the agency – without comments or suggestions

1	Prepare template email	Using the s 12(1) notification template, prepare your notification to the agency advising of the completion of your investigation. Quality checking by another person is not required for a s 12(1) to the agency however, you should be careful that all details in your email are correct so to avoid privacy breaches.
2	Send the notification	Send the notification to the same agency contact to whom you sent the s 8 correspondence (unless specified otherwise). Attach the email to the Resolve record. <div style="background-color: black; color: red; text-align: center; padding: 2px;">s 47G</div>
3	Finalise the complaint	Procedure 12 – Closing complaints sets out the process for finalising complaints

10.5.4 Decisions to finalise an investigation – with comments or suggestions

Our Office can make comments or suggestions to agencies on matters arising from investigations when finalising the investigation. This is provided for in s 12(4) of the Act (s 15(4) for ACT matters).

Before notifying the agency of your decision to finalise, you must consider whether comments are warranted. Generally, this will have been determined during the analysis process at 10.3. Some considerations when making comments include:

- Will comments or suggestions achieve something practical, for example, changes to the agency’s policy or practice?
- Is the error so serious that, even if it has already been fixed, you want it on the record that the agency’s actions were wrong?
- Is the issue already being addressed through other means (e.g. other investigation or strategic work)? Is a different tool that is more appropriate, perhaps a section 15 report, raising it at a liaison meeting or escalating to SAO or Deputy Ombudsman meetings?

You must also consider if you require a response to the comments. Some consideration which indicate you don’t need a response are:

- The agency has already acknowledged the error and has taken action to remedy it/prevent it from happening again (but it was serious and still warrants calling out).
- The suggestions are minor and uncontroversial (like updating a website).
- The suggestions have already been agreed to by the agency through other meetings.
- The issue will form part of a larger strategic report.

10.5.5 Process table – making comments to agencies

1	Commence workflow	s 47G
2	Brief Director and specialist on your decision	<p>There are two ways to progress your comment to the agency.</p> <ol style="list-style-type: none"> 1) If you have discussed the matter with your supervisor and are confident that your Director will support your s 12(4) (s15(4) for ACT matters) comment, you can complete step 3 now and draft your letter to the agency. When complete (consistent with the requirements of step 3), you can refer the two actions created in step 1 to your Director and the agency specialist with a comment to refer to your drafted letter in outgoing documents. Assuming your Director accepts the proposed comments and the draft letter, they will progress the workflow to step 5. 2) If you are unsure whether comments to the agency are warranted or whether your Director will approve your proposal, you should prepare a briefing in the two actions created in step 1. Both actions should be the same, and be relatively brief, outlining: <ul style="list-style-type: none"> • a short summary of the issues you investigated • relevant information from the agency • your proposed comments/suggestions and why you consider them to be appropriate and justified in the circumstances. • whether it relates to any other investigations. <p>The assigned specialist is expected to look at those comments within three days. If they don't, after that time your Director can close the <i>Specialist notification</i> action. It may be appropriate to advise the specialist in some other way, such as through a subject matter specialist or by email.</p> <p>When they have considered the briefing, your Director will either accept or refuse your proposal. s 47G</p> <div style="background-color: black; height: 15px; width: 100%;"></div> <div style="background-color: black; height: 15px; width: 100%;"></div>

3	Draft letter	<p>When you receive approval from your manager, this will auto generate a letter. Your letter should be addressed to the contact specified in the relevant contact arrangements or contact protocol (note: this person will generally be more senior than the usual agency contact).</p> <p>If in doubt about an addressee, please check with your Director, relevant subject matter specialist or Strategy Team or (subject to discussion with your supervisor) the usual agency contact.</p> <p>Your letter should contain similar content to a preliminary view letter, with the addition of:</p> <ul style="list-style-type: none"> • clear advice that it is a notification under s 12(4) of a finalisation of an investigation with comments or suggestions • clearly expressed numbered comments or suggestions to the agency • if you are seeking a response, a clear explanation of what you want the agency to respond to and a due date for the response • your Director’s (or in exceptional circumstances, SAO’s) signature block.
4	Obtain quality checking or peer review	Subject to your arrangements with your supervisor, seek quality checking or peer review of your letter.
	Refer to your Director	<p>Refer the s 47G to your Director, seeking their review and signature. If your Director has comments or questions, they will contact you.</p> <p>If there are no changes, or minor changes, the Director will sign the letter, save it as a PDF and send it to the agency as an attachment to an email. They will save a copy of the sent email in resolve.</p> <p>Alternately, if more substantial review is required they will refer it to you to revise as appropriate.</p> <p>The letter will then be added by your Director to the register of comments and suggestions. Your Director or the relevant strategy team may include a comment about follow-up they may undertake.</p>
5	Finalise the workflow	Your Director will progress the workflow and allocate you the s 47G . You can select no response required and close the action.
6	Finalise the complaint	<p>Close the complaint as explained in Procedure 12 – Finalising complaints.</p> <p>Once closed, add a follow-up action (with update due date) if you are waiting for a response.</p>
7	Receiving the response	<p>When you receive the response from the agency check that the remedy you entered into the Resolve issue strings is still appropriate. If not, update it.</p> <p>Analyse the response and raise any residual concerns with your Director. Alert your Director if they haven’t seen the response. Your Director will add the response to the register.</p>

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