

# *Parliamentary Complaint Handling Procedures*

## 1. Overview and glossary

Updated: 16 September 2019

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## 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 Disclosures<sup>1</sup>. 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

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<sup>1</sup> 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.

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[REDACTED]

[REDACTED] s, 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.

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### 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).

[REDACTED]

**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 (s 47 ) 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.

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**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.

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## 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

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 old<sup>1</sup>
- 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.

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<sup>1</sup> 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

<b>1</b>	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.
<b>2</b>	If necessary, obtain consent	See Procedure 5 – Receiving and registration for guidance on how to obtain and record consent
<b>3</b>	Confirm contact arrangements	Determine the preferred contact arrangements between yourself, the authorised representative making the complaint and (if appropriate) the affected person.
<b>4</b>	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
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### 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
<a href="#">National Relay Service</a>	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 <a href="#">Accessible Communication Guide</a> 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.

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.

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. ‘ <i>completely</i> ’ understand ; ‘ <i>totally</i> ’ agree; ‘ <i>significant</i> ’ 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"> <li>• Present issues in neutral terms such as ‘allegations’ or ‘assertions’</li> <li>• Use mitigating language when presenting arguments or conclusions such as ‘<i>it appears that...</i>’ or ‘<i>Ms E claims that...</i>’</li> </ul>
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).

- 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

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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	s 47	<ul style="list-style-type: none"> <li>• the date of the call</li> <li>• the reason for the call</li> <li>• any specific decisions or advice communicated to the complainant</li> <li>• any comments or advice provided by the complainant</li> <li>• key points of discussion</li> <li>• where relevant, duration of call.</li> </ul>
Email or letter to the complainant	See 2.5 of this Procedure	<ul style="list-style-type: none"> <li>• reference to the corresponding document in the documents tab.</li> </ul>
Unsuccessful telephone contact	s 47	<ul style="list-style-type: none"> <li>• the date and time of the call</li> <li>• the number called</li> <li>• whether a voicemail was left, and if so, a summary of the message.</li> </ul>
Face to face	s 47	<ul style="list-style-type: none"> <li>• the date, time, duration and location of the contact</li> <li>• the attendees</li> <li>• the reason for the contact</li> <li>• any specific decisions or advice communicated to the complainant</li> <li>• any comments or advice provided by the complainant.</li> </ul>

### 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 <sup>2</sup> <ul style="list-style-type: none"> <li>your contact details<sup>3</sup></li> <li>an expected timeframe for when you will next contact the complainant</li> <li>confirmation of specific contact arrangements or preferences</li> <li>information about the role of our office and responsibilities of the complainant (this may include any applicable fact sheets).<sup>4</sup></li> </ul>	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"> <li>advise of the decision</li> <li>if you have decided to investigate some, but not all, issues in a complaint you can advise of this decision by phone. However, you <b>must</b> also send a written confirmation of the issues you intend not to investigate or consider.</li> </ul>	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"> <li>return contact.</li> </ul>	2 working days	
The agency provides information	<ul style="list-style-type: none"> <li>provide update.</li> </ul>	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"> <li>provide update.</li> </ul>	Before the due date or previously stated timeframe elapses	

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

<sup>3</sup> 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.

<sup>4</sup> 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"> <li>3 working days, if contacting by email</li> <li>10 working days, if contacting by post.</li> </ul>	<ul style="list-style-type: none"> <li>the date, time and number you called</li> <li>the information/action you require from the complainant</li> <li>the complaint may be closed if the complainant does not contact you within the specified timeframe.</li> </ul>
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"> <li>the date, time and number you called</li> <li>the complaint may be closed if the complainant does not contact you within 3 working days.</li> </ul>
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.

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[Redacted content]

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'

- 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:

<b>1</b>	Enclose letter to the detainee/inmate in a standard (business) sized envelope	Envelope <b>must</b> be sealed and addressed to the detainee/inmate.
<b>2</b>	Draft a cover letter to the manager/governor of the facility	<span style="color: red;">s 47</span> 
<b>3</b>	Enclose 1) sealed letter to the detainee/inmate and 2) cover letter to the manager/governor in an A5 envelope	
<b>4</b>	Self-address a standard (business) sized envelope	Envelope <b>must</b> be unsealed. It will be used to return the signed acknowledgement slip to our Office
<b>5</b>	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 <b>must</b> be <ul style="list-style-type: none"> <li>• sealed</li> <li>• addressed to the manager/governor of the facility</li> </ul>
<b>6</b>	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
<a href="#">Ombudsman preferred terms</a>	Lists what terminology should be used/not used
<a href="#">Accessible communication guide</a>	Sets out guidelines for accessible and inclusive language and style
<a href="#">Style manual</a>	Provides advice on best practices in writing, editing, design and production for all published material
<a href="#">Standard Words</a>	Provides suggested sentences and paragraphs for use in outgoing complainant correspondence.

### 2.5.2 Recording written communication

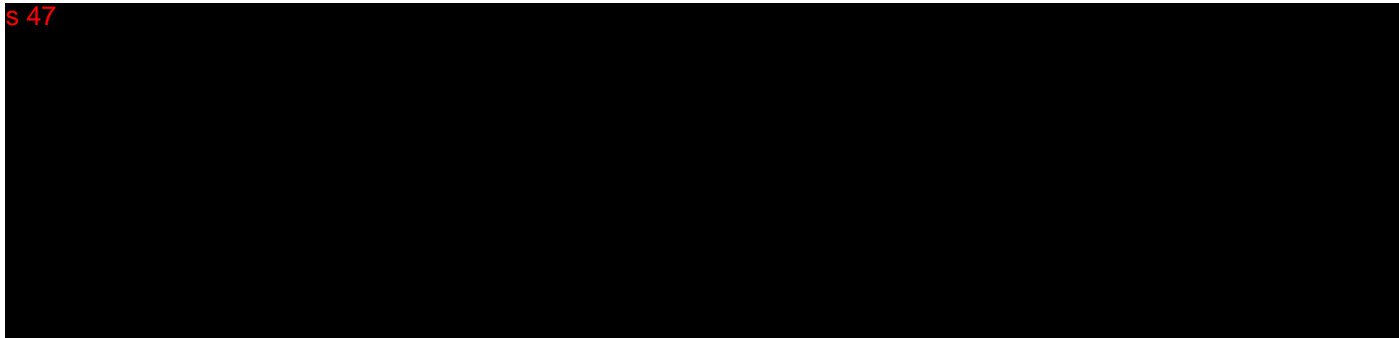
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### 2.5.3 Who signs written correspondence?

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 <sup>5</sup>	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

<sup>5</sup> 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.<sup>6</sup>

## 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

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<sup>6</sup> 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

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.

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## 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:

<b>1</b>	Record service delivery complaint	
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<b>2</b>	Allocate the approach to your Director	
<b>3</b>	Director will assess the service delivery complaint	<p>Generally this will involve:</p> <ul style="list-style-type: none"> <li>• where relevant, consulting with the Officer complained about</li> <li>• consideration of any applicable service standards/expectations.</li> </ul> <p>If appropriate, the Director may refer the complaint to the Officer's supervisor to action</p>
<b>4</b>	<b>Outcome 1:</b> decision that service delivery was reasonable in all the circumstances	<p>Director/SAO/supervisor will:</p> <ul style="list-style-type: none"> <li>• notify the complainant</li> <li>• where relevant, notify the Officer complained about</li> <li>• record their decision and close the service delivery complaint.</li> </ul>
<b>5</b>	<b>Outcome 2:</b> decision that service delivery was <i>not</i> reasonable in all the circumstances	<p>Director/SAO will:</p> <ul style="list-style-type: none"> <li>• Direct Supervisor to: <ul style="list-style-type: none"> <li>○ Provide remedy to the complainant</li> <li>○ Provide feedback to the Officer complained about.</li> </ul> </li> <li>• Action any recommendations for changes to our Office's service delivery policies or processes.</li> <li>• Record their decision and close the service delivery complaint.</li> </ul>

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## *Parliamentary Complaint Handling Procedures*

### 3. Working with agencies and third parties

Updated: 19 December 2019

Review at: 19 December 2020

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## Overview

As parliamentary complaint handlers, we have two main external stakeholders – our complainants and the agencies about whom we receive complaints. We discussed the procedures and expectations for complainant contact and service in Procedure 2. In this Procedure, we outline the expectations for engaging with government agencies, and the procedures to address common interactions with agencies. We also explain when it might be appropriate to contact a third party (neither the complainant nor the agency complained about).

Purpose	To explain when and how to engage with government agencies and third party organisations.
Workflow	Applicable at all complaints handling stages where a government agency is contacted.
Scope	All general rules set out in the Procedure are subject to more specific directions set out in our Office’s approved policies.

## 3.1 Professional Communication

### 3.1.1 Written communication

**To be read in conjunction with Procedure 2.5.**

To maintain the integrity and reputation of the Office, our oral and written communications must be clear, concise and accurate. It is important that the message we convey to agencies reflects the values of the Office, such as independence, impartiality and professionalism.

Although you may know and have an ongoing professional relationship with some of the contact people within agencies, email correspondence with agencies should not be too informal or personal. Your signature block when communicating with an agency must include your direct contact details. Out of office messages should refer agencies to your supervisor’s direct contact details.

We should demonstrate our commitment to taking a balanced approach by exercising restraint in our use of language intensifiers. Adjectives and adverbs should only be used when it is necessary to do so, and the added effect can be explained and justified.

When writing to agencies, use appropriate language. For example, do not suggest fault if all the circumstances are not yet clear. Present issues in neutral terms such as 'allegations'. Use mitigating language when presenting arguments or conclusions, such as 'it appears that...' or 'Ms B states that...'.

### 3.1.2 Communicating with agencies over the phone

**To be read in conjunction with Procedure 2.6.**

Similarly, it is important to maintain professional, clear and impartial communication with agency staff. While we normally communicate key information to agencies in writing, it may be necessary to communicate over the phone regarding extensions or to clarify content in our inquiries or the agencies’ response. You should avoid making any statements which could be construed as criticism of the agency or the complainant during the course of their discussions with agencies.

## 3.2 Contact arrangements with agencies

Generally, our Office initiates contact with an agency through email. No matter how the initial contact is made, you should comply with the formal contact protocol agreements (where one exists) or less formal contact arrangements. The agency contact protocols set out how the contact is to be made, who to contact and how long to give the agency to respond to us.

You should not contact the original agency decision-maker. They may not be fully aware of our role or powers, or the agency protocols for dealing with our office. Doing so contradicts the agreed contact arrangements with the agency. If you need direct access to decision-makers, please discuss with your Director first and then ask the agency contact officer to organise it.

### 3.2.1 Contact protocols

A formal agency contact protocol is an agreement we have with another agency where the details of how we engage with that agency. Agency protocols are generally agreed between senior executives or the heads of the agencies. Each agency contact protocol is different. Sometimes the contact protocol differs according to whether the contact is being made under s 8 or s 7A of the *Ombudsman Act 1976* or whether the contact is a transfer of a complaint. You can find existing protocols [here](#).

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[REDACTED]

In the absence of a formal contact protocol, refer to the most recent s 7A or 8 notice that was sent to the agency. If some time ago, phone the initial or responding contact officer at the agency (as, if a staff member has moved, their email may be retired) to identify if they are the appropriate contact person for your notice, or if there is a preferred alternative. The [Australian Government Agency Index](#) can also be a useful guide to help you locate the contact officer for an agency, if unclear from Resolve.

If there has never been contact with the agency or not for many years, consult with your Director as the initial contact will need to be from the SAO or Ombudsman (see below at 3.2.3).

If you are unsure about who to contact within an agency speak to the agency subject matter specialist or your supervisor.

### 3.2.3 Contact protocols with new agencies

In the absence of established contact protocols, the SAO or the Ombudsman should contact the principal officer, usually the agency head, by letter. Whether it is sent by the SAO or Ombudsman will depend on the agency being contacted and the circumstances of the investigation. Their contact will introduce our Office and the process of an Ombudsman notification, and invite an agency contact protocol agreement at an operational level. Once the arrangements are established, the agency specialist should record the details on the Agency Information page on the Australian Government Agency Index and in Resolve.

Template paragraphs for the initial contact from the SAO or Ombudsman are found in the [Standard Words](#) document.

## 3.3 Managing extension requests from agencies

Sometimes agencies request extensions of time to respond to our Office. All extension requests from agencies are to be considered on a case by case basis and with reference to the circumstances explained by the agency, our Office’s timeliness standards and the complainant’s circumstances.

### 3.3.1 Factors to consider when deciding whether or not to grant an extension

When considering whether to accept an agency’s request for an extension to respond, you and your supervisor should consider all of the following factors:

- potential impact on the complainant if the agency’s response is delayed
- urgency of the individual complainant’s issue
- the reason the agency has given for the request
- whether the agency has been proactive in resolving the practical issues for the complainant, and
- the complexity of the issues raised in the complaint or request.

Table 3.2: Extension requests and usual appropriate responses

Situation	Appropriate response
We sent a s 8 notice, due in 28 days. After 20 days, the agency seeks an extension of 14 additional days after the initial due date because legal advice has been sought.	Assuming that there are no other factors to consider, this type of request would usually be approved.

Situation	Appropriate response
We sent a s 8 notice, due in 28 days. On the date the response is due the agency requests an extension of a further 28 days. No reasons are provided for the extension request.	This type of request would require further consideration and should be escalated to a supervisor. This request is likely to be denied.
We sent a s 7A notice, due in 7 days. On the fourth day, the agency requests an extension for a section 7A response because they need to contact a third party agency to access relevant records.	The reason for the extension aligns with the agency's usual process of contacting the third party and the records contain relevant information for the complaint. This request is likely to be approved.

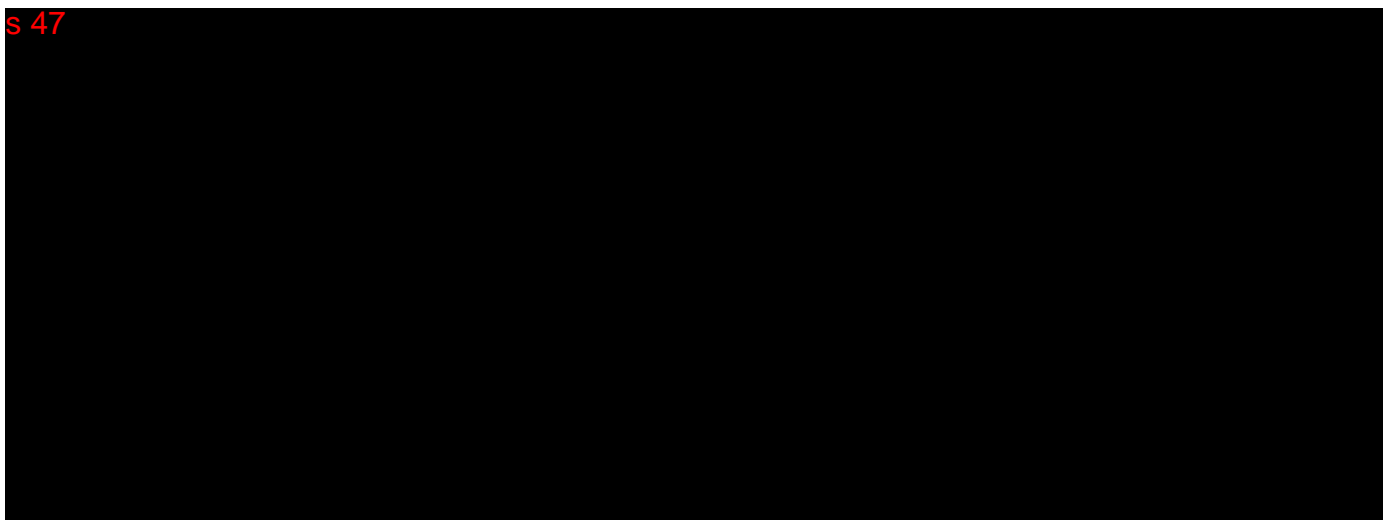
### 3.3.2 Granting or refusing extension requests from agencies

A case owner has the discretion to grant an extension to an agency where the total amount of extension of time requested by the agency is not more than 50% of the time allowed in the original notice. For example, if the original notice specified a period of 28 days, you can grant an extension of up to 14 days.

If the agency requests an extension beyond this timeframe, either initially or cumulatively (e.g. through two or more extension requests), you must raise this with their supervisor. For example:

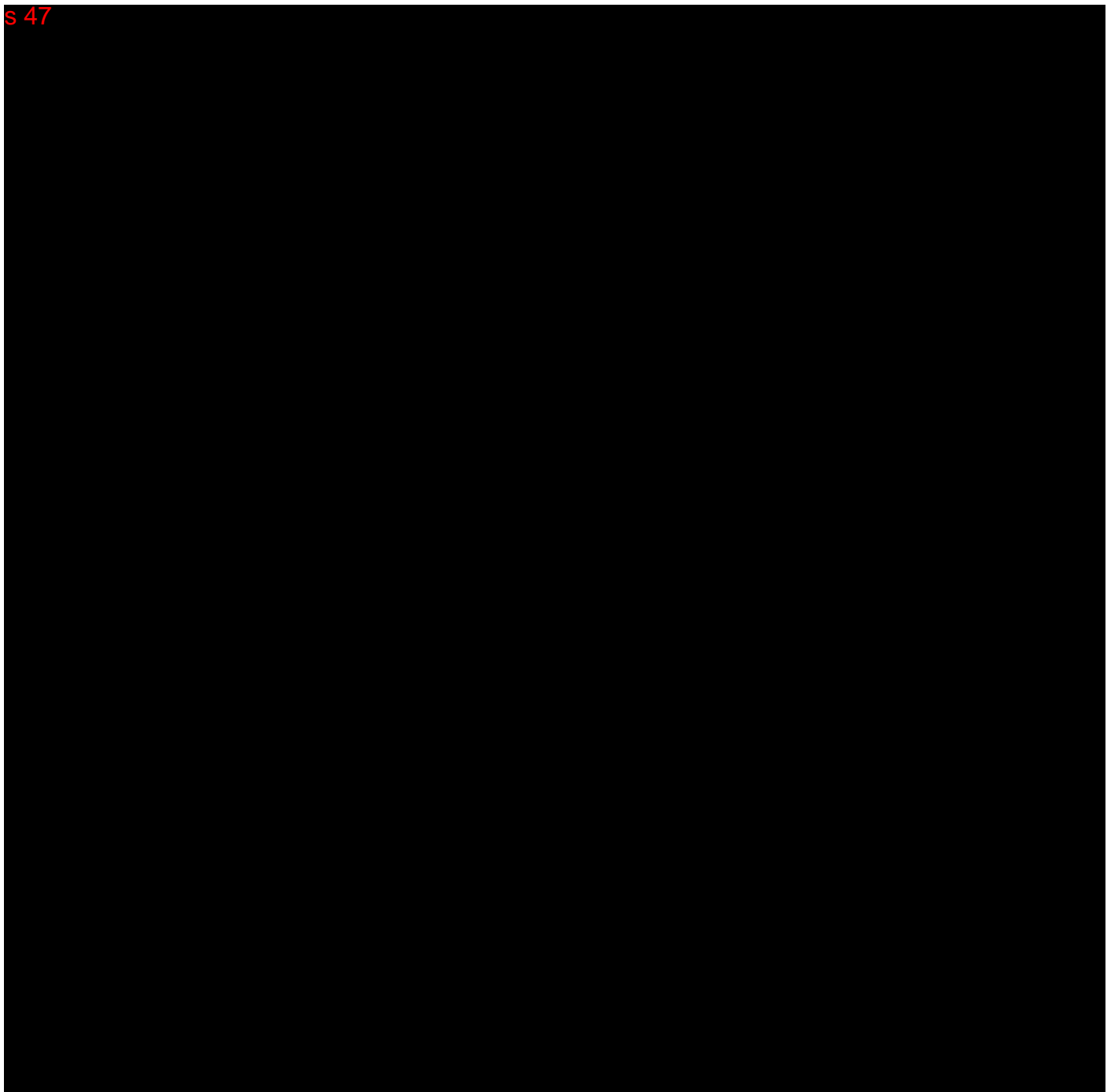
- You sent a section 8 notice, due in 28 days. You have the discretion to accept an extension request of up to 14 days.
- You sent a section 7A notice, due in 10 days. You have the discretion to accept an extension request of up to 5 days.
- You sent a section 8 notice, due in 28 days. The agency requests an extension of 7 days. You accept this request. The agency returns to request a further extension of 7 days. You have the discretion to agree to an extension of this length of time, however if a further extension of time is requested, you must raise this with their supervisor.

If you intend to refuse a request for extension you must discuss it with your supervisor, even if the agency's request does not exceed 50% of the response time initially provided. Extension requests can be responded to by phone or by email (see below template).



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### 3.3.5 What to do when a response is overdue

Sometimes agencies do not provide their response by the due date, without requesting an extension. This is referred to as an overdue response.

You can easily identify when the agency response is due in Resolve. The due date in the *Await Agency Response* action must be updated to reflect the agreed due date. You can then quickly identify when the responses are due in Resolve by:

- sorting your actions tab by due date, or
- using the calendar function.



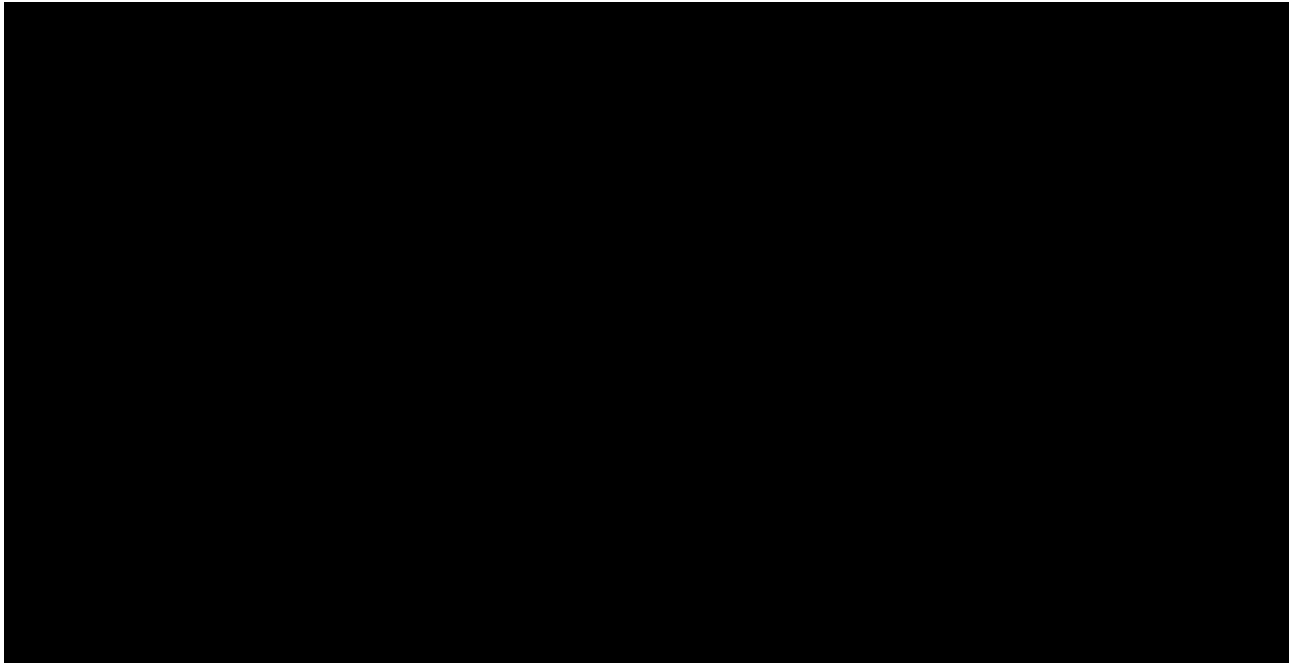
### Overdue response to a s 7A notice

If it is an overdue response to a s 7A notice, you should contact the agency using the below email template on the day after the due date of the response.

### Overdue response to s 8 and s 12(4) notices

If it is an overdue responses to s 8 notices and s 12 (4) notices:

- If you have the contact details of the person who is tasked with responding to your s 8 or s 12 (4) notice, within three days of the response's due date you should call the contact person and ask when our Office can expect to receive the response.
- If the contact person is not known, within three days of the response's due date you should contact the agency using the below email template at least three days after the due date of the response.



## 3.4 Information sharing

### 3.4.1 Types of information we can share with an agency

Generally, relevant information provided to us by a complainant can be shared with the agency (see part B of our [Privacy Policy](#)) if we investigate or make a preliminary inquiry. This allows the agency to fully consider the complaint and provide complete and relevant information to us as part of their response.

However, where a complainant specifically requested that certain information not be provided to the agency, you should find out the complainant's reasons for not wanting the information shared and consider whether you need to provide it. Although it is ultimately your decision, you should give due consideration to the complainant's preferences.

If a complainant wants to remain anonymous to the agency (i.e. they do not want you to release information about their identity), you should follow the advice in Topic 2 including:

- deciding whether you should exercise your delegation to not investigate the same as any other case

- agreeing to keep their identity from the agency where possible, or
- advising the complainant that it may limit the type of outcome we can achieve for them.

The below table outlines what you should do in particular circumstances relating to the release of information to an agency. If you remain unsure whether information should be provided to the agency, ask your supervisor. You may need to request some legal advice about what is permitted under our legislation and the *Privacy Act 1988*.

*Table 3.3: Releasing information to an agency.*

Circumstance	What you need to do
The complaint references reprisals by the agency related to the complaint	<p>Consider carefully if you need to provide specifics or personal identifiers to the agency.</p> <p>If yes:</p> <ol style="list-style-type: none"> <li>1. seek and record direct consent from the complainant</li> <li>2. s 47 [REDACTED]</li> </ol> <p>If you cannot gain consent, discuss this with your Director.</p>
The information is graphic or obscene.	Describe the material in broad terms instead of providing the information. You may consider asking a manager to call the agency before you send the email if even your description may still be confronting.
The information is not connected with the exercise of your powers or performance of functions under the <i>Ombudsman Act 1976</i>	You should refer the matter to the Director. If the Director is unavailable, and the issue is time sensitive, refer the matter to a person with delegation under s 35A (see the list of delegations). They will need to consider carefully whether the circumstances mean the information should be disclosed under that provision.

### 3.4.2 Providing agency information and documents to complainants

It will often be relevant to refer to information and documentation obtained from an agency in your decision letter. In some cases, a complainant may also request copies of the information we have received from an agency during our investigation.

The following table outlines what agency information and/or documentation we can, and cannot, pass on to a complainant. For the information our Office cannot provide (e.g. a copy of the agency’s response to our s 8 notice), refer the complainant to lodge a Freedom of Information request to our Office.

*Table 3.4: Providing information received from an agency to complainants.*

Information our Office cannot provide	Information our Office can provide
<i>If unclear whether you are able to provide information to a complainant consult with your supervisor.</i>	
Copies of an agency’s internal records	Summarising information about what the records showed or what you concluded based on the records

Information our Office cannot provide	Information our Office can provide
Copies of an agency’s policies or procedures that are not publically available	<ul style="list-style-type: none"> <li>Summarising information about what the policy or procedure states</li> <li>References to policies or procedures that are publically available</li> </ul>
Copies of correspondence from the agency to which the complainant is not entitled e.g. correspondence sent to people other than the complainant	Copies of correspondence from the agency to which the complainant is entitled e.g. decision letters or apology letters addressed to the complainant
The agency’s formal response to our Office’s inquiries	Summarising information about what the agency told our Office in response to our inquiries, including quotes

## 3.5 Contacting other agencies or organisations

### 3.5.1 Third party contacts

Occasionally we need to contact an agency or organisation that we have not received a complaint about – a third party. For example, where another complaint-handling body or a state, private or welfare organisation is involved. Subsection 8(3) of the Ombudsman Act (s 9(3) in the *Ombudsman Act 1989* (ACT)) authorises contact with alternative agencies in the course of an investigation. However, while we can contact third parties, we exercise caution in doing so.

Third party contact may be relatively minor and may often be considered research for your complaint. For example, if relevant information is unavailable online, you may contact the agency or organisation’s contact number to obtain information relevant to your complaint. If you do not need to disclose the complainant’s personal details to do so, you can do this without consulting with your supervisor.

If the third party contact requires sharing the complainant’s details or requesting information relevant to the complainant from the third party, you must consult with your supervisor prior to taking this step. In this case, you should consult with the complainant or seek their consent prior to contacting the third party.

### 3.5.2 Wrong agency contacted

A third party contact is not the same as when we contact an agency thinking it is the subject of a complaint, but subsequently identify the complaint is about a different agency. In those cases we would not have jurisdiction to continue those enquiries. The original complaint should be closed and a new complaint opened in relation to the correct agency.

### 3.5.3 Cross agency complaints

It may also be identified in the course of an investigation that the complaint is about another agency *as well as* the original agency complained about—for example, a complaint is made about the service delivery agency and investigation reveals that the policy agency may have an unfair policy. In such cases, open a new complaint in relation to the second agency, and the original complaint about the first agency should also remain open until completed.

### 3.5.4 Complainant consent

There is no requirement to seek the authorisation of the complainant to contact alternative agencies or third parties if it is for the purposes of reasonably progressing the complaint. However, it is good practice to do so, depending on who you propose to contact and what information you propose to provide.

If the complainant does not want other agencies to be contacted in the course of our investigation, you should explain why you are contacting that agency, and explore the complainant’s reasons for not wanting you to contact the agency. If they remain unconvinced, but you remain of the view that the second agency is required for the purpose of your investigation, you might need to advise the complainant of the legal authority of the Office to do so, or cease the investigation.

### 3.5.5 Section 35A disclosure

Section 35A of the *Ombudsman Act 1976* (s 34 of the ACT Act) allows the Office to disclose personal information in response to a serious threat of harm. You should be aware of the content of the Office’s [Policy and Procedures for Responding to Risks of Harms and Threats to Others](#).

This is a broad discretion. It is most commonly used within the Office:

- to disclose information to the state police or mental health services where a threat of self-harm or threat of harm to others is received, or
- to disclose that information to the relevant agency or a person within that agency where a threat of harm to another agency is received.

These are examples only and should not be interpreted as limiting the exercise of the discretion by the delegate. It is not a list of circumstances to guide escalation of issues. Delegates should exercise judgement on a case-by-case basis to determine whether disclosure is warranted, with consideration to the circumstances and nature of the threat, and the person’s particular circumstances.

Only delegated officers can approve the disclosure of information under s 35A, however threats of harm will usually be received by staff who do not hold that delegation. It is the responsibility of all officers to exercise their judgement in identifying and escalating complaints where the exercise of the delegation requires consideration.

If you have any doubt that you may be dealing with information that requires disclosure, you should always speak to a supervisor as quickly as possible. Given the sensitivity, supervisors will always speak with you about this as a top priority.

Even if you have consent, for example the complainant has asked you to help them contact a mental health service, you must discuss this with a delegated officer. This is because the consent would have been obtained when the individual is very upset.

### 3.5.6 Process table – responding to a threat of harm

If you receive a call and the caller makes a threat of harm:

<b>1</b>	Alert a supervisor	Attempt to alert your nearest supervisor while you are on the phone. This will give a supervisor an opportunity to provide support or assistance to you. If your supervisor is not available, make sure a colleague can sit with you. It is helpful to have someone else observe the call.
<b>2</b>	Determine whether disclosure is warranted	Work with the supervisor/EL1 or EL2 to determine whether a disclosure is warranted. If necessary, seek approval from the relevant delegated officer. It is not mandatory that you speak first with a supervisor before approaching the delegate in an urgent situation or where your supervisor is unavailable. You should explain: <ul style="list-style-type: none"> <li>• A brief summary of the complaint</li> <li>• How the threat issue arose</li> </ul>

3		<ul style="list-style-type: none"> <li>What the caller and what you said. This should be as close to verbatim as possible.</li> </ul>
	If approved, record your discussion with the delegate	<p>Ensure that you make a record of the delegate’s approval for the disclosure. This is particularly important if the conversation was verbal.</p> <p>As a general rule it is best practice to obtain written approval from the delegate, however verbal approval can be acted upon where it is time critical. In this situation, the delegate should later follow up with written approval as soon as practicable.</p>
4	Make the disclosure	<p>You or the delegated officer can make the disclosure. Be sure to only provide those caller’s details that are relevant to the threat and/or assist the police/person you are making the referral to, to ensure the welfare of the caller and/or any third parties.</p> <p>NOTE: you should provide direct contact details. However, as a general rule, do not seek a formal response from the police/organisation on their actions.</p> <p>Consider if the agency or any other party also needs to be told about this incident. The agency should be made aware of the incident if the threat was against them or they are likely to be contacting the complainant shortly. This will help the agency to prevent further harm to the complainant’s health and prepare for that conversation.</p>
5	s 47 [redacted]	s 47 [redacted]
6	If a threat was made against an agency/person from an agency	<p>Advise the agency. You may want to call first, however you should also confirm your disclosure in writing.</p> <p><i>As provided for by section 35A of the Ombudsman Act 1976, I’m disclosing the following complainant details following a threat just made against the Department:</i></p> <ul style="list-style-type: none"> <li><i>[full name]</i></li> <li><i>[date of birth if known]</i></li> <li><i>[address if known]</i></li> <li><i>[contact number if known]</i></li> <li><i>[reference number if known]</i></li> </ul> <p><i>[approach details – include as much information as possible including time and location of threat]</i></p> <p><i>I can further advise that [state/territory] police have been contacted with reference number [NNNNN]</i></p>

		<p><i>I hope this is of assistance and please let me know if there's anything further we may be able to provide.</i></p> <p><i>[signature block]</i></p>
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<b>Date of Review</b>					
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Version	Amended by	Review Date	Brief Description of Change	Approved by	Date

# *Parliamentary Complaint Handling Procedures*

## 4. Jurisdiction

Updated: 16 September 2019  
Review at: 16 September 2020

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## 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.

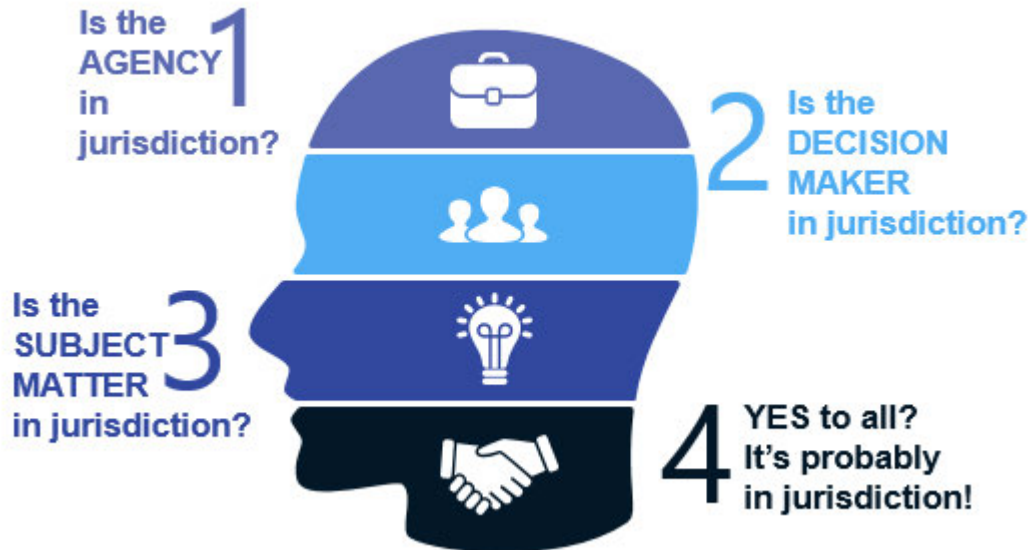
The Ombudsman's jurisdiction is established by examining three issues:

- 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?

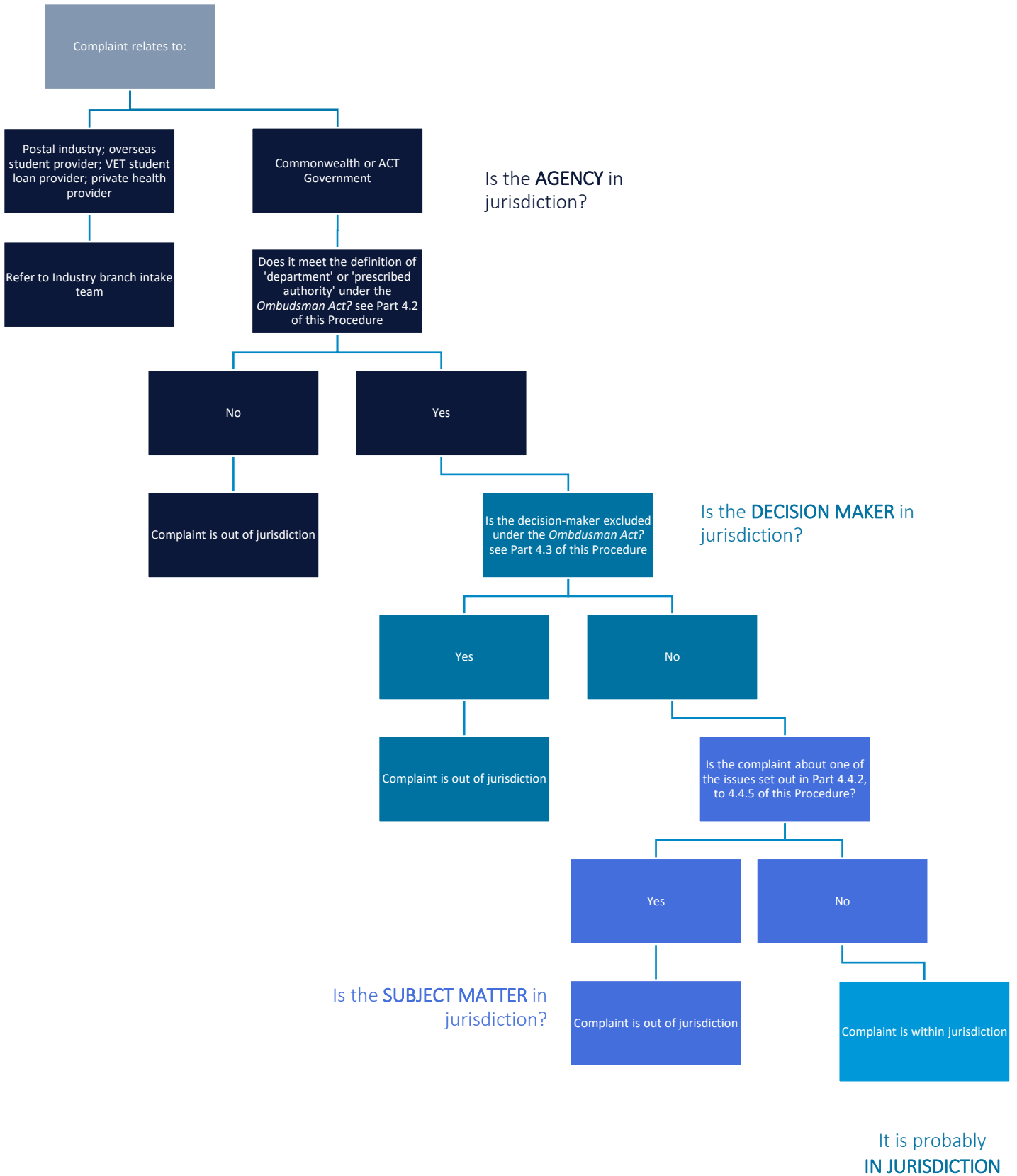
The Commonwealth and ACT Ombudsman Acts, along with the *Ombudsman Regulations 2017* (Cth), specify classes of people or decision makers that the Office cannot consider or investigate. Tables outlining these decision makers are provided at 4.3 of this Procedure.

### 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



## 4.2 Which agency took the action or made the decision?

<b>Which sections of the Act?</b>	<p><b>Commonwealth:</b> Sections 5, 3, 3A, 3B, 3BA of the Ombudsman Act Ombudsman Regulations 2017</p> <p><b>ACT:</b> Sections 5, 3, 3A, 3B and the Dictionary of the Ombudsman Act</p>
<b>Who to consult?</b>	<ol style="list-style-type: none"> <li>1. Read this Procedure and the relevant legislative provision(s).</li> <li>2. If unsure, ask your Supervisor and/or Director.</li> <li>3. If still unsure and you have your Director’s approval, seek advice from the Legal team.</li> </ol>

### 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)<sup>1</sup>
- 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.<sup>2</sup> Some agencies are explicitly out of jurisdiction as per Regulation 6 of the Ombudsman Regulations 2017.<sup>3</sup>

<sup>1</sup> 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)

<sup>2</sup> Can be found on the [www.finance.gov.au](http://www.finance.gov.au) website by typing into the Search field ‘flipchart’.

<sup>3</sup> 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 of 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?

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

### 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> <sup>4</sup>		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.

<sup>4</sup> 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><b>Commonwealth:</b></p> <p>Sections 5 of the Ombudsman Act</p> <p><b>ACT:</b></p> <p>Sections 5 of the Ombudsman Act</p>
Who to consult?	<ol style="list-style-type: none"> <li>1. Read this SOP and the relevant legislative provision(s).</li> <li>2. If unsure, ask your supervisor and/or Director.</li> <li>3. If still unsure, seek advice from the Legal team.</li> </ol>

##### 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.<sup>5</sup>

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

<sup>5</sup> 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

s 47



s 47



s 47



### 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

<b>1</b>	Discuss the need for legal assistance with your Director	You should do this by email. Do not attach it to your Resolve complaint record.
<b>2</b>	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 <a href="#">Legal services policy</a>
<b>3</b>	Draft your request for legal advice	Requests for legal advice should be made in writing to <a href="mailto:legal@ombudsman.gov.au">legal@ombudsman.gov.au</a>  Requests should include the following information: <ul style="list-style-type: none"> <li>• sufficient background and context to the request for advice</li> <li>• all relevant documentation</li> <li>• a timeline of events, and</li> <li>• a copy of any legal advice that the business area has previously received on the same or similar matters.</li> </ul>
<b>4</b>	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

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## 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, **s 47** 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 <b>s 47</b>
Email <sup>1</sup>	<b>s 47</b>

<sup>1</sup> 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 <b>s 47</b> 
Letter	Received by the mail team in Canberra or a State office and <b>s 47</b> 
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"> <li>• when a member of the public presents at an Office location (whether unannounced or for an agreed appointment)</li> <li>• during outreach activities such as community events or visits, or</li> <li>• during detention or other inspection activities.</li> </ul>

### 5.1.2 Receiving complaints – non-intake staff

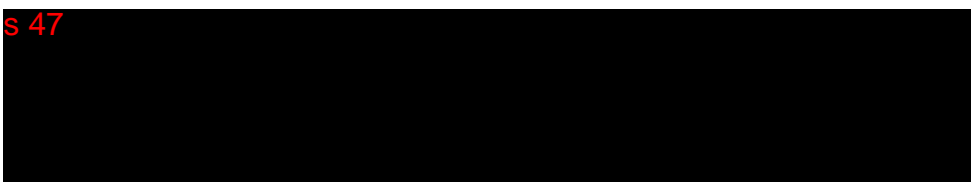
Sometimes, officers who are not in an intake team will receive complaints. For example, a person may make a complaint directly to you:

- 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](mailto:IAT@ombudsman.gov.au)) within **two** working days.

## 5.2 Registering complaints

**s 47**  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](#))

s 47



s 47 [Redacted]

[Redacted]

s 47 [Redacted]

[Redacted]

[Redacted]

### 5.2.3 Complaint files

s 47 [Redacted]. 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.

s 47 [Redacted]

[Redacted]

[Redacted]

### 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](#).

s 47 [Redacted]

[Redacted]

5.2.6 Process for registering a web complaint

1	s 47	
2	Assess jurisdiction	Consider whether the agency complained about is in jurisdiction with reference to the guidance set out in <a href="#">Procedure 4 - Jurisdiction</a> .
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.  <b>Process ends here</b>
4	If the agency <i>is</i> in jurisdiction	s 47
5	Search for the complainant	s 47
6	s 47	s 47
7	s 47	s 47
8	s 47	<p>s 47 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"> <li>• any reference numbers that would be used by the agency to identify the person (e.g. CRN, NDIS participant number)</li> <li>• whether the person has lodged a complaint with the agency, including the date and any relevant reference number</li> <li>• any other steps the person has taken to resolve their complaint with the agency</li> <li>• whether the person has provided consent to transfer the complaint</li> <li>• any key dates and/or events</li> <li>• whether the complaint has been lodged on behalf of another person</li> <li>• the person’s preferred contact method, and</li> <li>• what the person is seeking as an outcome to their complaint.</li> </ul>

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 <a href="#">5.2.4</a> of this Procedure.
	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 <a href="#">5.2.5</a> of this Procedure.  s 47 [REDACTED]
11	Record any adjustments or restrictions to our contact with the person	If there is: <ul style="list-style-type: none"> <li>• Any requirement for an interpreter or translator</li> <li>• Any adjustments to the way the office will provide services to the person, where the person has a disability</li> <li>• Any restrictions the office has placed on the services it provides to the person</li> </ul> s 47 [REDACTED]
12	Save and assess the complaint.	s 47 [REDACTED] Assess the complaint in accordance with Procedure 7.

5.2.7 Process for registering a telephone complaint

1	Search for the complainant	s 47 [REDACTED]
	s 47 [REDACTED]	[REDACTED]
2	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
3	s 47 [REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]
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. <b>Process ends here.</b>



6	If the agency is in jurisdiction	s 47 [REDACTED]
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 <a href="#">5.3.5</a>.</p> <p>s 47 [REDACTED]</p> <p><b>Process ends here.</b></p>
8	s 47 [REDACTED]	<p>Advise the complainant that you would like to ask them some questions about their complaint s 47 [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>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"> <li>• any reference numbers that would be used by the agency to identify the person (e.g. CRN, NDIS participant number)</li> <li>• whether the person has lodged a complaint with the agency, including the date and any relevant reference number</li> <li>• any other steps the person has taken to resolve their complaint with the agency</li> <li>• whether the person has provided consent to transfer the complaint</li> <li>• any key dates and/or events</li> <li>• whether the complaint has been lodged on behalf of another person</li> <li>• the person’s preferred contact method, and</li> <li>• what the person is seeking as an outcome to their complaint.</li> </ul>
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 <a href="#">5.2.4</a> 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 <a href="#">5.2.5</a> of this Procedure.</p> <p>s 47 [REDACTED]</p>

<b>11</b>	Record any adjustments or restrictions to our contact with the person	<p>If there is:</p> <ul style="list-style-type: none"> <li>• Any requirement for an interpreter or translator</li> <li>• Any adjustments to the way the office will provide services to the person, where the person has a disability</li> <li>• Any restrictions the office has placed on the services it provides to the person</li> </ul> <p>s 47 [Redacted]</p>
<b>12</b>	Escalate, save and assess the complaint.	<p>s 47 [Redacted]</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	s 47 [redacted]	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.  s 47 [redacted]
	Escalate	Escalate the complaint to category 2.
2	Notify Complainant of Complaint Referral	s 47 [redacted] 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.
3	Allocate to the relevant team	s 47 [redacted]
4		

### 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

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

<b>1</b>	Register complaint	Follow steps 1-7 of <a href="#">5.2.7</a> .
	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 <a href="#">5.2.6</a>.</p>
<b>2</b>		
<b>3</b>	s 47 [REDACTED]	[REDACTED]
<b>4</b>	Prepare a briefing email for the ERLO	Prepare an email to send to the ERLO when you transfer the call. s 47 [REDACTED]

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&amp;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>s 47</p> 

<b>3</b>	Obtain information from the complainant	<p><b>s 47</b> [REDACTED] Where relevant and if not previously recorded, obtain the following information:</p> <ul style="list-style-type: none"> <li>• any reference numbers that would be used by the agency to identify the person (e.g. CRN, NDIS participant number)</li> <li>• whether the person has lodged a complaint with the agency, including the date and any relevant reference number</li> <li>• any other steps the person has taken to resolve their complaint with the agency</li> <li>• consent to transfer the complaint or OBO consent</li> <li>• any key dates and/or events</li> <li>• whether the complaint has been lodged on behalf of another person</li> <li>• the person’s preferred contact method</li> <li>• what the person is seeking as an outcome to their complaint.</li> </ul>
<b>4</b>	Decide what action to take on the complaint	<p>Consider whether you are able to make a final decision, based on the information you have obtained from the complainant. You may decide:</p> <ul style="list-style-type: none"> <li>• not investigate the complaint</li> <li>• transfer the complaint</li> <li>• refer the complaint for investigation, or</li> <li>• that you require further information to assess the complaint.</li> </ul>
<b>5</b>	Action your decision	<p>Advise the complainant of your decision and</p> <ul style="list-style-type: none"> <li>• if you have decided not to investigate the complaint, action your decision in accordance with Procedure 8.2.</li> <li>• if you have decided to transfer the complaint, action your decision in accordance with Procedure 8.3.</li> <li>• 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.</li> </ul>

### 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.

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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



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## 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.

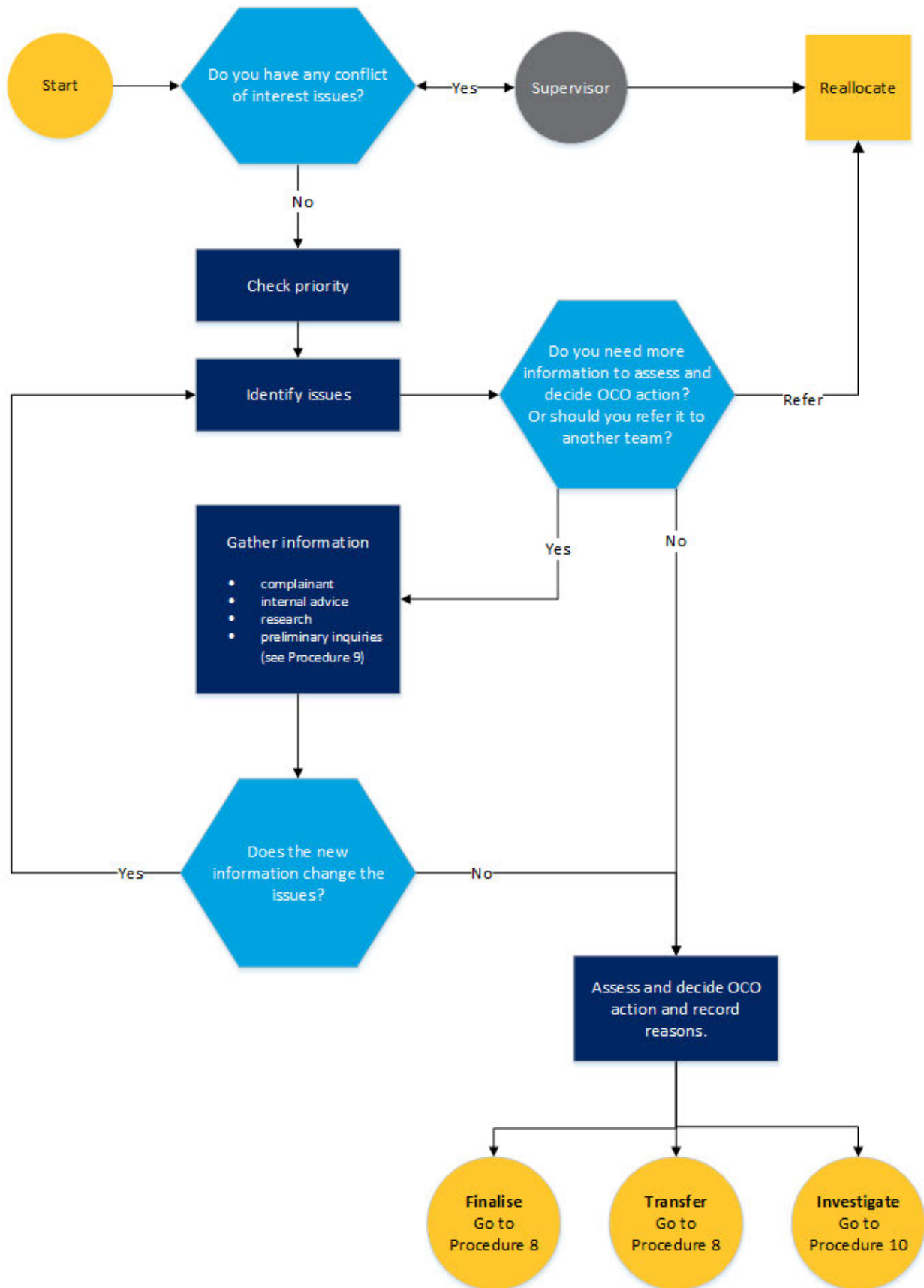
### Resolving complaints early

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 Defence<sup>1</sup>
- 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)

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<sup>1</sup> 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.

<b>1</b>	Review the information on the complaint file	<p>This should include:</p> <ul style="list-style-type: none"> <li>■ [Redacted]</li> <li>■ [Redacted]</li> <li>■ [Redacted]</li> <li>■ [Redacted]</li> </ul>
<b>2</b>	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.
<b>3</b>	Prioritisation assessment	<p>Consider whether the complaint should be prioritised due to urgency, sensitivities or vulnerability. <span style="color: red;">s 47</span> [Redacted]</p> <p>Ensure you include an explanation of any risks associated with the urgency, sensitivity or vulnerability and how you intend to address those risks.</p>
<b>4</b>	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.

s 47

s 47

### 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.*

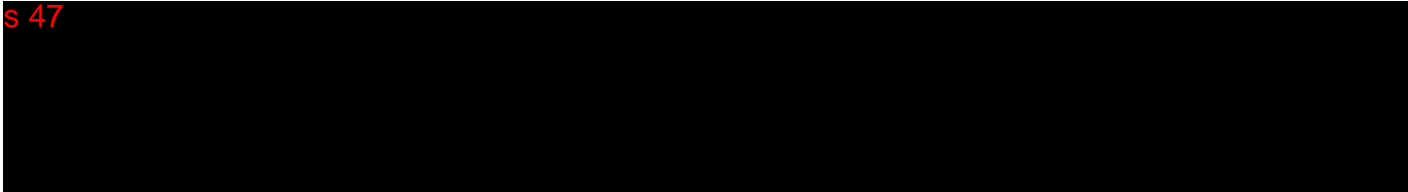
A systemic issue is by nature a significant issue. Examples of systemic issues include:

- 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.



**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,** s 47
- s 47
- **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).
- s 47

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.

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

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:

- 
- 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)	<a href="#">7.5.1.1</a>
Agency hasn't resolved / is still considering the complaint	6(1B)	6(3)	<a href="#">7.5.1.2</a>
Other review available	6(4)	6(7)	<a href="#">7.5.1.3</a>
Courts and tribunals	6(2), 6(3)	6(6)	<a href="#">7.5.1.4</a> , <a href="#">7.5.1.5</a>
Complainant refuses to clarify in writing	7(2)	7(2)	<a href="#">7.5.1.6</a>
Older than 12 months	6(1)(a)	6(1)(a)	<a href="#">7.5.1.7</a>
Frivolous, vexatious, not in good faith	6(1)(b)(i)	6(1)(b)(i)	<a href="#">7.5.1.8</a>
Not warranted in all the circumstances	6(1)(b)(iii)	6(1)(b)(iii)	<a href="#">7.5.1.9</a>
Insufficient interest	6(1)(b)(ii)	6(1)(b)(ii)	<a href="#">7.5.1.10</a>
Commercial activity	6(12)	N/A	<a href="#">7.5.1.11</a>

#### 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

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*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*

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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

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*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*

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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

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*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*

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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

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*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*

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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

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*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*

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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 <a href="#">Appendix A</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.

<b>1</b>	<b>s 47</b>	<b>s 47</b>
<b>2</b>	Identify the issues in the complaint	<b>s 47</b> The level of detail included will vary depending on the type and complexity of the issues in the complaint.
<b>3</b>	<b>s 47</b>	<b>s 47</b>
<b>4</b>	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"> <li>A preliminary inquiry (Procedure 9)</li> <li>An investigation (Procedure 10)</li> </ul>
<b>5</b>	Consider whether any of the issues are systemic issues	<b>s 47</b>
<b>6</b>	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.
<b>7</b>	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. <b>s 47</b>
<b>8</b>	Further information: research	Consider whether you need to conduct any research. <b>s 47</b> Ensure you include: <ul style="list-style-type: none"> <li>A reference to the source of the information</li> <li>Where relevant, a link to the source</li> </ul>
<b>9</b>	Further information: third party inquiry	Consider whether you require further information from a third party. <b>s 47</b>



<b>10</b>		<b>s 47</b> 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.
<b>11</b>	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"> <li>• Not investigate the issue</li> <li>• Transfer the issue</li> <li>• Investigate the issue</li> </ul>
		<p><b>s 47</b></p> <ul style="list-style-type: none"> <li>• Any consideration given to urgency, sensitivities, vulnerability, or accessibility issues</li> <li>• Any relevant law and/or policy</li> <li>• Where relevant, any discretion not to investigate that you applied</li> <li>• Whether any of the issues are tip-offs or systemic issues</li> </ul>

<b>Approval Date</b>					
<b>Date of Review</b>					
<b>Contact Team</b>					
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<b>Version</b>	<b>Amended by</b>	<b>Review Date</b>	<b>Brief Description of Change</b>	<b>Approved by</b>	<b>Date</b>

## 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
<b>Discretionary transfers</b>			
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	We <b>must</b> consult the Information Commissioner about complaints that either: <ul style="list-style-type: none"> <li>could have been made to the information Commissioner regarding privacy or freedom of information matters, or.</li> <li>have been subject to a completed investigation by the Information Commissioner: s 6C(2).</li> </ul>
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	
<b>Mandatory transfers</b>			
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
- s 47 
- 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><b>Sources of information</b></p> <p><b>Internal information</b></p> <ul style="list-style-type: none"> <li>Complaints data</li> <li>§ 47</li> <li>Findings from investigations &amp;/or inspections</li> <li>Feedback from regular agency liaison meetings</li> <li>Stakeholder feedback – round tables, communities of practice, other engagement</li> </ul> <p><b>External/public information</b></p> <ul style="list-style-type: none"> <li>Policy &amp; administrative reforms</li> <li>Other inquiries – Parliamentary, Productivity Commission, ANAO</li> <li>Decisions of courts &amp; tribunals</li> <li>Media coverage</li> <li>Academic papers/research</li> <li>Senate Estimates hearings, agency Annual Reports</li> </ul> <p><b>Outputs</b></p> <p>Briefings on key agencies/roles to Strategic Policy Board:</p> <ul style="list-style-type: none"> <li>Every 6 – 12 months, with schedule determined 6 months in advance</li> <li>10 minute presentations, followed by 10-20 minute discussions</li> <li>Written material, if needed, no more than 1-2 pages</li> <li>Identify trends &amp; systemic issues</li> <li>Recommend issues for further investigation</li> </ul>	<p><b>Potential own motion investigation issues to be assessed against the following criteria</b></p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="background-color: #4F81BD; color: white; padding: 2px;"><b>Impact</b></td> <td style="padding: 2px;">What change will result from the investigation? Is it measurable?</td> </tr> <tr> <td style="background-color: #4F81BD; color: white; padding: 2px;"><b>Scope</b></td> <td style="padding: 2px;">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: 2px;"><b>Significance</b></td> <td style="padding: 2px;">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: 2px;"><b>Vulnerability</b></td> <td style="padding: 2px;">What is the impact on:                             <ul style="list-style-type: none"> <li>Aboriginal and Torres Strait Islander peoples?</li> <li>People with disability?</li> <li>People from CALD backgrounds?</li> <li>Other vulnerable people?</li> </ul> </td> </tr> <tr> <td style="background-color: #4F81BD; color: white; padding: 2px;"><b>Risk</b></td> <td style="padding: 2px;"> <ul style="list-style-type: none"> <li>What are the risks of investigating or not investigating?</li> </ul> </td> </tr> <tr> <td style="background-color: #4F81BD; color: white; padding: 2px;"><b>Resources</b></td> <td style="padding: 2px;"> <ul style="list-style-type: none"> <li>What resources do we need?</li> <li>What resources are available?</li> <li>What other issues/work will be delayed or cease?</li> </ul> </td> </tr> </table>	<b>Impact</b>	What change will result from the investigation? Is it measurable?	<b>Scope</b>	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?	<b>Significance</b>	Is it a systemic issue? How important is the issue to our stakeholders? How many people are likely to be affected? 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## *Parliamentary Complaint Handling Procedures*

### 8. Actioning your decision: Not investigating and complaint transfers

Updated: 16 September 2019

Review at: 16 September 2020

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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	<i>Previous Step/s:</i> Procedure 4 - Jurisdiction Procedure 8 – Determining a course of action  <i>Next step:</i> Procedure 14 – Finalising complaints
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

<b>1</b>	Ensure your decision has been clearly recorded	See Procedure 7.
<b>2</b>	Quality check your decision	If required, undertake quality checking. <b>s 47</b>  Subject to the input of your supervisor or peer, revise your proposed decision. Once finalised, close the action.
<b>3</b>	Notify the complainant of your decision	<b>s 47</b> 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>s 47</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>You should follow the principles of Procedure 2 regarding appropriate communication.</p> <p>When you communicate your decision, you <b>must</b>:</p> <ul style="list-style-type: none"> <li>• explain the role of the Office</li> <li>• state the decision</li> <li>• explain the reasons for the decision</li> <li>• advise the complaint has been closed</li> <li>• invite the complainant to contact you regarding the decision (you do not need to provide a timeframe for them to do this by).</li> </ul>
	If you notify the complainant by telephone	<p>s 47</p> <p>[Redacted]</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 <a href="#">Standard words document</a> 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

<b>1</b>	Ensure your decision has been clearly recorded.	See Procedure 7.
<b>2</b>	Consent to transfer	<p>Complainants are asked whether they consent to our Office transferring their complaint during their initial complaint contact. <b>s 47</b></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>
<b>3</b>	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 <b>must</b> advise and obtain from them:</p> <ul style="list-style-type: none"> <li>• That you have decided to transfer the complaint and the current complaint will be closed.</li> <li>• The issues and information you are transferring and any actions you will suggest the agency consider taking.</li> <li>• Their preferred contact details and availability (noting these may not be able to be met).</li> <li>• The timeframe that the agency will contact them by and method of contact (including if it may be a private number).</li> <li>• The complainant’s ability to contact this Office again if the transfer does not resolve the issue or no response is received.</li> </ul> <p><b>s 47</b></p>
<b>4</b>	Consider any transfer arrangement/ protocols between our Office and the agency	
<b>5</b>	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"> <li>• the complainant’s details. Generally name, telephone number/s and applicable reference number. Date of birth and address may also be used</li> <li>• a brief summary of the complaint</li> <li>• advice that we have decided not to investigate the complaint</li> <li>• 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</li> <li>• any suggestions about issues to discuss or possible solutions to the complaint</li> <li>• 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</li> <li>• any relevant documents. This generally doesn’t mean providing all documents provided to us (unless the complainant specifically consented or requested it).</li> <li>• any contact arrangements the complainant has asked for (e.g. they’re unavailable on Friday mornings)</li> <li>• your contact details.</li> </ul>
<p><b>For example:</b></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"> <li>- [insert brief details of complaint]</li> <li>- ...</li> </ul> <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"> <li>- (for example) Confirming receipt of his/her complaint and providing a timeframe for the finalisation of the complaint.</li> </ul> <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><b>6</b></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><b>7</b></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>s 47</p> <p>[Redacted]</p> <p>[Redacted]</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. s 47</p> <p>[Redacted]</p> <p>[Redacted]</p>
	For example:	<p>Our reference: 2019-123123</p> <p>Dear [Complainant]</p> <p>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].</p> <p>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.</p> <p>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.</p> <p>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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<b>2</b>	Ensure you have the appropriate delegation	Check the appropriate <a href="#">delegations on the Intranet</a> .																				
<b>3</b>	Draft transfer correspondence to agency	<p>All complaint transfers should be actioned by email.</p> <p>A transfer email should include the following information:</p> <ul style="list-style-type: none"> <li>• The complainant’s details. Generally name, telephone number/s and applicable reference number. Date of birth and address may also be used.</li> <li>• The Office’s reference number.</li> <li>• Any relevant documents. Including all information provided in lodging the complaint.</li> <li>• Your contact details.</li> </ul>																				
	<p><b>Transfers to OAIC:</b></p> <p>Dear OAIC</p> <p><b>Transfer of complaint to the Office of the Australian Information Commissioner under s 6C of the Ombudsman Act 1976</b></p> <p>I wish to transfer a complaint about a request made under the <i>Freedom of Information Act 1982</i> (Cth). I have attached our records concerning this complaint.</p> <p>I am transferring this complaint to the Office of the Australian Information Commissioner under s 6C of the <i>Ombudsman Act 1976</i>.</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 25%;">Resolve number</th> <th style="width: 30%;">Name of complainant</th> <th style="width: 25%;">Contact details</th> <th style="width: 20%;">Agency</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">XXXX</td> <td style="text-align: center;">XXXX</td> <td style="text-align: center;">XXXX: XXXX</td> <td style="text-align: center;">XXXX</td> </tr> </tbody> </table> <p>We have contacted XXXX on XXXX to advise that this complaint is being transferred to the OAIC. If you wish to discuss this transfer with me, you may contact me using the contact information below.</p> <p>Yours sincerely</p> <p><b>Transfers to IGT:</b></p> <p>Dear Inspector-General of Taxation</p> <p><b>Transfer of complaint about tax administration action</b></p> <p>The Commonwealth Ombudsman has received a complaint which we consider is wholly/partially about tax administration action. In accordance with section 6D(3)(a)/(b) of the <i>Ombudsman Act 1976</i> (Cth), we are transferring the complaint to the Inspector-General of Taxation.</p> <table style="width: 100%;"> <tr> <td style="width: 30%;">Our reference</td> <td style="text-align: center;">XXXX</td> </tr> <tr> <td>Complainant</td> <td style="text-align: center;">XXXX</td> </tr> <tr> <td>Address</td> <td style="text-align: center;">XXXX</td> </tr> <tr> <td>How received</td> <td style="text-align: center;">XXXX</td> </tr> <tr> <td>Complaint about</td> <td style="text-align: center;">Australian Taxation Office</td> </tr> <tr> <td>Received date</td> <td style="text-align: center;">XXXX</td> </tr> </table> <p>Documents provided by the complainant are attached.</p> <p>We informed the complainant of the transfer on XXXX.</p> <p>Please contact me should you have any questions.</p> <p>Yours sincerely</p>		Resolve number	Name of complainant	Contact details	Agency	XXXX	XXXX	XXXX: XXXX	XXXX	Our reference	XXXX	Complainant	XXXX	Address	XXXX	How received	XXXX	Complaint about	Australian Taxation Office	Received date	XXXX
Resolve number	Name of complainant	Contact details	Agency																			
XXXX	XXXX	XXXX: XXXX	XXXX																			
Our reference	XXXX																					
Complainant	XXXX																					
Address	XXXX																					
How received	XXXX																					
Complaint about	Australian Taxation Office																					
Received date	XXXX																					
<b>4</b>	Seek quality checking of your decision	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 EL1 Assistant Director.																				

<b>5</b>	<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"> <li>Complaints about Tax Administration Actions should be sent to: <a href="mailto:service@igt.gov.au">service@igt.gov.au</a></li> <li>Complaints about FOI outcome/processes should be sent to: <a href="mailto:enquiries@oaic.gov.au">enquiries@oaic.gov.au</a></li> </ul> <p><b>s 47</b></p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>
<b>6</b>	<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><b>s 47</b></p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>
<p><b>OAIC transfers:</b></p> <p>Our Ref: <b>XXXXX</b> Dear <b>XXXX</b></p> <p>I refer to your email dated <b>XXXX</b> about the <b>XXXX</b> regarding your Freedom of Information (FOI) request. I am writing to inform you that we have transferred your complaint about <b>XXXX's</b> 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 <a href="#">here</a>.</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 <a href="#">online complaint form</a>. 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><b>IGT transfers:</b>                  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 <a href="http://www.ombudsman.gov.au">www.ombudsman.gov.au</a>.                  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: <a href="http://www.igt.gov.au">www.igt.gov.au</a>                  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 <a href="#">online complaint form</a>. 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		
		
10	Close the complaint	Procedure sets out the process for closing complaints.



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

## *Parliamentary Complaint Handling Procedures*

### 9. Actioning your decision: Preliminary inquiries

Updated: 16 September 2019  
Review at: 16 September 2020

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9.1 ASSUMPTIONS	3
9.2 PROCESS TABLE – IMPLEMENTING A DECISION TO MAKE PRELIMINARY INQUIRIES	4

## Overview

Procedure 7 covered when you might decide to make preliminary inquiries of an agency to find out more information to help you to decide what action to take on a complaint. This Procedure explains how to implement your decision to conduct a preliminary inquiry of an agency. It is assumed you have read Procedure 7.

This Procedure also does not address decisions to investigate or not investigate, including transferring complaints. Procedures 8 and 10 explain the process for those decisions.

The Office's [Preliminary Inquiries policy](#) outlines the overarching policy and expectations of how preliminary inquiries are used in this Office. This Procedure outlines the procedure for using preliminary inquiries for parliamentary complaints.

Purpose	To explain how to implement a decision to make preliminary inquiries in relation to a complaint
Workflow	<i>Previous Step:</i> Procedure 7 – Determining a course of action <i>Next step:</i> Procedure 12 – Finalising complaints
Scope	Does not examine the thinking process for making a decision to make preliminary inquiries Only applies to parliamentary complaints.

### 9.1 Assumptions

Prior to commencing these processes, you are required to:

- ✓ have read Procedure 7 and assessed your complaint
- ✓ have documented your assessment as per the process
- ✓ have read the [Preliminary Inquiries Policy](#) (the Policy)
- ✓ decided that a preliminary inquiry to an agency is the appropriate course of action for your complaint
- ✓ be aware of your timeliness expectations (we generally expect to finalise contacts where an investigation is not required within 30 days).

9.2 Process table – implementing a decision to make preliminary inquiries

1	Ensure your assessment and proposed decision has been clearly recorded	See Procedure 7.
	Commence preliminary inquiry workflow	<p>s 47 [REDACTED]</p> <p>As preliminary inquiries require formal approval from a supervisor, you need to explain why it is an appropriate course of action. You must include:</p> <ul style="list-style-type: none"> <li>• an explanation of why the preliminary inquiry is appropriate</li> <li>• the questions you propose to ask the agency.</li> </ul> <p>Remember the limits on when to use preliminary inquiries as outlined in the Policy – simple inquiries only and limited questions.</p> <p>s 47 [REDACTED]</p>
	s 47 [REDACTED]	
2	Supervisor approval	s 47 [REDACTED]
3	Not approved	<p>s 47 [REDACTED]</p> <p>This will end the preliminary inquiry workflow and you will not be able to commence it again for that complaint. Subject to your supervisor’s advice, you will need to identify a different course of action as outlined in Procedure 7.</p>
4	Approved	s 47 [REDACTED]

5	Prepare to contact the agency	We conduct preliminary inquiries by email. Occasionally we may support the email by contacting the agency by phone, but this does not supplant the requirement to notify the agency by email of the preliminary inquiry. Draft your preliminary inquiry to the agency using the template provided below.
	<p>Ombudsman ref: 2019-123123 Dear [agency],</p> <p style="text-align: center;"><b>Section 7A notification – Preliminary inquiry – complaint from [Complainant]</b></p> <p>The Ombudsman has received a complaint from [Complainant] (Agency ref: xxx xxx) regarding the [Department/agency/subject matter].</p> <p>Please accept this email as notice under s 7A of the <i>Ombudsman Act 1976</i> that I have decided to conduct a preliminary inquiry and request information from [the Department / Agency].</p> <p><b>Issue/background:</b> [Complainant] told us [insert <i>brief outline of the issue regarding the preliminary inquiry – 1 or 2 sentences</i>].</p> <p><b>Questions:</b> To assist our assessment of this complaint, would the [Department/agency] please [respond to the following questions/provide the following information]:</p> <ol style="list-style-type: none"> <li>1. [...]</li> <li>2. [...]</li> </ol> <p>I would be grateful if you could respond to this enquiry by [xx Date/as soon as possible]. You are welcome to phone me if you would like to discuss this request. Yours sincerely</p>	
6	Seek quality checking of your email	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.
	Send the preliminary inquiry	Once you are satisfied with your inquiry, send it to the agency using the agreed email address (generally in the contact protocol or recorded in Resolve). s 47
7	[Redacted]	
	Receive the agency's response	s 47 [Redacted] It will default to a due date of 5 working days after commencement. Manually change it to the correct date if needed. s 47 [Redacted]
8	Analyse the agency's response	Follow the principles set out in Procedure 10 regarding analysing responses from an agency.
	Decide on next steps	<p>After analysing the response, decide what action you will take – for example, finalise the complaint, transfer or consider investigation. You should follow a similar decision making process to that outlined in Procedure 7.</p> <p>s 47 [Redacted]</p> <p>Your analysis should include information about:</p> <ul style="list-style-type: none"> <li>• what the agency told you</li> <li>• your analysis of that information, including whether it is correct, reasonable and appropriate</li> </ul>
9	[Redacted]	
	[Redacted]	

		<ul style="list-style-type: none"> <li>whether the information received is sufficient to determine if the complaint should or should not be investigated, and why.</li> </ul>
10	Investigation warranted	<p>s 47 [Redacted]</p> <p>You supervisor may seek to discuss this decision with you prior to you completing this step. If so, consult accordingly.</p>
	Investigation not warranted	<p>s 47 [Redacted]</p>
	Investigation Declined	<p>Advise the agency of your decision by email. See template below. Refer to the processes in Procedure 8 to implement your decision not to investigate a complaint.</p>
11	<p>Ombudsman ref: 2019-123123</p> <p>Dear [Agency],</p> <p style="text-align: center;"><b>No further action - Preliminary inquiry - complaint from [Complainant]</b></p> <p>I refer to my preliminary inquiry of [xx date] regarding a complaint from [Complainant] (Agency ref: 123 123). Thank you for the information provided. After considering this information, I have decided to finalise [Complainant]'s complaint. I do not need any further information from [agency].</p> <p>Yours sincerely</p>	
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## *Parliamentary Complaint Handling Procedures*

### 10. Actioning your decision: Conducting investigations

Updated: 28 October 2019

Review at: 28 October 2020

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## 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 47

## 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 <a href="#">Investigator’s toolkit</a> .
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. <b>s 47</b>
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"> <li>• result in an individual outcome for the complainant, such as payment of a claim or a better explanation of an agency’s decision</li> <li>• clarify whether relevant processes and policies were followed by an agency</li> <li>• otherwise result in an improvement of public administration.</li> </ul> <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.

s 47

### 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"> <li>confirmation that our office has decided to investigate the complaint, with reference to the relevant section of Act</li> <li>a summary of the issues raised by the complainant. Be sure to use neutral language and state what the complainant told us</li> <li>your requested information from the agency – normally a series of questions about the complaint</li> <li>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.</li> </ul>
	Quality checking	In accordance with your arrangements with your supervisor, obtain quality checking of your notice.
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. <b>s 47</b></p> <p>If it isn’t clear, you may need to add a sequence number and a short description of the email.</p> <p><b>s 47</b></p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p> <p>[Redacted]</p>
	Advise the complainant that investigation has commenced	<p>Contact the complainant by telephone or in writing and advise them that you have commenced an investigation and sought information from the agency. You must provide a timeframe for when the information is expected from the agency and when you will next contact them (e.g. four weeks, a specific date is generally not appropriate).</p> <p>If you have decided to investigate some issues of the complaint, and not investigate other issues, you must advise the complainant in writing about the issues you have decided not to investigate. You should follow the processes outlined at <i>Procedure 8.2</i> for advising of decisions not to investigate.</p>
4	If you notify the complainant by telephone	<p><b>s 47</b></p> <p>[Redacted]</p> <p>[Redacted]</p>
	If you notify the complainant in writing	<p><b>s 47</b></p> <p>[Redacted]</p> <p>[Redacted]</p> <p><i>Standard words</i> may provide useful words or paragraphs to include.</p>



<b>5</b>	Seek quality checking or peer review	In accordance with your arrangements with your supervisor, obtain quality checking of your email/letter.
	<b>6</b>	Receive and save the response

### 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><b>Unreasonable delay</b></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><b>Inadequate advice, explanation or reasons</b></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><b>Human error</b></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><b>Factual error</b></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><b>Legal error</b></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><b>Government programs: deficiency arising from agencies' interaction</b></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><b>Procedural deficiency</b></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><b>Unreasonable / harsh / discriminatory action or decision</b></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><b>Flawed administrative process</b></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><b>Inadequate knowledge / training of agency staff</b></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><b>Breach of duty/ misconduct by an officer</b></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><b>Legislation and policy: unreasonable or harsh impact or unintended consequence</b></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><b>Unprofessional behaviour by an officer</b></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
	4		Record your analysis



- 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

<b>1</b>	Record your analysis	You are expected to have completed process 10.3.2 prior to completing this step.
<b>2</b>	[REDACTED]	s 47 [REDACTED] [REDACTED] [REDACTED]
<b>3</b>	Draft your request for further information	Further inquiries will be made using the powers under s 8 of the Act (or s 9 for ACT matters). Your request should include: <ul style="list-style-type: none"> <li>• acknowledgement of the previous response</li> <li>• explanation that you’re seeking further information or action under the relevant section of the Act</li> <li>• the requested information or action</li> <li>• an appropriate timeframe for the agency to respond.</li> </ul>
<b>4</b>	Quality checking	In accordance with your arrangements with your supervisor, obtain quality checking of your section 8 notification.
<b>5</b>	Send your request	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 47 [REDACTED] If it isn’t clear, you may need to add a sequence number and a short description of the email. s 47 [REDACTED] [REDACTED] [REDACTED] [REDACTED]
<b>6</b>	Update the complainant	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.  You must provide a timeframe for when the information is expected from the agency and when you will next contact them.

7	If you notify the complainant by telephone	s 47 [Redacted]
	If you notify the complainant in writing	s 47 [Redacted] <a href="#">Standard words</a> may provide useful words or paragraphs to include.
	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. s 47 [Redacted] [Redacted] [Redacted] [Redacted] 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> .
8		
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

<b>1</b>	Consult with your supervisor	If you haven't already during your analysis step, you must consult with your supervisor prior to commencing this process.
<b>2</b>	s 47 [REDACTED]	[REDACTED]
<b>3</b>	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.
<b>4</b>	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"> <li>• 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'</li> <li>• The background of the complaint including any relevant established facts of how the issue was administered by the agency</li> <li>• The evidence considered</li> <li>• The preliminary views reached and the basis for those views</li> <li>• Any action you are asking the agency to take, or consider taking</li> <li>• A request for the agency's response and a 28 day response timeframe</li> <li>• Your Director's signature block and appropriate Commonwealth or ACT branding.</li> </ul> <p>s 47 [REDACTED]</p>
<b>5</b>	Seek quality checking	Obtain quality checking or peer review of your preliminary view letter.
<b>6</b>	Refer to your Director	<p>s 47 [REDACTED] 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. <b>s 47</b> [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
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## 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.<sup>1</sup> 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.

<sup>1</sup> 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 <b>must</b>:</p> <ul style="list-style-type: none"> <li>• explain the decision and the reasons for the decision</li> <li>• 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)</li> <li>• confirm your intention to finalise the investigation ,</li> <li>• tell them if you are making comments to the agency to improve practices</li> <li>• invite the complainant to respond (either during the conversation or by the timeframe specified in table 10.4), and</li> <li>• thank them for their complaint – all complaints provide us with an opportunity to look into agency practice.</li> </ul> <div style="background-color: black; color: red; padding: 2px;">s 47</div>
2		
3	If you notify the complainant by telephone	<div style="background-color: black; color: red; padding: 2px;">s 47</div> <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> <div style="background-color: black; color: red; padding: 2px;">s 47</div> <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> <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>



### 10.5.3 Notifying the agency – without comments or suggestions

<b>1</b>	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.
<b>2</b>	Send the notification	Send the notification to the same agency contact to whom you sent the s 8 correspondence (unless specified otherwise). <b>s 47</b> [REDACTED] [REDACTED] [REDACTED].
<b>3</b>	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	<p><b>s 47</b> [REDACTED]</p> <p>[REDACTED]</p> <ul style="list-style-type: none"> <li>■ [REDACTED]</li> <li>■ [REDACTED]</li> </ul>
	Brief Director and specialist on your decision	<p>There are two ways to progress your comment to the agency.</p> <p>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.</p> <p>2) <b>s 47</b> [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED] be relatively brief, outlining:</p> <ul style="list-style-type: none"> <li>• a short summary of the issues you investigated</li> <li>• relevant information from the agency</li> <li>• your proposed comments/suggestions and why you consider them to be appropriate and justified in the circumstances.</li> <li>• whether it relates to any other investigations.</li> </ul> <p>The assigned specialist is expected to look at those comments within three days. <b>s 47</b> [REDACTED]</p> <p>[REDACTED] 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. <b>s 47</b> [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
2		

3	Draft letter	<p><b>s 47</b> [REDACTED]</p> <p>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"> <li>• clear advice that it is a notification under s 12(4) of a finalisation of an investigation with comments or suggestions</li> <li>• clearly expressed numbered comments or suggestions to the agency</li> <li>• 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</li> <li>• your Director’s (or in exceptional circumstances, SAO’s) signature block.</li> </ul>
	4	Obtain quality checking or peer review
5	Refer to your Director	<p><b>s 47</b> [REDACTED] 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. <b>s 47</b> [REDACTED]</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>
	6	Finalise the workflow
7	Finalise the complaint	<p>Close the complaint as explained in Procedure 12 – Finalising complaints.</p> <p><b>s 47</b> [REDACTED]</p>
	Receiving the response	<p><b>s 47</b> [REDACTED]</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>

<b>Approval Date</b>					
<b>Date of Review</b>					
<b>Contact Team</b>					
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<b>Version</b>	<b>Amended by</b>	<b>Review Date</b>	<b>Brief Description of Change</b>	<b>Approved by</b>	<b>Date</b>
			<b>Creation of Procedure</b>		

## *Parliamentary Complaint Handling Procedures*

### 11. Interviews, inspections and coercive powers

Updated: 19 December 2019

Review at: 19 December 2020



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## Overview

Almost all of the Office’s cases are resolved through the processes explained in Procedures 8, 9 and 10. However, at times different investigation strategies are required to obtain the information we require to reach the right outcome. This may be through formal agency meetings, interviewing key people involved in the issue investigated or conducting inspections. We may take these steps with the agency’s agreement or by exercising our powers to require an agency to produce information.

This Procedure covers different strategies to apply in complex investigations outside asking written questions. It does not cover analysing the information you receive using these strategies or what steps we might take to finalise investigations. This information is covered in Procedures 10 and 12.

<b>Purpose</b>	To explain when and how to conduct interviews and inspections, commence action under s 9 / s 11 and understand other legislative powers.
<b>Workflow</b>	<i>Previous to:</i> Procedure 10 – Actioning your decision: Conducting Investigations <i>Next Step:</i> Procedure 10 – Actioning your decision: Conducting Investigations Procedure 13 - Formal reports.
<b>Scope</b>	Does not discuss other investigative techniques or the analysis of information obtained through techniques in this procedure.

### 11.1 Introduction

In most investigations, written questions to an agency and follow up questions to the complainant will obtain the information you need to confidently analyse and decide the outcome of a complaint. However, sometimes you cannot obtain the information or reach the level of confidence you need to finalise the complaint. In those cases, alongside the options discussed in Procedure 10.4.1, the following methods may assist the investigation:

- meeting with the agency
- interviewing a key person/s involved in the issue/s being investigated
- conducting an inspection of documents
- conducting an inspection of a site.

Each of these methods involves greater resourcing than a desktop investigation and, as they are a more intrusive form of investigation, carry an element of reputational risk. You should try the methods outlined in Procedure 10 before conducting interviews or inspections. Director approval will also be required before conducting meetings, interviews or inspections, and in most cases the Director should attend too.

If the agency or person involved consents, these can be conducted using s 8 of the *Ombudsman Act 1976* (Cth) (s 9 of the *Ombudsman Act 1989* (ACT)). However, in some cases it may be necessary to use the Office’s coercive powers using s 9 of the *Ombudsman Act* (s 11 of the *ACT Act*) to obtain this information (see 11.4).

## 11.2 Obtaining information: meetings and interviews

This section applies when you are obtaining information from an agency or third party during a meeting or an interview which does not require issuance of a notice under s 9 of the Ombudsman Act (or s 11 of the ACT Act). It is generally better for a meeting or interview to happen in person, but can also happen by videoconference or phone.

See 11.4 and 11.5 for procedures and guidance on using s 9 (s 11) powers.

### 11.2.1 Preparation

You need to determine:

- who should be invited to the meeting or be interviewed
- where and when you should meet or conduct the interview
- how (in person, by teleconference or over the phone)
- what questions / broad themes the meeting or interview should cover.

You need to involve your supervisor and Director in this preparation stage. SMS's or strategy teams can also provide valuable information.

It is important you prepare for meetings and interviews by making a plan. The plan should identify the purpose of the meeting or interview and the questions you intend to ask. The level of detail required for the plan depends on the complexity of the issues. [Appendix A](#) provides an indicative meeting or interview plan.

You should organise the plan by issue or process, and prepare questions under each issue or process. It is a good idea to start with general questions (e.g. how long have you worked in the role, what do you do in your role). Then move on to each issue or process you are requiring information about. When asking questions, you should ask open questions first to draw out as much information as possible, then clarify or probe further into specific points.

You should consider using documents in the meeting or interview. When using documents, you should compile a document list and number each document (1, 2, 3 etc). This is so that you can refer to the document number during the interview. Make duplicate copies of the document list and the documents (one for the interviewee, one for you, and one for any colleague accompanying you to the interview).

### 11.2.2 Conducting the meeting or interview

You and any colleague attending the meeting or interview should decide who will take the lead, and who will be the supporting officer and what role the supporting officer will take (e.g. will they take notes; ask follow up questions). You may decide to change roles the different parts of the meeting or interview. For example, you may introduce and lead questions regarding issues of your expertise, while your colleague leads the issues of their expertise and closes the meeting.

Talk clearly and ask the questions you have planned. Be prepared to change the direction of questioning with any new information that may come to light from the interview.

Try to stick to the length specified in the s 9 (s 11 in ACT Act) notice to the interviewee, and offer a short break at least every 45 minutes to an hour.

If the attendee wants a support person, then refer to 11.2.4.

### 11.2.3 After the meeting or interview

After the meeting or interview, you should thoroughly document your notes or minutes and any action items. Ensure all information is recorded on the Resolve record. In some cases, an interview may be digitally recorded and transcribed. If the interview is transcribed, a copy must be provided to the agency or third party.

Write to the agency or third party to thank them for attending and advise of any follow up action or next steps in your investigation. It is generally good practice to provide the agency or third party with a summary of what was said in the discussion, and inviting them to provide you with comments if they disagree with any aspects of the notes or transcription. Please note it is not necessary to provide the agency or third party with the opportunity to comment on your own analysis, observations or conclusions from the interview, just your record of what was said.

All information relating to the interview should be filed in the Resolve approach. Progress your investigation as outlined in 10.4.

### 11.2.4 Third parties attending interviews

Persons being interviewed under the provisions of the Ombudsman Act and the ACT Act have no statutory right to have another person present with them during a formal interview, including a legal representative. Nevertheless, good practice and fairness suggest that a person subject to interview should be able to be accompanied by someone else—for example a colleague or lawyer—unless there are good reasons to interview them alone. The third party is not a participant in the interview, and should not take any active part without the express consent of the officer conducting the interview.

Factors to be taken into account when considering this issue include:

- The objective of the interview — this is to obtain information first-hand from the person being interviewed. It is important that this objective is not compromised by the intervention of a third party. On this basis, attendance of a third party can only be for the purpose of providing a supporting presence for the person being interviewed and it is not appropriate for that party to speak for the subject or to object to questions. On the other hand, there is not generally any objection to reasonable consultation taking place between the person and the third party and the third party is generally permitted to make observations, usually at the end of the questioning.
- Whether the matters to be canvassed relate to the personal affairs of another person (for example, the complainant). We may not be able to agree to the presence of a third party at an interview where the presence is sufficient to constitute a breach of another person's privacy.
- The timing of the interview —on rare occasions it may be necessary to interview a person with very little notice, in which case it may not be feasible to arrange a third party presence.

Requests to have a third party present should be considered on a case-by-case basis. Generally it is appropriate to agree if there is no privacy issue and provided the third party attends for the limited purposes set out above.

## 11.3 Conducting inspections

Section 14 of the Ombudsman Act and s 17 of the ACT Act give us the power to enter agency premises and inspect documents at our will. We can also enter premises at the invitation and agreement of the agency.

Inspections are useful when you want to view documents that are classified or voluminous, or when the agency prefers you to view the documents at their premises rather than deliver a paper or electronic copy to you.

### 11.3.1 Who can enter agency premises

Only the Ombudsman and an authorised person can enter agency premises at our will. The authorised persons (for both Cth and ACT jurisdictions) are: the Deputy Ombudsman, a Senior Executive Service employee (usually a SAO in this Office), and EL 2 staff.

Any level officer can enter with the agency's agreement.

### 11.3.2 Preparing for the inspection

Similarly to interviews, it is important to prepare for an inspection. Before you decide to conduct an inspection you need to clearly identify what you are looking for from the inspection and how this will assist your investigation. You should conduct a risk assessment to consider whether you are likely to obtain the information you are seeking, or how inspecting the site will assist your evidence gathering. **s 47**

When you have obtained approval from your Director to conduct the inspection, you need to liaise with the agency involved to facilitate the inspection. The relevant strategy team may also be able to assist. There is no set form for how this should occur, given the circumstances of each inspection are likely to vary greatly. For example, if an agency is welcoming of a site or document inspection a notice from the case owner may be sufficient whereas in other cases Director or SAO engagement may be warranted.<sup>1</sup>

Prior to the agreed inspection date, you should notify the agency of:

- who from our Office is attending and their positions
- what issues you are investigating that have prompted the inspection
- what you want to see and if an agency attendee or private room is requested
- how long you expect to require access
- if inspecting documents, whether you want access to a photocopier or scanner
- whether you would like a pre- or post- inspection meeting.

If needed, prepare a pre-inspection pack. This may include information regarding contact officer at the agency, the address and any access processes and any relevant documents or investigation materials already obtained.

### 11.3.3 During the inspection

There is no set form for how an inspection should progress as each case is different. As general principles, you are expected to dress and behave professionally to reflect the Office's values.

You should make the most of the opportunity to ask agency staff relevant questions as it is far more efficient to do so on the day than through follow up questions.

You should keep detailed notes of the inspection – what sites or documents did you see, what observations did you make, who did you interact with and, if warranted, what did they say. Even information or observations that may not seem important at the time may be relevant later.

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<sup>1</sup> For example, the Private Health Insurance Ombudsman must give 48 hours written notice before entering a premises for the purposes of an inspection or audit under s 20SA or s 20TA of the Ombudsman Act.

### 11.3.4 After the inspection

After the inspection you should thoroughly document your notes and observations from the inspection. **s 47**

Write to the agency to thank it for facilitating the inspection and advise of any follow up action or next steps in your investigation. If you took copies of documents, advise the agency of the documents you obtained.

Progress your investigation as outlined in 10.4.

## 11.4 Power to issue notices to attend interview or seek information

The Ombudsman has strong powers to require an agency or person to provide information relevant to an investigation (as opposed to s 8 in which we can request information). Our legislation provides legal protections to the person or agency providing the information.

The Ombudsman Act provides powers to:

- require production of any information including documents or other written records, s 9(1)
- copy, take or retain documents, s 9(1A)
- require attendance at a specified place and answer questions, s 9(2)

Similar provisions exist in the ACT Act at s 11. These are collectively referred to in this Procedure as 's 9 / s 11 powers'. We generally only use these powers if an agency or third party will not or cannot provide the information voluntarily, or asks us to use the powers to provide additional protection.

It is important that anyone who is considering exercising these powers fully understands what the legislation says and how it impacts the rights and obligations of the parties involved.

### 11.4.1 Legislative provisions

The relevant legislative provisions are outlined here. Please note that the below should not replace directly considering the legislation and consulting with the legal team as there are some limitations or clarifications not specified below.

#### Section 9 of the Cth Act (s 11 in ACT Act):

Section 9(1) says that where:

- there is an investigation under the Ombudsman Act, and
- the Ombudsman believes a person or agency is capable of providing information (including documents or oral testimony) relevant to that investigation,

the Ombudsman may issue a written notice to that person or agency that requires them to provide that information to the Ombudsman, within specified parameters.

Those parameters include when, where and how to provide the information.

Section 9(1AA) says that where:

- there is an investigation under the Act, and
- the Ombudsman considers that a person can provide information, but does not know the identity of that person,

the Ombudsman can serve notice to the principal officer of an agency or provider and require the unidentified person (or nominee) to produce the information or attend an interview.

Section 9(2) allows the Ombudsman to send written notice to a person that it seeks to interview requiring attendance at an interview.

Section 9(4) explains that the agency or person cannot be excused from providing the information, even if providing the information may:

- contravene other legislation
- incriminate the person or make them liable to punishment
- disclose legal advice or communication protected by legal professional privilege or,
- be contrary to the public interest.

Section 9(5) provides that a person who complies with a s 9 notice is not liable for punishment under any other enactment.

Other subsections address what the Ombudsman may or shall do in relation to documents obtained by s 9 / s 11 powers (s 9(1A)); the Attorney-General's right to issue a certificate preventing the disclosure of requested information (s 9(3)); and further details regarding the impact of legal professional privilege (s 9(5A)).

#### 11.4.2 Circumstances where s 9 / s 11 may be warranted

The Office rarely needs to use s 9 / s 11 powers to complete its work. Most investigations can be effectively conducted with an agency through the s 8 investigative provisions (s 9 in the ACT Act). Moreover, using these powers is a significant and, at times, lengthy process and should not be commenced without consideration and risk assessment.

That said, in limited circumstances the powers can be an effective tool to obtain information.

Here are some situations where we may use the s 9 / s 11 powers:

- the agency or individual wants greater protection for disclosing information
- there is credible evidence to suggest that the information may be otherwise destroyed or withheld
- the agency or individual is unwilling to cooperate.

It may also be appropriate to use the powers when, for example:

- the investigation involves serious maladministration, misconduct or significant allegations and the allegations have some substance
- an agency or person repeatedly delays or obfuscates in the provision of information under s 8
- there is reason to believe that a person or agency is being untruthful or attempting to mislead the Office
- there is substantial public interest or risk in the investigation, warranting visible or efficient investigation.

### 11.4.3 Alternatives to implement before using s 9 / s 11 powers

Due to the time, effort and risk involved in exercising s 9 / s 11 powers, they should only be pursued after other options have been ruled out or applied unsuccessfully. Section 9 / s 11 powers may be warranted if the circumstances of your investigation are appropriate and the options outlined below have not delivered an alternative outcome.

Escalation	If not already involved, escalating the matter to an EL or SES officer level may result in the information being provided under s 8.
Obtain more information	Try to identify why the circumstances that have led to s 9 / s 11 being considered are occurring. For instance, if an agency s 8 response is significantly delayed, consult with the applicable Strategy team or specialist or ask the agency.
Providing other party with more information	It is important to identify and address the other party's concern about providing information under s 8. For example, explain the legal protections provided by s 8 and the complexities of the s 9 process (time, head of agency and Ministerial notifications).

### 11.4.4 Who can use s 9 / s 11 powers

The Office's policy is the Ombudsman must consider and sign all s 9 / s 11 power notices. By delegation, ss 9 and 14 (ss 11 and 16 in ACT Act) can be actioned by EL2 staff and above. EL1 staff and above can administer oaths under s 13 (s 17 in ACT Act).

More junior staff can accompany a delegated officer during actions taken under the Office's these powers.

The Ombudsman Act (Cth) requires that the relevant Minister be informed of an investigation when a s 9 notice is sent to an agency or person within that Minister's portfolio (see s 8(7A)). This power sits with the Ombudsman and Deputy Ombudsman only. The ACT Act contains corresponding provisions.

Exercising s 9 / s 11 powers without proper delegation is unlawful and would constitute a breach of the APS Code of Conduct.

### 11.4.5 Section 9 / s 11 powers - Protections and penalties

The person is not subject to penalties or civil actions by complying with the s 9 notice (s 9(5) and s 37).

Under s 9(4) of the Ombudsman Act (s 11(4) of the ACT Act), a person is not excused from complying with a s 9 notice, nor failing to produce a specific document or answer a specific question at an interview, on any of the following grounds:

- the provision of information would contravene an Act
- the provision of information might incriminate the person or make them liable to a penalty
- it would disclose legal advice given to a Minister, Department or a prescribed authority
- it would disclose communication protected against disclosure by legal professional privilege
- it would be contrary to the public interest,

although information that falls into one of these categories cannot be used in proceedings against the person except in very limited circumstances, such as a prosecution for failing to attend or for providing false or misleading information.



Section 36 of the Ombudsman Act makes it an offence for anyone to refuse to comply with a s 9 notice (penalty: \$1,000 or imprisonment for 3 months), unless there is a reasonable excuse.

The [Criminal Code Act 1995](#) (Commonwealth Criminal Code) provides substantial penalties for people who make false or misleading statements to officials (see for example s 137.1(4)). If you consider it necessary, you can advise interviewees prior to the interview that giving false or misleading information is a serious offence, but there is no requirement to do so.

If an agency or individual does not comply with a s 9 / s 11 notice, s 11A(2) (Cth) or s 14(2) (ACT) allows the Ombudsman to make an application to the Federal Court of Australia (or the ACT Supreme Court) for an order to direct the person to comply with the notice. The Ombudsman and the Legal Team must be consulted if purporting to exercise s 11A(2).

## 11.5 How to prepare and issue s 9 / s 11 notices

### 11.5.1 General process

When you consider that s 9 / s 11 powers may be appropriate for your investigation, you must discuss the proposal with your Director. If your Director agrees, the SAO will be consulted. If there is a Strategic team for the agency involved, the Director of that team should be consulted too. You may also need to engage with the Legal Team as to the form of the notice.

If the SAO agrees that s 9 / s 11 powers are warranted, a briefing with the recommendation to use them will be presented to the Deputy Ombudsman and Ombudsman for a decision.

Subject to the requirements of your supervisor, Director and SAO and the Office's template and style guide, the minute to the Ombudsman (via the Deputy Ombudsman) should address:

- the issues in the complaint which directly relate to the need for s 9 / s 11 powers
- high level overview of the investigation and preliminary findings (if any)
- why s 9 / s 11 powers are appropriate in the case
- any action taken to avoid using s 9 / s 11 powers
- risk assessment of using and not using s 9 / s 11 powers, and
- your recommendation.

**s 47**. A person affected by a decision to use a s 9 / s 11 power can request a statement of reasons for the decision under the *Administrative Decisions (Judicial Review) Act 1977* (ADJR Act). It is, therefore, essential that you properly record reasons for using this power and that all relevant evidence is examined before such a decision is made.

### 11.5.2 Preparing the notice

Things to consider when preparing the notices.

- Section 9(1) and 9(1AA) notices should be sent to the principal officer of an agency.
- Section 9(2) notices must be sent directly to the interviewee and must provide a date, time and location of the interview. Within reason, the time/date/location of the interview may be revised administratively if the initial date does not suit the interviewee without a new s 9(2) notice being sent.

- Where possible, it is best practice to contact the interviewee directly once it is internally agreed that a s 9(2) notice is likely to be sent to the interviewee to advise the person and, where possible, obtain their consent to send the notice to their work address. If that consent is refused, obtain an alternative postal or email address. If no address is provided, seek legal advice.
- While not required by law, it is good practice to notify the principal officer of an agency that a s 9(2) notice has been sent to an employee of their agency. If a different s 9 notice is being sent to the principal officer about the same investigation, you can include the advice about the s 9(2) interview of their employee in that letter. If no other s 9 notices are being sent, consult with your Director regarding how the principal officer should be advised.
- Good practice requires that ‘reasonable time’ be granted to the agency to respond to a notice or a person to attend an interview. What constitutes ‘reasonable time’ is dependent on the circumstances of the case, but guidance would be that no less than 5 working days should be provided to an agency. If in doubt, consult with your supervisor or the Legal Team.
- If you are seeking the interviewee to travel, you should inform them that the Office can pay reasonable expenses incurred, for example their travel expenses (see Regulation 13 of Ombudsman Regulations 2017). A witness may be paid a ‘reasonable’ amount, as considered by the Ombudsman.

If you are requesting many documents, it may be warranted to attach a Schedule of requested documents with your notice.

### 11.5.3 Serving notice of interviews

Our legislation does not prescribe the form of, or method of, serving a notice, other than that it should be in writing. Accordingly, a notice may be served in person, by post or by email. To ensure the privacy of the individual is not breached, if the notice is to be posted it should be forwarded to the interviewee's home address after informing the person that this is to take place. It is not appropriate to forward a notice to a member of the public's place of employment without their prior agreement. If the person is a Government official, arrangements for serving the notice may be made with the head of the agency.

When a notice is served the interviewee should also be provided with a copy of the document [Information for Recipients of Notices Issued under s 9 of the Ombudsman Act](#). This details interviewees' obligations and entitlements.

Once the decision has been made to obtain information through s 9 / s 11 powers and the notices have been sent, we must inform the Minister responsible for the agency concerned that the matter is being investigated. The responsible Minister for these purposes is the Minister of the agency that is the subject of the complaint. This must be sent by the Ombudsman.

### 11.5.4 Using s 9 / s 11 powers—informing the Minister

The Ombudsman must inform the relevant Minister when proposing to issue a notice to obtain access to documents or require a person to answer questions under s 9 of the Ombudsman Act, unless the Minister has already been informed of the investigation (s 8(7A)).

Section 9(9) of the ACT Ombudsman Act has a similar effect. For an ACT community policing matter the ACT Attorney-General should be provided with a copy of a letter to the Australian Government Minister.

To ensure accountability in the use of s 9 / s 11 powers, this advice to the Minister needs to be reasonably detailed, with enough information to enable them to assess whether to seek a briefing, including:

- the identity of the complainant if appropriate and/or relevant
- a description of the action under investigation, and

- a general summary of the claims or allegations.

[Template letters](#) for the use of s 9 / s 11 powers can be found on the intranet.

### 11.5.5 Obtaining evidence under oath or affirmation

Section 13 (s 16 in the ACT Act) allows the Ombudsman to administer an oath or affirmation to a person attending interview pursuant to s 9 / s 11, and examine that person under that oath or affirmation. We do not usually do so during interviews, but you should consider if it is warranted in your interview. If you decide or are requested to administer an oath or affirmation you must consult with your Director and the legal team.

## 11.6 Process Table – using s 9 / s 11 powers

<b>1</b>	Identify if s 9 / s 11 powers are appropriate	<p>Consider if your case is appropriate to consider using s 9 / s 11 powers. Clearly identify what information you require and why using s 8 powers (s 9 in ACT Act) has not been able to obtain the information.</p> <p>Analyse if the any of the circumstances in 11.4.2 and 11.4.3 apply. If you think s 9 / s 11 powers are warranted, you must discuss with your supervisor at this point.</p>
<b>2</b>	Consult with Director and obtain SAO support	<p>If your supervisor agrees s 9 / s 11 powers may be warranted, it is expected that you and your supervisor will consult with your Director at this point. The implementation of these powers requires executive and senior executive support, so your Director’s support should be obtained early in the process.</p> <p>If your Director agrees, they will consult with the SAO. If your SAO is also supportive, and any alternatives to obtain the information are exhausted, you can start the s 9 / s 11 powers process.</p> <p><b>s 47</b> [REDACTED]</p>
<b>3</b>	Draft minute for the Ombudsman	<p><b>s 47</b> [REDACTED]</p> <p>Draft a minute to the Ombudsman to accompany the s 9 / s 11 notice/s and s 8(7A) letter to the relevant Minister. Use the ‘Ombudsman Minute’ template that is available on Microsoft Word. Cover the points under 11.5.1.</p>
<b>4</b>	Prepare notices for Ombudsman	<p>Draft the notice/s for the Ombudsman’s signature. The following is a template for the notice. However, the circumstances in which s 9 / s 11 notices are sent can vary greatly and the tone of the letter should be drafted to reflect the circumstances of the case. It is useful to find and consider any recent cases where s 9 / s 11 powers have been used.</p> <p style="text-align: center;"><b>NOTICE</b></p> <p style="text-align: center;"><b><i>Ombudsman Act 1976 – Notice under subsection 9(1)/(1AA)/9(2)</i></b></p> <p>[...]</p>

		<p>You are legally obliged to comply with the requirements of this notice and there is a penalty for not doing so. However, the information provided to me is not admissible in evidence against you unless you provide false or misleading information.</p> <p>[If you are writing to the principal officer of an organisation]</p> <p>Under section 8(7A), I am required to notify the Minister responsible for the NMHRC of my use of powers under section 9 of the Act. Accordingly, I have informed the Minister for [xxx] of my decision to issue this notice.</p> <p>[If it is a s 9(2) notice]:</p> <p>My staff seek to conduct this interview at [time], [date] at [location]. You may have a support person with you during the interview. Further information will be provided to you prior to interview regarding the interview and your rights and obligations.</p>
5	Submit your Minute and draft notices through sign off chain	<p>Your prepared minute and notification package will need to be cleared through your supervisor, Director and SAO before being submitted to the Deputy Ombudsman and Ombudsman for signature. Normally the legal team and relevant strategy team will also be asked to clear some or all versions of the briefing package.</p> <p>Revisions are likely in this process which may produce multiple versions of the documents. <b>s 47</b> [REDACTED]</p>
6	Ombudsman approval	<p>On receiving the briefing package, if the Ombudsman agrees to use his powers he will sign the minute and notifications. His executive assistant will usually scan and send these documents to you to record and send to the parties receiving the notification. The Ombudsman may also choose to directly send the notifications to the parties receiving the notification.</p>
7	Update Resolve	<p><b>s 47</b> [REDACTED]</p> <p>Follow the usual investigative processes in 10.3 for receiving information or in 11.2 and 11.3 for interviews and inspections.</p> <p>Process ends.</p> <p><b>s 47</b> [REDACTED]</p>

## 11.7 Less commonly used powers

The following are less commonly used powers under the Ombudsman Act. A summary of these powers are provided below. You should read the actual text of these provisions before considering using the power.

If you consider exercising any of these powers may be appropriate, discuss the matter first with your Director. If your Director supports it they will discuss the proposal with the SAO and legal team. Check the [current delegations](#) to determine who can exercise the relevant power.

### ***Section 10 (Cth) and s 12 (ACT) – unreasonable delay in exercising power***

Section 10 (Cth) and s 12 (ACT) covers a situation where the Ombudsman receives a complaint about an unreasonable delay in exercising a legislative power. Several things need to be satisfied for s 10 or s 12 to be invoked.

First, the law must give a person the power to do something, but without specifying a time period for taking action. Second, there must be a law which provides that an application may be made to a tribunal for the review of decisions made in the exercise of that power. Third, the Ombudsman must have investigated the complaint and formed an opinion that there has been unreasonable delay.

If these conditions are met, the Ombudsman can give the complainant a certificate, which in effect, allows the complainant to make an application for review to the tribunal.

### ***Section 10A and 11 (Cth) and s 13 (ACT) – referring questions to the AAT (Cth) or ACAT (ACT)***

Where the Ombudsman is conducting an investigation, ss 10A, 11 (Cth) and s 13 (ACT) allow the Ombudsman to refer questions, or recommend that the principal officer to refer questions, to the Administrative Appeals Tribunal (in the case of Cth) or the ACT Civil and Administrative Tribunal (in the case of ACT), for an advisory opinion.

### ***Section 11A (Cth) and s 14 (ACT) – powers of the Federal Court of Australia and the ACT Supreme Court***

The Ombudsman or the principal officer of an agency may apply to the Federal Court of Australia or the ACT Supreme Court, as the case may be, to determine a question about the exercise of the Ombudsman's functions or powers.

## Appendix A Template for an interview or meeting plan

### Introduction

- Introduce you and your colleague, your titles and (if an interview, roles in the interview).
- Explain the purpose of the meeting / interview.
- Explain the Ombudsman investigates in private and our employees are bound by the secrecy provisions in the Ombudsman Act.
- If an interview:
  - o Is the interview recorded? If so, what happens to the recording and are you making a transcript?
  - o What is the role of the support person for the interviewee?
  - o Are you taking any breaks?
- What happens after the meeting / interview?
- You may like to explain that the meeting / interview is not to attribute blame – it's a fact finding exercise. If we were to be critical of any person or agency, we are obliged to give them the opportunity to comment first.

### General questions

- Open with general questions such as:
  - o How long have you worked for the agency and what is your role?
  - o What are your duties?
  - o What was your role in this project?

### What should have happened?

- You might want to start with questions about what should have happened. For example:
  - o Are there any legislative requirements? If so, can you describe them?
  - o What is your agency's process for making decisions of this nature?
  - o Is there a document outlining the procedures?
  - o If not, how are you made aware of the procedures?

### What did happen?

- You can then proceed with finding out what did happen.
- Do this either in chronological order or pick specific events.
- Use open, rather than closed questions to start with.

### Conclusion

- Thank the person for their time.
- Ask the person if they have any questions of you.
- Explain what happens now.
- Ask for any information/records in a follow up email.
- Invite the person to contact you if they have any questions.

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*Parliamentary Complaint Handling Procedures*  
12. Closing complaints

Updated: 28 October 2019

Review at: 28 October 2020



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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. **s 47**

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.

**s 47**

s 47

[Redacted]

s 47

[Redacted]

[Redacted]

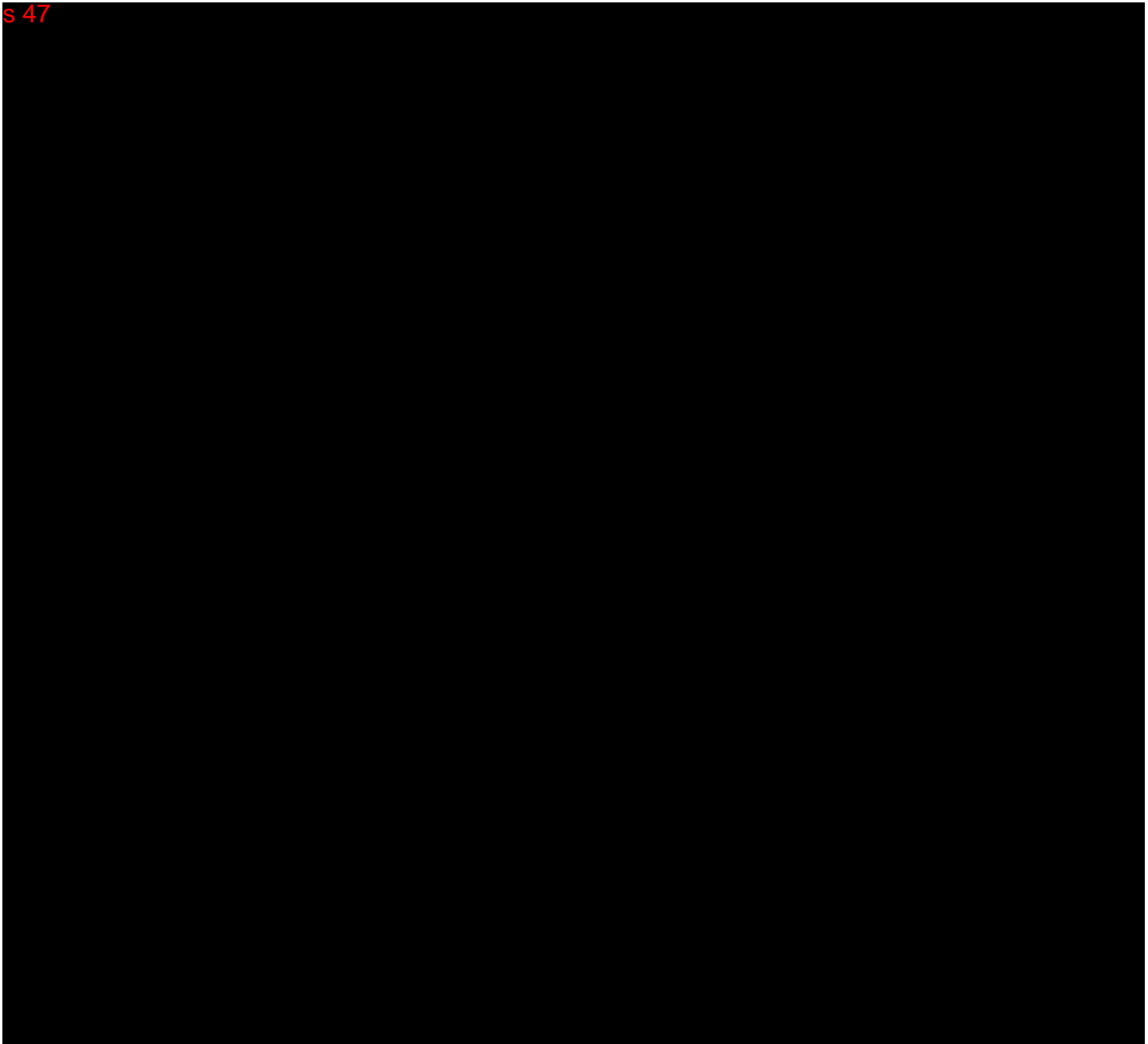
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## *Parliamentary Complaint Handling Procedures*

### 13. Investigation reports

Updated: 19 December 2019

Review at: 19 December 2019

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13.3.2 Process table – Complaint Reports	5

## Overview

The *Ombudsman Act 1976* (Cth) and *Ombudsman Act 1989* (ACT) allow for the Ombudsman to make a public report following an investigation. There are two types of reports prepared by the Office for parliamentary complaints - complaint reports and own motion reports.

This procedure addresses complaint investigation reports. Own motion reports are generally completed by strategy teams.

<b>Purpose</b>	To explain when and how to prepare a parliamentary complaint investigation report.
<b>Workflow</b>	<i>Previous to:</i> Procedure 10 – Actioning your decision: Conducting Investigations <i>Next Step:</i> Procedure 12 – Closing complaints
<b>Scope</b>	Does not explain how to conduct an own motion report.

### 13.1 The Ombudsman’s power to report

The Ombudsman’s power to issue reports is broad, but there are certain conditions in the Ombudsman Act that need to be met. Under s 15(2) (s 18(2) of the ACT Act), after an investigation has been completed, the Ombudsman must issue a report if of the opinion that the two criteria set out in those sections are met – that the issue is sufficiently serious or significant and that further action is warranted to influence the outcome of the complaint (these criteria are outlined at 13.3.1 below).

A copy of any report issued under these sections must be provided to the relevant minister (see s15(6) Cth Act; s 18(6) in the ACT Act).

A report issued under these sections need not be made public, although the Ombudsman may decide to make a disclosure authorised under s 35A (s 34 of the ACT Act) if they consider it is in the public interest to do so. As a matter of practice, a report about a complaint that meets the criteria in s 15(2) is likely to be in the public interest to release, but it is a matter for the Ombudsman to consider in the circumstances of each case.

#### 13.1.1 ‘Glasshouse’ consideration of recommendations

Our Office has committed to apply ‘glasshouse’ principles when issuing recommendations to agencies and organisations. Each time we produce an own motion or complaint report, we must assess our Office against proposed recommendations to the agency to ensure we are meeting the standard that we are setting (or if we don’t meet it currently, that we agree we *should* meet it). Committing to these ‘glasshouse’ principles ensures that we are mindful that our recommendations are practical and reasonable.

If we assess the recommendation does apply to us and we do not currently meet it, we will commit to do so and our progress to implement it will be tracked by the Strategic Policy Board.

### 13.2 Own motion reports

Under s 5(1)(b) of the Act, the Ombudsman may ‘at their own motion’, investigate any action that relates to a matter of administration. As outlined at 13.1, s 15 then requires the Ombudsman to issue a report after the completion of an investigation if satisfied of the criteria has been satisfied. The report that follows an own motion investigation is known as an ‘own motion report’.

Own motion investigations usually target issues that may not just affect one or two people, but are of a systemic nature. All own motion investigations require approval by the Strategic Policy Board.

Parliamentary own motion investigations and reports will generally be conducted by the relevant strategy team who will consult as required. The Strategy Branch has [guidance](#) in place for own motion investigations and reports. You should refer to that guidance and procedures if you are considering proposing an own motion investigation.

### 13.3 Complaint reports

We used the term ‘complaint report’ to refer to a report under s 15 that follows the investigation of an individual complaint, rather than an own motion investigation.

Complaint reports:

- are focussed on issues identified through the investigation of a complaint (generally a narrower scope than own motion reports)
- provide information about what happened and what should have happened, and
- give formal and practical recommendations for improvement.

Complaint reports can vary in length and complexity, depending on the circumstances of the individual investigation. Complaint reports would generally be made public, although this is ultimately a decision for the Ombudsman.

#### 13.3.1 When to prepare a complaint report

The circumstances where a complaint may warrant a report to be prepared and published are varied and inherently specific to the complaint. However, all complaint reports will require us to have identified systemic or important issues during the investigation. The [systemic issue identification tool](#) may help you communicate why you think the issue/s are sufficiently important or systemic to justify a report. Your supervisor and Director can help you identify issues that may meet the threshold for a complaint report.

A systemic or important issue alone is not significant enough to warrant a complaint report. The following two criteria are based on s 15 (s 18 of the ACT Act) and explain that two legislative requirements are needed to report on an investigation – a particular type of investigated issue and the influence that could be obtained through producing a report.

##### Criteria 1: The issue

The Ombudsman must form an opinion that:

- the investigated action was:
  - contrary to law
  - unreasonable, unjust, oppressive or improperly discriminatory
  - in accordance with a rule, but the rule was unreasonable, unjust, oppressive or improperly discriminatory
  - based wholly or partially on a mistake of law or fact, or
  - in all the circumstances wrong, or
- a discretionary power was used:
  - for an improper purpose

- o taking into account irrelevant factors or without taking into account relevant factors, or
- o without being properly communicated to the complainant.

Criteria 2: Influence

The Ombudsman must also find that:

- the issue should be referred to the agency for further consideration, or
- something could and should be done to rectify, mitigate or alter the effects of the investigated action. This could include the agency changing processes and procedures, telling the complainant why they made a decision or changing a rule.

If the agency has taken all possible action to fix the situation, this criteria might not be met.

If both criteria are met and the complaint involves a systemic or important issue, a complaint report may be justified.

**13.3.2 Process table – Complaint Reports**

<b>1</b>	Pre-approval	<p>Ensure that your investigation is complete and no further enquiries need to be made with the agency. It is a requirement in Commonwealth and ACT legislation that the investigation is complete.</p> <p>Discuss your proposal with your Director and, if they are supportive, the SAO. You will need to show how the complaint meets the criteria for a complaint report and use the systemic issue tool to communicate why you think the issue is important.</p> <p>Advise the complainant that the investigation is complete and we are providing comments to the agency. As no decision has been made, they <u>are not to be informed</u> that we are going to make a public report or that we are considering doing so. You may need to develop and clear through your Director a plan for managing complainant expectations or behaviour depending on the complainant’s requests and interest. The process to prepare a public report may take a long time, so you should explain to the complainant that they will likely receive less frequent updates from you.</p>
<b>2</b>	Internal consultation	<p>Your Director will discuss the matter with the relevant strategic team (if there is one). The process ends if after discussion it is agreed the complaint:</p> <ul style="list-style-type: none"> <li>• doesn’t meet the threshold for a complaint report</li> <li>• is best addressed through comments and suggestions</li> <li>• is better dealt with through a broader own motion investigation.</li> </ul> <p>If no agreement on how to proceed can be reached, further executive guidance may be sought, such as through the Strategic Policy Board.</p>

3	Approval to commence drafting	<p>A minute is prepared for the Ombudsman explaining the issue identified and assessing the complaint against the criteria at 13.3.1. The minute will be cleared through the legal team, your SAO and the SAO of the relevant strategy team before being sent to the Deputy Ombudsman and Ombudsman.</p> <p>The Ombudsman may reject the proposal <b>s 47</b>, ask for more information, or approve the drafting of the report.</p> <p><b>s 47</b></p>
4	Draft	<p><b>s 47</b> Commence drafting the report. While the investigating officer should be involved in preparing the draft, they will be heavily assisted by an Assistant Director.</p> <p>Each report is different, and therefore structure and content is specific to the facts of the case. The following guidance may assist.</p> <ul style="list-style-type: none"> <li>• Draft the report using the Office’s report template in Word. Pay attention to the Office style guide. You may want to look at past reports for guidance.</li> <li>• Ensure the report sets out reasons the complaint meets the criteria for a complaint report.</li> <li>• The recommendations should be specific, clear and implementable, and link to the issues identified in the investigation. Consider including a timeframe for the recommendations to be completed.</li> <li>• A glasshouse assessment must be completed against the recommendations.</li> </ul>
5	Internal consultation	<p>When the draft is cleared by the Director, it needs to be referred to the relevant strategy team for comment and legal team for review. It can then be referred to your SAO for clearance. Your SAO will determine whether and how the report should be referred through SPB members.</p>
6	Consultation with the agency	<p>When the finalised draft is cleared, it will be provided through the Deputy Ombudsman to the Ombudsman along with a letter to the agency head seeking comment on the draft, including recommendations, by a certain date.</p> <p>You should review the agency’s comments in consultation with your Director. Amend the report (if required) in consultation with the SAO, Deputy and Ombudsman.</p>

<p style="text-align: center; font-size: 24pt; font-weight: bold;">7</p>	<p>Approval of report</p>	<p>The legal and communications teams are provided with the final copy to clear. A communications strategy may need to be developed.</p> <p>You will need to prepare a de-identified version of the report. The legal team must also clear the de-identified version.</p> <p>Both the identified and de-identified versions of the report are provided to the Ombudsman for approval.</p> <p>Prepare a pack of approval materials for the Ombudsman. This should include a cover minute, the cleared final report, a draft cover letter to the agency head attaching the report, a draft cover letter to the Minister attaching the report and a draft letter to the complainant thanking them for their complaint and advising of the report.</p> <p><b>s 47</b> [REDACTED]</p>
<p style="text-align: center; font-size: 24pt; font-weight: bold;">8</p>	<p>Release</p>	<p>Arrange with Communications Team to publish the report and prepare any media releases for the Ombudsman. You should let the agency know beforehand when the report will be published, so that it may prepare its own media release if needed.</p>
<p style="text-align: center; font-size: 24pt; font-weight: bold;">9</p>	<p>Follow-up</p>	<p><b>s 47</b> [REDACTED]</p> <p>Follow up with the agency on the progress of the recommendations in consultation with the relevant Strategy team.</p>

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# *Parliamentary Complaint Handling Procedures*

## 14. Internal reviews

Updated: 28 October 2019  
Review at: 28 October 2020

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## Overview

Sometimes complainants will be dissatisfied with the decisions we make. While there is no requirement under the Commonwealth or ACT Ombudsman Acts that we conduct internal reviews of our decisions, it is a good administrative practice we offer to complainants. It is possible for us to make mistakes or overlook important information in the course of our complaint-handling. In this respect, our internal review process provides an opportunity for us to correct errors, make better decisions, learn from our mistakes and continuously improve our work practices.

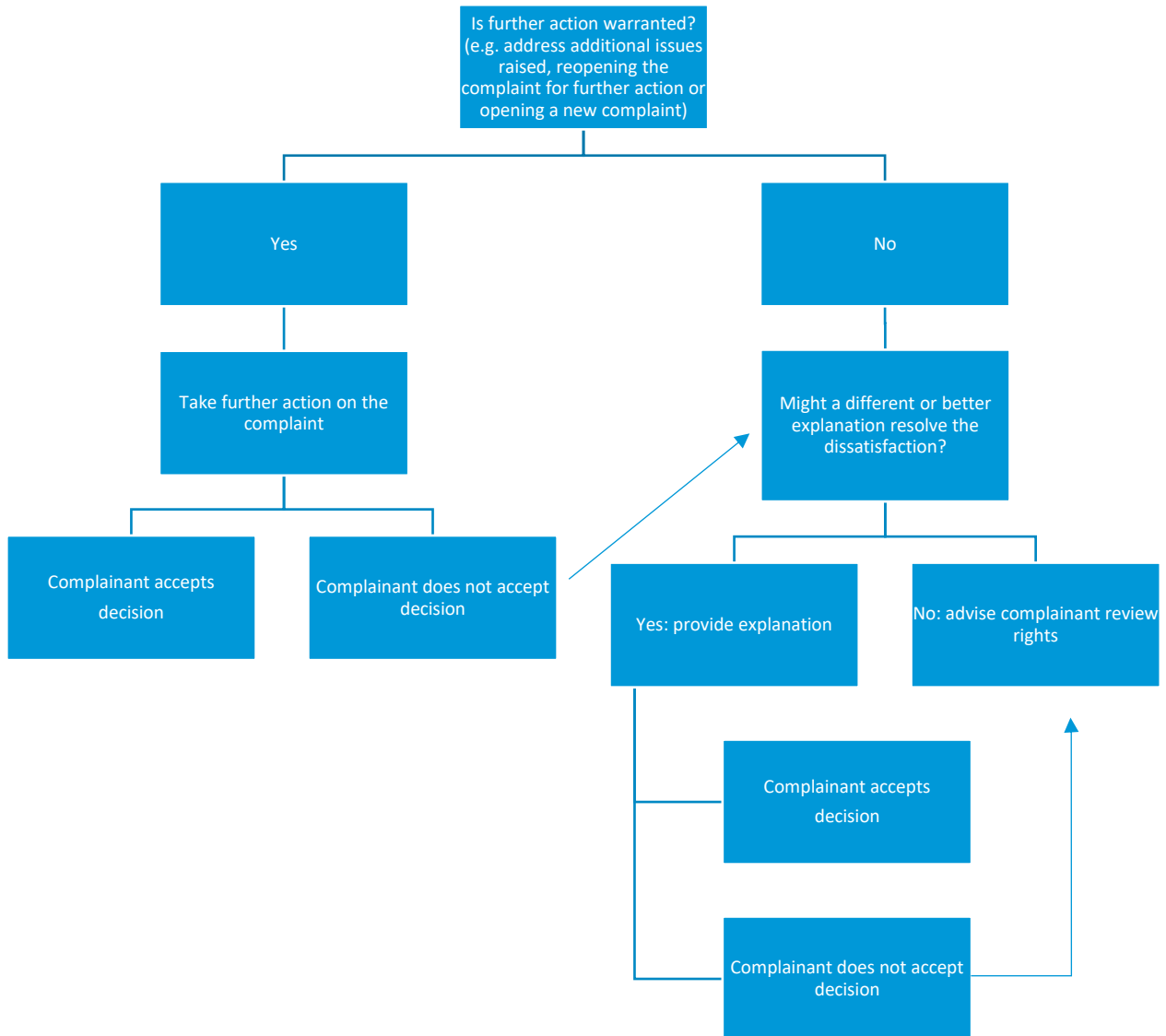
This procedure explains how to assess and respond to complainant dissatisfaction with your decision, including:

- providing a different or better explanation (Part 14.2)
- deciding further action is warranted (Part 14.3)
- referring the matter for independent internal review (Part 14.4)

Purpose	Explain how to assess and respond to complainant dissatisfaction about our decisions
Workflow	Previous Step: Procedure 12 – Closing complaints
Scope	Does not address dissatisfaction with service delivery. This is covered in Procedure 2 – Complainant Contact and service

## 14.1 Person disagrees with decision

The following flowchart explains the process to undertake when a person disagrees with the decision, prior to referring the person to our internal reviews process. This section then describes that process in more detail.



### 14.1.1 Consider whether further action is needed

Where the complainant provides or refers to information you have not considered, or alleges an error with your decision or decision-making process, you should consider whether further action should be taken, such as:

- assessment of additional information and response
- re-opening the complaint to conduct a preliminary inquiry or to investigate, or
- continuing to investigate.

In some cases, a complainant may raise a new issue which is separate to the information initially complained about. For example, the complaint was initially about a Centrelink payment issue; the complainant raises a new issue about their job provider which is the responsibility of a different department. In such cases, you should consider whether to register a new complaint. Refer to Procedure 5 on registering new complaints.

### 14.1.2 Providing a different or better explanation

We often ask agencies to provide a ‘better explanation’ to complainants in order to demonstrate fair, accountable and transparent decision-making. It is important our Office holds itself to this standard.

Not all complainant dissatisfaction stems from a disagreement with the facts or merits of a decision. In many circumstances, it may be from a misunderstanding, lack of understanding or insufficient information. Because of this, you should consider whether a complainant’s dissatisfaction may be resolved by providing a different or better explanation of your decision.

As a general rule, a different or better explanation should be provided by phone. The exception is when you have already discussed the decision by phone or the complainant has access barriers that prevent them from discussing the decision by phone, in which case a written response may be more appropriate.

Table 14.1: When a different explanation may help

Dissatisfaction <u>may be</u> resolved by different or better explanation
<ul style="list-style-type: none"> <li>• Complainant indicates a misunderstanding or lack of understanding about the role of our Office or the outcomes we can achieve.</li> <li>• Complainant indicates a misunderstanding or lack of understanding about the reasons for the decision.</li> <li>• You consider more information could be provided to clarify or better explain the decision or decision making process.</li> <li>• Complainant or their response has indicated they have been unable to access or understand the decision due to disability, language, or literacy.</li> </ul>
Dissatisfaction <u>unlikely</u> to be resolved by different or better explanation
<ul style="list-style-type: none"> <li>• Complainant provided new information or referred to information that you haven’t considered in reaching your decision.</li> <li>• Complainant identifies an error with the decision of the decision making process.</li> <li>• Complainant demonstrates they have a good understanding of the decision and our role, but disagrees with the decision or the decision making process.</li> <li>• Complainant raises a new issue.</li> </ul> <p><i>These could all lead to further action on the complaint.</i></p>

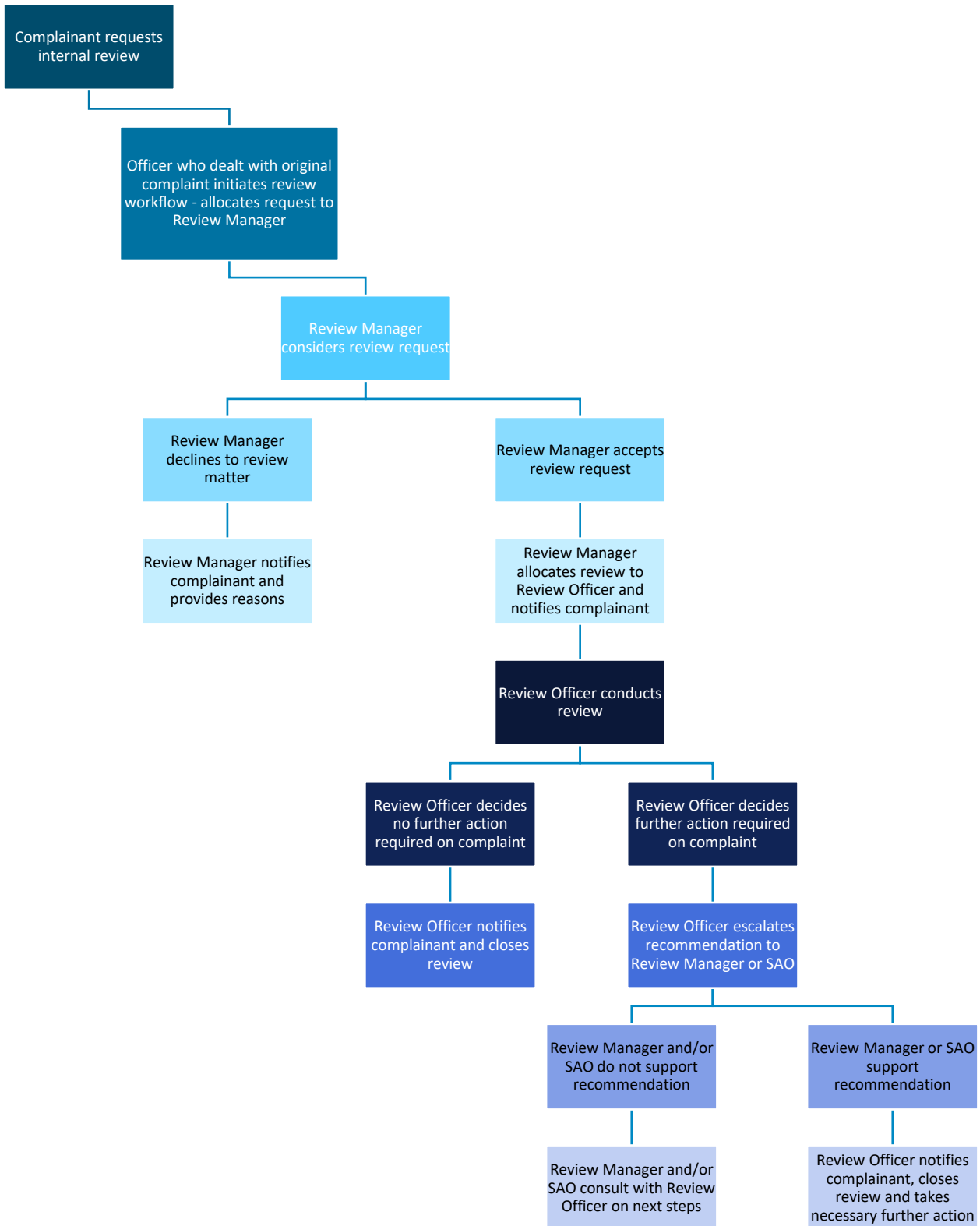
### 14.1.3 Call escalations

Intake teams, who are our first point of contact for complainants, routinely receive a high number of callers who express dissatisfaction with our Office. It may not always be clear whether these should be treated as a request for reconsideration, review or a service delivery complaint.

Intake staff can agree to escalate such callers to their supervisors in the first instance. All staff are encouraged to exercise discretion with regards to whether to escalate a call, conduct a reconsideration or create a review request or service delivery complaint.

When taking escalated calls, supervisors should determine whether it is necessary to treat the call as a reconsideration, review request or formal service delivery complaint and progress the complaint accordingly.

## 14.2 Internal review overview



### 14.2.1 Timeliness expectations

Our Office has key performance indicators (KPIs) to guide timely resolution of review requests:

Table 14.2: KPIs for reviews

Key function	KPI
Decision to accept or decline a review request by the Review Manager	90% of review requests are decided within 10 days
Review finalisation	80% of reviews finalised within 60 days.  <i>Guiding principle: time taken should be commensurate with the complexity of the complaint.</i>

### 14.3 Advising complainants about internal review

When you:

1. have not been able to resolve a complainant’s dissatisfaction by providing a different or better explanation, and
2. do not consider further action is warranted on the complaint

you should provide the complainant with information about their right to have your decision internally reviewed.

Regardless of whether you do this by telephone or in writing, you **must** include information about the timeframe for requesting a review (see Part 14.3.1); how to request a review (see Part 14.3.2); and guidance on what are sufficient grounds for review (see Part 14.3.3).

Our [Standard Words](#) document includes template paragraphs for advising complainants about their internal review rights.

#### 14.3.1 Timeframe for requesting a review

Complainants should request a review within three months of the date of the original decision.

We will accept review requests made outside this timeframe only in exceptional circumstances (e.g. where the complainant has been hospitalised or otherwise incapacitated for an extended period). In such cases, we would expect the complainant to explain the reasons for the delay when making their request.

If the complainant calls to make a review request outside of the timeframe, the officer should ask the complainant for any reasons why the request was not made sooner. **s 47**

If the complainant writes to make a review request outside of the timeframe, the original decision-maker must assess the request, and if the reasons for making the late request are unclear, ask the complainant to explain why they could not have made the request sooner. This should be done prior to referring the review request to the Review Manager.

#### 14.3.2 How to request a review

Complainants should request a review in writing using our [online form](#). Verbal requests for review are generally accepted where there are accessibility considerations. The form assists complainants to clearly set out their

reasons for requesting a review. If a complainant requests a review verbally, by email or post, they should still include the type of information described in the online form in their request.

### 14.3.3 Sufficient grounds for review

Simply being unhappy with a decision will generally not be sufficient for the Review Manager to grant a review. Although the Review Manager will consider the decision, a review is more likely to be granted if the complainant clearly identifies why they consider the decision or decision-making process was incorrect or unreasonable, and provides supporting information. Reiterating they are unhappy with the agency’s decision or action is unlikely to be a sufficient ground for review, unless the complainant can also point to an area of concern with the original decision or action which the case officer does not appear to have considered.

## 14.4 Actioning review requests

### 14.4.1 Case officer’s responsibility

The original case officer must send review requests to the Review Manager on the day they are received or as soon as practical thereafter.

Before sending the review request to the Review Manager, the case officer should read the review request and ensure there is nothing that warrants a different decision about the complaint (refer to 14.1). If the officer maintains their original position, they can commence the review process.

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### 14.4.2 Review staff

There is an agreed group of officers who consider and action all internal reviews requests on parliamentary complaints. The review team includes a ‘Review Manager’ and ‘Review Officers’.

The Review Manager is a Director in the Complaints Management and Education Branch. The role usually sits with the Director of the Education, Coordination and Review team, as it is separate from the three complaint-handling teams and maintains a level of independence.

The Review Manager:

- considers review requests, decides whether or not to grant a review, and advises complainants accordingly
- provides guidance to review officers
- may provide feedback to individual staff on their decision making
- may conduct reviews themselves
- if a review officer recommends further action to be taken, consults with relevant Director and the SAO (if needed)
- reports to Senior Leadership Group on review outcomes and lessons learnt each quarter.

Review Officers:

- have the ability to discuss cases constructively and impartially



- are skilled at identifying what is a correct and preferable decision, including any systemic issues that we may have missed
- must work with the Review Manager to ensure the efficient completion of reviews, and
- may review decisions that are made by someone who is more senior than them.

### 14.4.3 Review manager's decision

All review requests are assessed by the Review Manager in the first instance. The Review Manager has discretion as to whether to grant the review. Reviews are unlikely to be accepted if:

- the request does not articulate any reason for being dissatisfied with the decision or decision-making process
- the request was made more than three months after the date of the last decision and the complainant has not provided reasons why they could not have made the request earlier
- the request does not make sense
- the complaint is clearly out of jurisdiction
  - the complainant is seeking an outcome that cannot be achieved by our Office
  - the complaint was closed due to the complainant's lack of cooperation or refusal to provide information in response to a reasonable request
  - the issues raised are better dealt with as a new complaint
  - the issues raised are better dealt with as a service delivery complaint, and/or
  - the complaint concerns an issue that has been previously considered by our Office and there is no new and relevant information.

The Review Manager may remit a matter back to the original officer if they consider the review is premature. For example, where the officer hasn't had telephone contact with the complainant (unless there is a good reason not to) or there has been an obvious error or oversight.

The Review Manager may also decide that the matter should be reopened for further action without going through the review process. If this occurs, the Review Manager will discuss the matter with the original officer's Director and may either nominate the original or a new officer to undertake the further action. If there's disagreement between the Review Manager and the officer's Director about reopening the complaint, the SAO will make a final decision.

The Review Manager will notify the complainant of their decision. If the review request has been accepted they will allocate the matter to a Review Officer who has had no prior involvement in the matter.

The Review Manager will indicate the focus of the review to the Review Officer **S 47** [REDACTED]. This is intended as guidance to the Review Officer, but should not be seen as limiting the scope of the review if the Review Officer identifies additional issues.

### 14.4.4 Contacts while the Review Manager is considering the request

If the complainant contacts this Office after making a review request but before the Review Manager has decided whether to grant the review, the complainant should be advised that the Review Manager aims to make a decision within 10 working days.

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## 14.5 Conducting reviews

### 14.5.1 Review Officer responsibility

As part of the review process, a Review Officer should consider:

- contacting the complainant soon after receiving the review to clarify the issues raised and provide information about the review process, timeframes and possible outcomes. This can be done by email or telephone.
- clarifying any matters with the original officer if this is required. This is normally not required if the review is straightforward or the decision is made to affirm the original decision.

In reaching a decision, the relevant question for the Review Officer is whether the decision was the **correct and preferable** decision. The Review Officer will assess this by looking at the decision and the decision-making process and considering, for example, whether the original officer:

- addressed all the key issues in the complaint
- provided an opportunity for the complainant to be heard (i.e. provide relevant documents and comment on the decision)
- gathered and/or considered all the relevant information, sufficiently responded to the key issues, including analysing those issues in sufficient depth
- properly explained their decision to the complainant or made statements that could be interpreted differently by the complainant
- made a decision that was correct (i.e. in accordance with our legislation and policies), and
- made a decision that was the one we should have made – it is the correct and preferable decision (e.g. the decision is preferable in the sense that, if there is a range of decisions that are correct in law, the decision settled upon is the best that could have been made on the basis of the relevant facts’).

Generally, a Review Officer is not required to assess an approach afresh and make a new decision (although this may be necessary where, for example, the reasons for the original officer’s decision is absent, unclear or incorrect). However, if the Review Officer reaches the conclusion that, in their opinion, a different decision is the correct and preferable one, this should be made having regard to all the material.

### 14.5.2 Complainant contacting the office during review

If the complainant contacts this Office when a Review Officer is considering the matter, they should be referred to that Review Officer. s 47 and referred to the Review Officer.

If the call cannot be referred to the Review Officer, s 47

### 14.5.3 Review outcomes

A review can result in one of two outcomes:

- a decision that further action is required in relation to some or all complaint issues.
- a decision that no further action is required in relation to any complaint issues.

Even where a Review Officer concludes that no further action is required, they must consider whether a better explanation for the decision can and should be provided to the complainant in the review decision.

#### Complaint re-opened

Where a Review Officer decides that further investigation (or investigation) of the complaint is warranted, they must send an email to the Review Manager setting out:

- a brief history of the complaint and relevant decisions
- issues identified in the review and recommendation that the matter be re-opened
- areas warranting separate action such as an apology for poor service, and
- a list of suggested areas for focus and reasons for their recommendation.

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If the recommendation to re-open the complaint is supported, the Review Manager will discuss this with the Director of the team that will be undertaking further work on the complaint. If there's disagreement about whether or not to undertake further action, the CMEB Senior Assistant Ombudsman (SAO) will make a final decision.

If it is more efficient to do so, the Review Officer will be responsible for taking further action or conducting further investigation.

#### *Notifying the complainant:*

Once it is decided that further action is required, the Review Officer will then inform the complainant of the outcome of the review. This can include better explanations of the original decision or acknowledgement of where we could have done better. This should occur as soon as possible and can be done in writing or on the phone. If the recommendation is not supported, internal consultation is required before the complainant can be informed of the outcome.

When communicating with complainants, Review Officers should avoid express or implied criticism of an agency if the agency has not already had an opportunity to respond to that criticism. Review Officers should also inform complainants of the proposed area of focus if further investigation is warranted, but also explain that these suggestions are not binding and can change as further information comes to the attention of the officer. If any issues raised by the complainant are not included in the re-opened investigation, the Review Officer must explain the reasons for this to the complainant.

#### *Feedback:*

In some cases, a Review Officer may consider that feedback to the original officer about their decision or decision-making process is warranted. In such cases, they should discuss this with the Review Manager. Feedback about how an officer conducted the complaint will come from the officer's Director or the Review Manager – not the Review Officer.

At the end of the review, the Review Officer should also send an email to the Review Manager with dot points about any lessons learnt or positive feedback from the reviewed approach.

#### 14.5.4 Contacts after the review has been completed

This section assumes that any subsequent action or investigation following review has been finalised and the outcome has been communicated to the complainant.

The Review Manager can place an alert on the complainant's record noting the issue that we have finalised, reviewed and that further correspondence about the same matters (which does not provide new and relevant information) will be read but not responded to. This alert will only be used if a review is declined or a review is finalised with no further action. The alert may be used if the complainant has contacted our Office about the same issue more than once, and it is likely that they might initiate further contacts in the future.

Complainants may contact us after a review has been declined, a review has been finalised with no further action, or investigation following a review has been completed. If written contact is received, it should be referred to the officer who made the last substantive decision. This will usually be the Review Officer or another officer who has been assigned with the responsibility for assessing the complainant's contacts. Failing this, refer the material to the Review Manager.

The officer who is allocated this correspondence must consider whether it raises new material that could change their previous decision. If not, the officer must document this assessment and either acknowledge and respond as appropriate, or otherwise note that no further action will be taken in response to that correspondence (particularly if we have previously indicated to the person that this is what we will do).

If the correspondence does provide new and persuasive information pertaining to previous complaints/reviews, the officer must engage with the Review Manager to decide how to respond to that material. This may lead to a new complaint or the re-opening of a previous complaint.

If the correspondence raises new issues that have not been previously considered by this Office, **s 47**

#### 14.6 Requests for review of further action on re-opened complaint

This occurs when:

- a complaint has been re-opened or opened following review
- further action was taken (e.g. an investigation)
- the officer makes a decision to finalise the action, and
- the complainant is dissatisfied with the result and wants another review.

The Review Manager is unlikely to grant a further request for a review if:

- the further action considered the same issue as the original decision, and
- there is no new information obtained from the agency or the complainant.

The Review Manager will consider a further request for a review if:

- the further action considered different issues to the original decision, or
- new information was obtained from the agency or the complainant.

If in doubt about whether you should advise the complainant of their review rights the second time, consult with the Review Manager.

## 14.7 Process tables

### 14.7.1 Pre-review process

<b>1</b>	Record the dissatisfaction	<b>s 47</b> [Redacted]
<b>2</b>	Assess your options to resolve the dissatisfaction	<p>If the dissatisfaction:</p> <ul style="list-style-type: none"> <li>• is likely to be resolved by a different or better explanation – go to step 3</li> <li>• raises issues that warrant re-opening the complaint or investigation – go to step 4</li> <li>• raises issues that warrant opening a new complaint – go to step 5</li> <li>• is unlikely to be resolved by a different or better explanation and does not warrant further action – go to step 6</li> </ul>
<b>3</b>	Provide a different or better explanation	<p>This should be done by phone, unless you have already discussed the decision by phone or there are access barriers preventing the complainant from discussing the decision by phone.</p> <ul style="list-style-type: none"> <li>• If the complainant accepts the decision – process ends here.</li> <li>• If the complainant does not accept the decision – go to step 2.</li> </ul>
<b>4</b>	Re-open the complaint or investigation	<p>If you are re-opening a closed complaint:</p> <p><b>s 47</b> [Redacted]</p> <p>If you are re-opening an investigation:</p> <p><b>s 47</b> [Redacted]</p>
<b>5</b>	Register a new complaint	<p>See <i>Procedure 5</i> for how to register a new complaint. The new complaint should be allocated to either early resolution or investigations team, as appropriate.</p> <p>Process ends here</p>

<b>6</b>	Provide the complainant with information about their internal review rights	This can be done by telephone or in writing. You should refer to the <a href="#">review page</a> on our website.
<b>7</b>	Record your decision	<b>s 47</b> [Redacted] <b>s 47</b> [Redacted] [Redacted] [Redacted]

**14.7.2 Processing review requests**

<b>1</b>	Record the review request	<b>s 47</b> [Redacted]
<b>2</b>	Initiate the review workflow	Ensure you have followed the pre-review processes before actioning the review. If you have not – go to process table 14.11. <b>s 47</b> [Redacted]
<b>3</b>	Prepare a briefing for the Review Manager	<b>s 47</b> [Redacted] Your briefing must include: <ul style="list-style-type: none"> <li>• a brief history of the complaint</li> <li>• the relevant issues and decisions made</li> <li>• why the complainant has expressed dissatisfaction</li> </ul> what engagement and responses you have had with the complainant regarding that dissatisfaction.
<b>4</b>	Allocate to the Review Manager	<b>s 47</b> [Redacted]

**14.7.3 Review Manager process**

<b>1</b>	Read the review action and review request	
<b>2</b>	Assess documents on file to decide whether or not to grant a review	<b>s 47</b> [Redacted]

<b>3</b>	Decision point: review not granted	<p><b>s 47</b> [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
<b>4</b>	Decision point: review granted	<p><b>s 47</b> [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>

14.7.4 Conducting review

<b>1</b>	<p><b>s 47</b> [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>	<p><b>s 47</b> [REDACTED]</p> <p>[REDACTED]</p>
<b>1</b>	Read relevant documents	<p>You should read:</p> <ul style="list-style-type: none"> <li>• the original decision, including the decision maker’s response(s) to comments from the complainant</li> <li>• the review request</li> <li>• other relevant documents on file, including information provided by the complainant, agency response(s) (if any) and decision maker’s notes/analysis of the complaint.</li> </ul>
<b>2</b>	Record decision	<p>[REDACTED]</p> <ul style="list-style-type: none"> <li>• If you decide further action is not warranted – go to step 5.</li> </ul> <p>If you decide further action is warranted – go to step 3.</p>
<b>3</b>	Prepare a briefing for the Review Manager	<p><b>s 47</b> [REDACTED]</p> <p>[REDACTED] Your briefing should include:</p> <ul style="list-style-type: none"> <li>• a brief history of the complaint and relevant decisions</li> <li>• issues identified in the review</li> </ul>

4		<ul style="list-style-type: none"> <li>a recommendation for what further action should be taken on the complaint, with reasons.</li> </ul>
	Allocate to Review Manager for approval	<p>If the Review Manager supports your recommendation, they will discuss the matter with the relevant Director.</p> <ul style="list-style-type: none"> <li>If the review manager and relevant Director support your recommendation – go to step 5.</li> <li>If the review manager and the relevant Director do not agree, they will consult with the SAO.</li> <li>if the review manager and relevant Director do not support your recommendation, they will consult with you about the next steps.</li> </ul>
5	Record your decision	<p>s 47 [REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p>
6	Notify the complainant of your decision	<p>This can be done by telephone or in writing. Section 14.5.3 provides guidance for notifying complainants about a decision.</p> <p>Where you have decided that no further action is warranted you must advise the complainant that, per our policy, a complaint will be reviewed only once.</p> <p>Where you have decided further investigation of the complaint is warranted. You should clearly outline which issues will be further investigated and which, if any, will not be investigated.</p>
7	s 47 [REDACTED]	s 47 [REDACTED]
8	s 47 [REDACTED] [REDACTED] [REDACTED]	[REDACTED] [REDACTED]



<b>Approval Date</b>					
<b>Date of Review</b>					
<b>Contact Team</b>					
<b>Document ID</b>					
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<b>Version</b>	<b>Amended by</b>	<b>Review Date</b>	<b>Brief Description of Change</b>	<b>Approved by</b>	<b>Date</b>