



QUEENSLAND
OMBUDSMAN
Standing for fairness



Complaints Management

RESOURCE

Contents

Complaints management	1
-----------------------	---

Level 1: Frontline complaints handling (early resolution)	6
Receiving the complaint	7
Assisting the complainant	7
Understanding the complaint	7
Managing the complainant's expectations	8
Acknowledging the complaint	8
Assessing the complaint	8
Declining the complaint	9
Referring the complaint	9
Resolving the complaint	9
Recording the complaint	10

Level 2: Internal assessment	11
Acknowledging the complaint	12
Identifying the complaint issues	12
Assessing the complaint	12
Grounds for declining the complaint	13
Communicating the outcome	13

Level 2: Internal investigation	14
Planning	15
Finding the facts	15
Determining the outcome	17
Preparing the investigation report	19
Communicating the outcome	19
Closing the complaint	19
Monitoring the implementation of remedies	19

Level 2: Internal review	20
Acknowledging the complaint	21
Assessing the complaint during the internal review	21
Conducting and deciding the internal review	21
Reporting on the internal review	23
Communicating the outcome	23
Closing the complaint	23
Monitoring the implementation of remedies	23

Level 3: External review	24
External review organisations	25
Other complaints handling organisations	25

Referenced legislation

Queensland

Civil Liability Act 2003
Human Rights Act 2019
Information Privacy Act 2009
Local Government Act 2009
Public Interest Disclosure Act 2010
Public Records Act 2002
Public Service Act 2008
Local Government Regulation 2012

Federal

Privacy Act 1988
Tertiary Education Quality and Standards Agency Act 2011

Complaints management

Complaints management is about dealing with and resolving individual complaints. It is also about using information to identify potential improvements to decision-making, practices and service delivery.

Complaints management is an integral part of quality customer service and provides tangible benefits for agencies, staff, customers and people in the community.

Benefits of complaints management include:

- increased customer satisfaction
- improved organisation reputation
- reduced costs by resolving complaints internally and efficiently
- improved decision-making, systems and service delivery.

Complaints are an essential part of the accountability process. Every person or organisation has a right to complain and seek a remedy (a resolution) for decisions, actions or services by government agencies adversely affecting them. The community expects government agencies to be customer-focused and responsive to feedback, including complaints.

In response to the increasing accountability expectation and drive for continuous improvement, Queensland Parliament has legislated that state government departments and agencies and local governments must have systems in place to efficiently and effectively manage complaints.

A government organisation's code of conduct may require officers to effectively manage complaints and comply with their complaints management policy and procedures.

For example, the Code of Conduct for the Queensland Public Service outlines that agencies have a responsibility to treat complaints seriously and respond to constructive feedback as an opportunity for improvement.

What is a complaint?

In general terms, a complaint is where a customer or member of the community communicates to an organisation that they are dissatisfied with a decision, action, service or the conduct of staff.

Simply, a complaint is someone expressing dissatisfaction about something the organisation has or hasn't done and is seeking a resolution.

Australian standard definition

The Australian Standard AS/NZS 10002:2014 – Guidelines for complaint management in organizations (the Australian Standard) defines a complaint as:

... an expression of dissatisfaction made to or about an organization related to its products, services, staff or the handling of a complaint, where a response or resolution is explicitly or implicitly expected or legally required.

However, the term 'customer complaint' or other similar complaint expression may be specifically defined in legislation or the organisation's complaints management policies.

Legislative definitions

Section 219A of the *Public Service Act 2008* defines a customer complaint as:

- a) a complaint about the service or action of a department, or its staff, by a person who is apparently directly affected by the service or action; and
- b) includes, for example, a complaint about any of the following:
 - (i) a decision made, or a failure to make a decision, by a public service employee of the department
 - (ii) an act, or failure to act, of the department
 - (iii) the formulation of a proposal or intention by the department
 - (iv) the making of a recommendation by the department
 - (v) the customer service provided by a public service.

Section 268 of the *Local Government Act 2009* does not use the term 'customer complaint' but instead refers to a customer complaint as an 'administrative action complaint'. An administrative action complaint is defined as 'a complaint about an administrative action of a local government made by an affected person'.

Section 306 of the *Local Government Regulation 2012* provides that the following considerations are irrelevant in determining whether a complaint is an administrative action complaint:

- how quickly the complaint was resolved
- to which area of council the complaint was made
- whether the complaint was written or verbal
- whether or not the complaint was made anonymously.

Internal policy and procedure definitions

An organisation's complaints management policies and procedures should clearly define the term 'customer complaint' or other similar terms consistently with any relevant legislative definitions. Staff handling customer contacts should be aware of any relevant definitions.

How to recognise a complaint?

Whether a customer has made a complaint is not always apparent. It is the organisation's responsibility to determine if a complaint has been made.

The following factors may indicate a complaint has been made.

The customer:

- is focused on a particular decision, action or service of the organisation
- used the word 'complaint' or similar
- indicated or informed that the organisation's action is wrong or unfair
- is affected by the organisation's action
- requests a review, investigation or response
- is seeking a different outcome.

All complaints should be received and assessed accordingly. It does not matter:

- who made the complaint
- how the complaint was made
- merit or seriousness of the complaint
- how the complaint may be managed
- how quickly the complaint may be resolved.

How should complaints be managed?

People making complaints should be treated with courtesy and be provided with reasonable assistance. Complaints should be managed by trained staff in an open, accountable, fair, efficient and effective way in accordance with the organisation's complaints management system.

What is a complaints management system?

A complaints management system (CMS) is a step-by-step way of managing complaints and using them to improve systems, decision-making and service delivery.

A best-practice CMS has five distinct functions:

1. Receiving
2. Recording
3. Processing
4. Responding
5. Reporting.

CMS core components

The core components of a CMS are the organisation's:

- complaints management policy and procedures
- complaints database or recording system
- other resources.

Each government organisation is required by law to establish and implement a CMS meeting legislative requirements and recognised standards.

Complaints management policy

An organisation's complaints management policy should establish commitment to the effective management of complaints and include the guiding principles underlying the policy and the complaints model.

Complaints management procedures

Supporting procedures should outline how complaints will be managed, who will be involved in the process and their roles and responsibilities.

Complaints database/recording system

A complaints database or other recording systems should promote a practicable and systematic approach for receiving, recording, analysing and reporting complaints information.

It should have the capacity to capture complaint related records and record other key information in sufficient detail for senior management to identify, analyse and respond to complaint trends and potential improvements.

Other resources

Other CMS resources include modern information and communication technology (e.g. website) and staff. Well trained staff is the most important resource in a CMS.

The CMS model

An efficient and effective CMS should incorporate a three level model.



CMS framework

The Australian Standard provides that an efficient and effective CMS that is fair should be implemented.

Essential features include:

- senior management commitment and support
- a positive complaints management environment encouraging complaints and feedback
- complaints management policy and procedures
- clear lines of responsibility and authority for management and staff
- adequate resourcing, awareness and training for staff involved in managing complaints.

The CMS Australian Standard

The Australian Standard provides detailed guidance on managing customer complaints within organisations.

CMS statutory requirements

Departments and public service offices

Section 219A of the Public Service Act requires each state government department and public service office to establish and implement a system for managing customer complaints that complies with the current Australian Standard.

Local governments (councils)

Section 268 of the Local Government Act requires each council to adopt a process for resolving administrative action complaints that complies with the requirements set out in s 306 of the Local Government Regulation 2012. The requirements include written policy and procedures, visibility of the process at offices and on websites, complaints recording, timely and efficient response to complaints in a fair and objective way, informing complainants of the complaint decision and reasons, and internal reporting to senior management on the operation of the process.

Public universities

Under the *Tertiary Education Quality and Standards Agency Act 2011*, universities are required to comply with the Higher Education Standards approved by the Minister for Education and Training.

Standard (2.4) sets out the minimum requirements for receiving and handling student grievances and complaints. These minimum requirements address:

- accessing complaint mechanisms
- implementing policies and processes that deliver timely resolution at no or reasonable charge and are applied consistently and fairly
- providing confidentiality, independent professional advice, advocacy or other support and review by an independent third party
- recording formal complaints and appeals and providing outcome, reasons and further avenues of appeal
- initiating prompt action where a formal complaint or appeal is upheld.

Source - Higher Education Standards Framework

Human rights in complaints management

The introduction of the *Human Rights Act 2019* means that human rights considerations now form part of decision-making and complaints management approaches by government agencies.

In relation to customer complaints, this means that complaint handlers are required to identify and consider all relevant human rights when assessing and responding to complaints made under a CMS.

This should be appropriately reflected in agency's CMSs.

The Human Rights Act requires all government agencies in Queensland to act compatibly with human rights and to give proper consideration to human rights before making a decision.

Under s 58(1) of the Act, it is unlawful for government agencies:

- to act or make a decision in a way that is not compatible with human rights; or
- in making a decision, to fail to give proper consideration to a human right relevant to the decision.

If an individual believes a government agency has breached their human rights, they can make a human rights complaint. The complainant must lodge their complaint with the agency in the first instance.

The agency then has 45 business days to respond to the complaint. In exceptional circumstances, the Queensland Human Rights Commission (QHRC) may also accept a complaint before the 45 business days have elapsed.

If the complainant has not received a response from the organisation within 45 business days, or is dissatisfied with the organisation's response, they can make a complaint to the QHRC.

Assessing compatibility with human rights

Compatible with human rights is defined in s 8 of the Act. Section 8 says that an act or decision will be compatible with human rights if:

- it does not limit a human right, or
- it limits a human right only to the extent that is reasonable and demonstrably justifiable, in accordance with s 13 of the Act.

This means that every act, policy or decision by a government agency must be assessed for compatibility with these rights.

To carry out these responsibilities, when acting or making decisions, agencies should follow these steps.

Step 1: Identify relevant rights

Look through the list of the 23 rights protected under the Act and see what rights are relevant to your situation.

Step 2: Consider the impact

Will your decision limit or restrict any of the relevant rights you've identified?

No: if rights are not being limited, you are acting compatibly with human rights.

Yes: if human rights are being limited, or if you are unsure, you should move to step 3.

Step 3: Determine whether the limit is reasonable and justified

Ask yourself the following questions about the decision or action you are proposing:

- Is it lawful?
- What law or regulation allows you to limit a person's rights? If you can't identify a law or regulation then you may not be able to limit rights.
- Is there a purpose?
- What is the aim of the limitation? Does it achieve a legitimate purpose?
- Is it reasonable?
- Will what you are doing effectively achieve your purpose?
- Is it necessary?
- Is this the least restrictive way to achieve your purpose?
- Is it fair and balanced?
- Do the benefits outweigh the harm caused by the limitation?

If you answer no to any of these questions, your proposed action or decision is unlikely to be compatible with human rights.

If it is possible to modify your proposed action or decision, do so then reassess for compatibility.

If it is not possible to modify the proposed action or decision, you will need to document the nature and extent of the incompatibility and the process used to consider human rights.

This is a general guide only. You may wish to seek legal advice if you need more detailed guidance on a specific issue, or consult the Queensland Human Rights Commission website for more information: www.qhrc.qld.gov.au.

LEVEL 1:

Frontline complaints handling (early resolution)



Why?

Efficient and effective early resolution of complaints is important as the majority of complaints received can be addressed by frontline staff. Complaints should not unnecessarily be escalated.

When?

Early resolution of suitable complaints may be handled by:

- frontline staff such as reception, call centres, front service counters, operational or administrative areas
- frontline staff involved in or responsible for the decision/action which is the subject of complaint.

How?

Essential components of effective early complaint resolution include receiving, assisting, understanding, managing expectations, assessing, declining, referring, resolving and recording.

Agencies should provide frontline staff with procedures and guidance on early resolution.

While early resolution aims to quickly and satisfactorily resolve complaints at the frontline, not every complaint is suitable for this approach.

Generally, complaints involving serious/complex matters, significant injustice/consequences, or systemic issues are not suitable for frontline early resolution.

Receiving the complaint

An organisation's CMS should be easily accessible and provide flexible methods for making a complaint. Policy, procedures, websites and brochures should clearly outline where and how complaints may be made.

How an organisation responds to receiving a complaint is its first opportunity to demonstrate commitment to effective complaints resolution. Complaints should be received in a positive and responsive manner.

Assisting the complainant

Equitable access to early resolution includes providing reasonable assistance to support people to make a complaint, where needed.

Frontline staff should be clear on the assistance options available. People who may need assistance include those with literacy problems, from non-English speaking backgrounds, with disabilities, seniors or children and young people.

Assistance available should include:

- access to interpreting/translating services
- access to Australian National Relay Service
- a teletypewriter (TTY) service for people with hearing impairments and Auslan signing
- providing guidelines to assist people to make a complaint
- providing verbal information and explanations
- recording complaints in writing.

Types of assistance should be made easily available and outlined in the CMS policy or procedures.

Understanding the complaint

To ensure an early resolution, the complaint must be understood correctly. People may not be skilled in expressing their complaint. Misunderstood complaints may lead to wrong assessments or outcomes and complaints being unnecessarily escalated.

Frontline staff should consider the substance of the contact to confirm that a complaint is being made rather than an enquiry or service request.

Regardless of how a complaint is received, frontline staff should talk with the complainant to clarify:

- the details of the complaint
- why they are dissatisfied
- how they are affected
- any supporting relevant information
- the desired outcome to resolve the complaint.

For verbal anonymous complaints, frontline staff should obtain as much relevant information about the complaint as practicable as further contact may not be available. It is ideal that an anonymous complainant is provided with a reference number so that they can acquire an update.

Managing the complainant's expectations

Frontline staff should ensure that they effectively manage the complainant's understanding and expectation to achieve a successful early resolution.

Failure to properly address them may result in dissatisfaction with the complaints process, unrealistic expectations and complaint escalation.

Where practicable, frontline officers should clearly explain or clarify the organisation's role, its functions and the complaints process.

Acknowledging the complaint

Generally, complaints are received by telephone, email and in person. Frontline staff should ensure complainants are provided with prompt and informative acknowledgement.

Complaints should be acknowledged, preferably in the same way the complaint was received or the way requested by the complainant.

An acknowledgement should clearly indicate the complaint was received and include information about the complaints process, expected resolution time and the contact officer's details.

The organisation's procedures on early resolution should include guidance on acknowledging complaints, including expected timeframes.

Assessing the complaint

Early resolution is generally not suitable for complaints involving serious/complex matters, significant factual or legal issues, staff conduct and anonymous complaints.

If the complaint is not suitable for early resolution, it should be escalated for internal assessment.

Procedures on early resolution should outline assistance to frontline staff assessing complaints.

The assessment should consider:

Is the complaint within jurisdiction?

Does the subject matter of the complaint concern something the organisation is responsible for within the legislation administered or its functions? If not, the complaint should be declined.

Does the subject matter of complaint engage any human rights?

Organisations must consider human rights when assessing every complaint, not just those where a breach is alleged by the complainant.

The 23 human rights are set out in Part 2 of the Human Rights Act.

Is the complaint covered by CMS policy/procedures?

The CMS policy/procedures should clearly outline specific complaints excluded, the applicable legislation or organisation's policies/procedures and the officer/area responsible for handling such complaints.

Examples include:

- corrupt conduct complaints
- public interest disclosures (a disclosure about serious wrongdoing or danger that is of public interest)
- complaints where the customer has a specific legislative internal or external right of review or appeal.

If the complaint is excluded, it should be referred for further assessment and action.

Is the complaint suitable for early resolution?

The organisation's procedures should provide frontline staff with clear guidance on the authority to handle complaints, including available resolution options and the types of complaints suitable for early resolution.

Relevant factors in evaluating whether a complaint is suitable for early resolution include:

- the nature and seriousness of the complaint
- the number and complexity of the complaint issues/grounds
- the significance of the implications/consequences arising from the complaint for the complainant and organisation
- the outcomes requested and apparent systemic or public interest issues
- the possibility of serious breaches of human rights.

Declining the complaint

The organisation's procedures should outline the grounds on which complaints may be declined. Frontline staff should be clear on the scope of their authority to decline complaints. The customer should be advised of the decision and reasons.

Where practicable, the complainant should be advised of the correct organisation to handle their complaint. If the complainant provides consent, the complaint may be referred to the correct organisation.

If the complainant is dissatisfied with the organisation's decision to decline their complaint, they should be given assistance about escalating the complaint/requesting a review of the decision.

The decision, reasons and advice provided to the customer should be recorded. The complaint may be required to be registered in the CMS database or register.

Referring the complaint

Complaints not covered by the CMS policy/procedures or unsuitable for early resolution should be referred for internal assessment.

The customer should be advised of the decision and reasons for the referral.

To avoid unrealistic expectations, no indication about the merits of the complaint or what action may be taken to resolve it should be given to the customer.

The decision, reasons and advice provided to the customer should be recorded. The complaint should be registered in the CMS database or register.

Resolving the complaint

Customer satisfaction is an important objective of resolving complaints. However, it is not always achievable. For example, the complaint may not be justified or the requested outcomes are unreasonable. Effectively resolving complaints involves the complaint issues being properly considered with timely and reasonable outcomes being provided.

Remedies may include:

- admission of fault
- an apology
- change of decision
- correction of records
- explanation
- refund
- compensation
- repairing damage
- return of property.

In many complaints, providing an early, genuine apology for an error or less than satisfactory service is a powerful remedy to resolve a complaint. Under s 72D of the *Civil Liability Act 2003* an apology cannot be used in any civil proceeding as evidence of fault or liability against the organisation.

Complaints about staff conduct

Staff conduct complaints depending on their nature and seriousness may be handled by frontline staff. However, they should not be handled by the officer who is the subject of the complaint.

Complaints about service failure or delay

The focus on resolving a failure or delay complaint is about promptly accessing the relevant record or discussing with the relevant officer to find out the progress, reasons for any delay and the expected timeframe for completion.

Complaints about decisions

Complaints about correctness or reasonableness of decisions may arise because of misunderstandings or poor communication. Further explanation of the decision/action may resolve the complaint.

Frontline staff should discuss with the complainant the basis for the decision/action complained about including relevant information, law and policy considered.

If not resolved, the complainant's issues with the decision and requested outcomes should be specifically addressed. Frontline staff should specifically discuss any requested outcomes that cannot be accommodated because of legal or other reasons and discuss options that may be available to resolve the complaint.

Complaints involving human rights

Where complaints are assessed as involving human rights, consideration needs to be given to:

- whether the action or decision limits any human rights relevant to the complaint
- balancing the right and the limit
- whether any limit is reasonable and justified.

Refer to the process outlined on page 4/5 under 'Human rights in complaints management'.

Meaningful communication on outcome

Frontline staff should provide the complainant with a timely and meaningful response specifically addressing the complaint issues. The response should clearly advise the decision and reasons and any action to be taken. If the complainant is dissatisfied, they should be advised of the next stage of the complaints process.

Recording the complaint

Under the *Public Records Act 2002* full and accurate records of a government organisation's activities must be kept and maintained.

Information should be recorded in the relevant recordkeeping system and be easily accessible. Complaints may also be required to be registered in the CMS database or register.

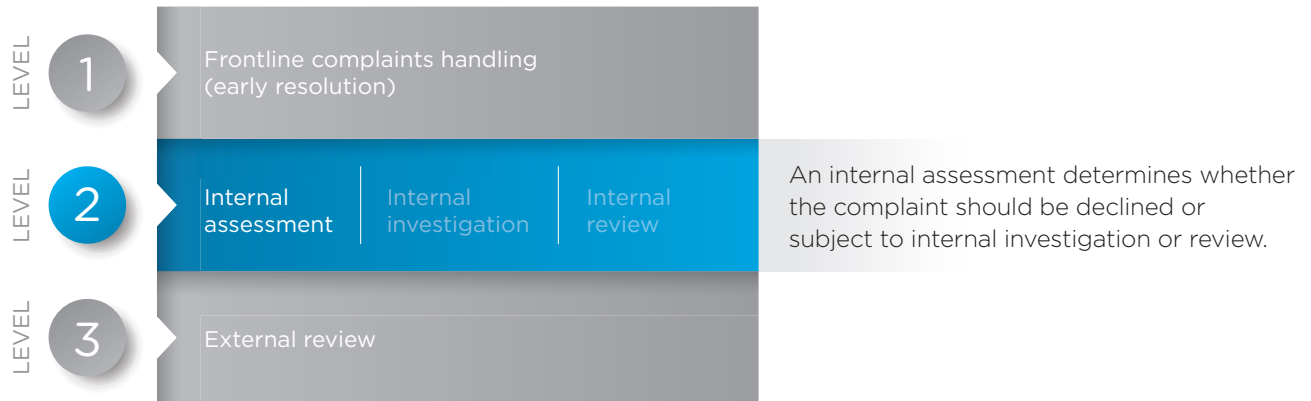
Early resolution complaint records may be referred to for many purposes, including managing complaint escalation, and reviewing and analysing data to inform service delivery improvements.

Staff should make complete and reliable records of complaints. This includes:

- the complainant's name and contact details
- the decision/action complained about
- issues raised
- outcomes sought
- key actions taken to manage the complaint
- the outcomes, reasons and advice provided to the complainant.

The organisation's procedures on early resolution should provide specific guidance on recording and registering complaints.

LEVEL 2: Internal assessment



Why?

An internal assessment is conducted to:

- assess information provided by the complainant
- identify unresolved complaint issues
- determine whether a complaint should be declined or if the complaint should be subject to an internal investigation or internal review.

When?

An internal assessment is conducted when:

- a complaint is considered unsuitable for early resolution at the frontline
- a complaint is unresolved at the frontline and the complainant continues to express dissatisfaction
- the organisation considers it necessary for the complaint to be further considered
- a complainant is dissatisfied with the handling or outcome of an internal investigation of the complaint.

How?

The internal assessment should be conducted by a senior officer with relevant knowledge and experience but having no prior involvement or conflict of interest in the matter.

The assessment officer role may be conducted by a complaints officer responsible for investigation or internal reviews.

The organisation's complaints management policy and procedures should specifically address how to conduct an internal assessment.

Acknowledging the complaint

A complaint referred for internal assessment should be acknowledged promptly, preferably in the same way the complaint was received or the way requested by the complainant.

The complainant should also be advised of the assessment process, expected timeframe and the assessment officer's contact details.

Identifying the complaint issues

Complaints may not be clearly expressed or provided with all the relevant information. Misunderstood complaints may lead to incorrect assessments and wasted time in investigations or reviews.

The complainant should be contacted to discuss and confirm the complaint issues, supporting information and requested outcomes. This approach also assists in building the complainant's confidence in the internal assessment and with managing the complainant's understanding and expectation.

An accurate record of this contact should be made. If necessary, put the confirmed complaint issues and outcomes in writing to the complainant and request their response before proceeding.

Assessing the complaint

Overall, the focus of an assessment is to decide whether there is any fair and reasonable purpose in taking the complaint further. If not, it should be declined. If yes, it should be referred for internal investigation or internal review.

An important aspect of the assessment is whether the alleged facts can be sustained and, if so, whether they can give rise to unfairness or maladministration.

Complaints should be assessed to determine how they should be managed.

Assessment considerations may include:

- whether the complaint issues are within the scope of the CMS policy and procedures
- nature and seriousness/significance of the issues
- complexity
- health and safety implications
- impact on the complainant, organisation or public
- potential escalation
- need for immediate action
- adequacy of information provided
- the complainant's interest in the matter
- outcomes requested
- the time since the matter arose
- the resources required to investigate or review the complaint
- whether maladministration is indicated
- whether human rights are engaged.

The same considerations should be used for assessing an anonymous complaint. Other important considerations include the quantity and quality of information provided and capability of a productive investigation.

Grounds for declining the complaint

A complaint should only be considered for further action if there is a fair and reasonable purpose to do so. Following an assessment, a complaint may be declined on one or more of the following grounds.

Complaint is trivial, frivolous or vexatious

- **A trivial complaint** – a matter of little importance or does not show that the complainant has suffered a significant injustice.
- **A frivolous complaint** – lacking in merit, minimal importance, not having any serious purpose or value.
- **A vexatious complaint** – made without reasonable ground/s or a wrongful purpose (e.g. to harass, annoy, cause delay or detriment).

Complainant does not have sufficient direct interest

- Greater than the concerns of a bystander who has no direct interest in the outcome.
- When a person's rights or interests would be affected if the administrative action stood or continued.

Internal investigation or internal review is unnecessary or unjustifiable

- There is no apparent maladministration or merit in the complaint.
- The complaint is a continuation of a previous complaint (or a pattern of previous complaints) involving the same or similar issues.
- The resources required to investigate or review the complaint would be disproportionate to the seriousness of the issues and likely outcomes.
- An investigation or review is likely to be ineffective because of a lack of relevant evidence and no practical possibility of it being obtainable.
- The expectations of the complainant are unlikely to be satisfied.
- No practical outcome can be achieved (e.g. the decision or action complained of cannot be reversed and has already been addressed).

Communicating the outcome

The outcome of an internal assessment is either that the complaint is:

- declined for action
- is (fully or partially) accepted for the next step of Level 2 – an investigation or internal review.

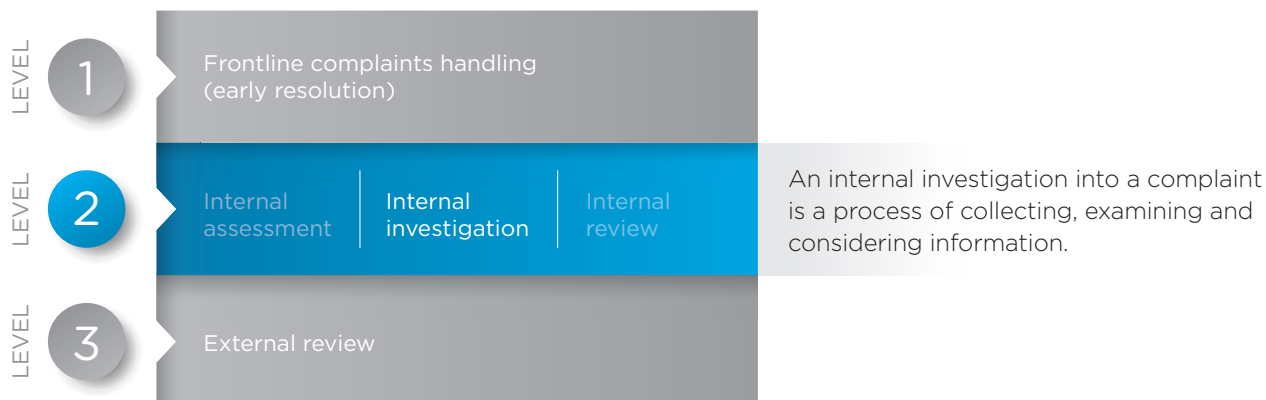
The assessment outcome and reasoning should be recorded. It should clearly identify and explain why the issues were declined or accepted.

If the complaint is declined, the complainant should be advised of the decision, reasons and internal or external review option.

Accepted complaints should be referred to an appropriate investigation or internal review officer, and the assessment outcome should be meaningfully communicated to the complainant.

The complainant should be advised of the issues accepted for investigation/review, process, estimated timeframes and the contact officer's details.

LEVEL 2: Internal investigation



Why?

To determine whether the complaint has merit.

When?

An internal investigation should be conducted when a complaint raises significant or complex issues for either the complainant or the organisation.

How?

An officer with the necessary knowledge and experience to conduct an efficient and effective investigation that is timely, objective, impartial and procedurally and substantively fair.

An internal investigation has essentially seven components:

1. planning
2. finding the facts
3. determining the outcome
4. preparing the investigation report
5. communicating the outcome
6. closing the complaint
7. monitoring the implementation of remedies.

The organisation's complaints management policy and procedures should address internal investigations.

Planning

Planning should be the first step in an investigation to ensure that:

- it is carried out methodically and professionally
- resources are used to best effect
- sources of relevant information are not overlooked.

The primary planning tool is an investigation plan.

The investigation plan should:

- identify all relevant activities and requirements in order to successfully complete the investigation
- include the issues accepted for investigation, facts to be established, relevant benchmarks (legislation, policy, standards), sources of relevant information (people, experts, documents, places, things), inquiries/tasks (order and timeframes) and possible outcomes
- consider conflicts of interest, authority, procedural fairness and collection and handling of personal information
- be revised during the course of an investigation as information is collected and analysed and new or unforeseen situations emerge.

The investigations officer should:

- not have a direct or perceived conflict of interest in the matter, as it is important for the officer to look at things factually instead of seeing things only from the organisation's position.
- have authority to obtain relevant information and make findings and recommendations to the decision-maker or alternatively authority to decide the complaint.

An investigation should be procedurally fair. For all agencies, other than health agencies, personal information collected is managed in accordance with the 11 Information Privacy Principles under the *Information Privacy Act 2009*.

The Human Rights Act requires that individuals should not have their privacy unlawfully or arbitrarily interfered with, and not have their reputation unlawfully attacked.

For health agencies, personal information collected is managed in accordance with the 9 National Privacy principles under the *Privacy Act 1988*.

Finding the facts

This involves collecting and analysing relevant information to make factual findings.

Collecting information

The first step of finding the facts is collecting relevant information.

Relevant information is the basis for sound factual findings. Information collection should be directed to the issues under investigation and any related material facts in the issue.

Sources of relevant information include verbal accounts (complainants, officers, witnesses and other relevant people), documents, site inspections (visual observations) and expert opinion (technical reports).

All reasonable and practical lines of inquiry should be pursued to collect the best information available (i.e. relevant, reliable and significant).

Verbal accounts

Generally, collecting verbal information from people is the most difficult to obtain.

Preparation is key to good interviewing. Draft questions should be prepared as well as follow up questions based on anticipated responses. Consider who will be interviewed and the order, how, when and where interviews will be conducted, how interviews will be recorded, what notice may be required, and the presence of third parties (e.g. support person) and special needs (e.g. interpreter).

Documents

Documents are an important source of information. 'Document' is a wide term and is not limited to paper or electronic records. Original documents should be obtained as soon as practicable.

A record of documents obtained and other relevant details should be maintained and safely secured.

Site inspections

A proper understanding of the complaint issues and context may require a site inspection to collect visual information.

An inspection may provide an investigation with particularly relevant and significant information.

Be well prepared. The purpose, objectives and tasks should be clearly identified. Prior reasonable notice of the inspection including timing, location and persons attending may need to be provided. Knowledge about the timing of the inspection should be limited to officers or other persons with a sufficient direct interest.

Good records of the site inspection, including detailed notes, interviews, photographs, voice or video recordings should be created, maintained and safely secured.

Expert opinion

An investigation may be assisted by expert opinion on technical issues. The type of expert depends on the nature of the issues under investigation.

An expert may be selected by using professional associations. Consider the expert's qualifications, training, experience and impartiality.

Any expert chosen should be qualified and independent of the parties involved in the complaint.

Analysing information

The second step in finding the facts is to analyse information to determine the facts.

All relevant information collected must be considered in making factual findings. Information is relevant if it could rationally affect, directly or indirectly, assessing the existence/non-existence of a fact.

Relevant information should be assessed for reliability and sufficiency.

Reliability

Not all relevant information has the same value or weighting of reliability (such as high, medium, low). Generally, hearsay information and non-expert opinion are unreliable, whereas documentary information may be important and reliable.

Conflicting accounts don't necessarily mean someone is lying. People may be mistaken, perceive or remember events differently.

Generally, documents are important and a reliable source of information. However, the reliability of a document can be affected where there was a significant delay in the making of the document.

In evaluating reliability, consider the following factors:

Verbal accounts:

- Did the person observe the event or act?
- Has the person made any inconsistent statements?
- Is the person's account inconsistent with other information?
- Is the person's account inherently improbable?
- Does the person have a personal interest?
- What is the person's manner and demeanour?
- What is the standing or reputation of the person?

Documents:

- Who created it?
- Has it been verified with the relevant authority or author?
- Is it the original or a copy?
- Has the document been altered or tampered with?
- When was it created?
- Has the information been superseded by another document?
- How did it come into your possession?
- Is it consistent with other information?

Expert opinion:

- Expert's field of specialised knowledge.
- Expert's qualifications, training, study and experience.
- Expert's research and inquiry.
- Reasonableness of inferences/conclusions.
- Factual basis for opinion.
- Opinion wholly or substantially based on specialised knowledge.
- Expert's impartiality and objectivity.

Sufficiency

Sufficiency is about whether there is enough relevant information to make a factual finding.

The quantity and also quality (reliability) of the information is critical in deciding what factual findings can be made.

A fact is established when the relevant information meets the required standard, the balance of probabilities. The seriousness and consequences of the issue may affect the strength of information required to establish a fact on the balance of probabilities.

Factual findings

Factual findings should be clearly identified, explained and recorded.

Determining the outcome

Evaluating the facts

Determining the complaint outcome is about whether the complaint has merit.

A complaint may be substantiated (whole or in part) or not substantiated.

This involves evaluating the factual findings against relevant benchmarks and considering relevant submissions.

Benchmarks include relevant legislation, whole-of-government and organisation policies/directives/guidelines, other recognised standards and relevant previous organisation decisions/practices, and the definition of maladministration.

Affected parties (e.g. customer and officers) should be given a reasonable opportunity to make a submission on critical issues or significant and relevant adverse information before the complaint outcome is decided. Any submissions received should be properly considered. If not, the investigation may be seen to be procedurally unfair and this may compromise the fairness of the complaint outcome.

Remedies

An organisation's complaints management policy and procedures should provide clear guidance to staff on remedies for resolving complaints.

When a complaint is considered to be substantiated (justified), the next step is to determine an appropriate remedy for the complainant.

The primary aim of providing remedies is to restore the complainant to the position they would have been in had the maladministration not occurred.

There may be a range of options available for remedying a complaint.

Consider the following:

- What is the complainant seeking?
- What remedies are provided for in legislation?
- If any human rights have been limited
 - Is there another reasonably available decision or action that will have less impact?
 - Is the limitation reasonable and justified?
- The organisation's complaints management policy or procedures.
- The degree of detriment to the complainant.
- If it is not possible to completely rectify the effects of the maladministration, try to mitigate the effects on the complainant.
- The remedy should be reasonable for the complainant and the organisation.
- The remedy should cover all elements of the complaint to prevent recurring complaints on the same issue.
- Provide a remedy to all people affected, not just those people who complained.

Remedies having a direct benefit to a complainant include:

- admission of fault
- an apology
- change of decision
- correction of records
- explanation
- refund
- compensation
- repairing damage
- return of property.

Systemic remedies include:

- recommendations to change law
- change to policy, procedures, practices
- change to delegations and internal controls
- change to recordkeeping, communication and staff training.

Preparing the investigation report

An investigation report should be prepared that details the entire investigation process.

The format, content and detail of the report will vary depending on the investigation, particularly the complexity and seriousness of the issues considered.

The report should be made available to the officers involved in the investigation process and the delegated decision-maker to consider the findings and decide the complaint.

It may also be provided to or accessible by the complainant or other affected parties.

The report should clearly include:

- the issues investigated
- procedures followed
- relevant information collected and considered
- factual findings
- relevant benchmarks considered
- the recommended complaint outcome and remedies
- the decision and reasoning.

If the complaint is escalated because the complainant is dissatisfied with the outcome or the investigation process, the report may be made available for internal review or external review purposes.

Communicating the outcome

The complainant should be advised of the outcome as soon as possible. Communication should be open and accountable, subject to legal requirements.

Complainants are more likely to accept negative decisions if they understand the basis for the decision. A clear reason specifically addressing the complaint issues is the key.

The complaint outcome should also be communicated to the officers involved in the complaint.

The complainant should be advised:

- what actions were taken in response to the complaint
- the outcome of the complaint
- the reasons for the outcome
- any remedies
- the availability of internal review.

Closing the complaint

The complaints management database or other complaints recording system should be updated to record the significant steps taken to address the complaint, outcome, date finalised and follow up actions required.

The investigation report and accompanying records should be securely stored and only accessible by authorised officers.

Monitoring the implementation of remedies

The remedies (direct benefit and systemic) that were implemented to resolve the complaint should be monitored and reported on. Where necessary, contact the complainant to confirm remedies have been implemented.

LEVEL 2: Internal review



Why?

An internal review is a systematic way of reviewing the complaints process and outcome to ensure that it complied with policy or procedural requirements and that the complaints outcome reached is the preferable decision.

When?

A complaint should be referred for internal review if the complainant is dissatisfied with frontline early resolution, internal assessment or internal investigation.

How?

An internal review should be conducted by an internal review officer, such as a senior officer, manager or other appropriate officer.

The credibility of an internal review rests on the internal review officer being objective, independent and impartial. They should be in a position equal to or higher than officers involved in the decision/action subject of the complaint and have no conflict of interest in the matter.

The organisation's complaints management policy and procedures should address internal review.

Acknowledging the complaint

A complaint referred for internal review should be acknowledged promptly, preferably in the same way the complaint was received or the way requested by the complainant.

The complainant should also be advised of the internal review process, expected timeframe and the internal review officer's contact details.

Assessing the complaint during the internal review

The starting point for the internal review is to identify with the complainant:

- the reasons they are dissatisfied with the earlier complaint process or outcome
- any relevant information supporting their complaint
- their requested outcomes from the internal review.

Unless there is a good basis for a complaint to be declined, an internal review should be conducted. An internal review may also be conducted where a complainant hasn't identified any specific grounds but the internal review officer considers an internal review is warranted.

Many complainants may not be skilled at expressing why they are dissatisfied. Therefore the internal review officer may need to provide assistance to the complainant.

Before a complaint is declined, the complainant should be contacted and given a fair hearing to respond to critical issues or adverse (relevant, significant and credible) information likely to turn the decision.

Conducting and deciding the internal review

The internal review may concern an early resolution, internal assessment or investigation complaints process or outcome. Primary documents considered in the internal review are the complainant's submissions and the organisation's records of the complaints process and outcome under review.

The internal review should obtain and carefully examine these records. It may consider new information provided by the complainant which may not have been available at the time of the previous complaints process and which could have a bearing on the internal review outcome.

It may also need to make inquiries for the purpose of gathering relevant information where they should have been made in the previous complaints process or take other action in order to remedy defects in the previous complaints process. In doing so, the internal review may need to consult relevant officers.

The internal review must be procedurally fair. The complainant or any other affected party should be advised of any new or critical issues or any adverse relevant, credible and significant information and given a reasonable opportunity to respond to it before any decision is reached. Any submission received should be genuinely considered.

Complaints process grounds

If the complaint has raised grounds about the complaints process, the internal review should consider its compliance with any relevant legislative requirements or recognised standards and the organisation's complaints management policy or procedures.

Grounds that may be raised about the complaints process include failure to:

- acknowledge the complaint
- contact the complainant for further information
- comply with timeframes
- gather relevant information
- afford procedural fairness
- consider relevant matters
- exclude irrelevant matters
- provide the complainant with the complaint outcome and reasons or information about the right of internal review.

If one or more complaint process ground is substantiated, the internal review should consider their individual or collective impact on the complaint outcome.

Some grounds may not affect the soundness of the outcome (e.g. failing to acknowledge a complaint or failing to strictly comply with a timeframe).

Other grounds such as failing to gather or consider relevant significant information and failing to afford procedural fairness are substantial procedural deficiencies in process and could have a material bearing on the complaint outcome.

Complaint outcome grounds

If the complaint has raised grounds about the complaint outcome, the internal review should consider the merits of the outcome.

A merits review is reviewing the complaint outcome and deciding what is the correct or preferable outcome.

The internal review can consider any relevant information, including new information provided by the complainant that will help come to the correct or preferable decision.

Grounds that may be raised about the complaints outcome include:

- no information to justify the outcome
- unreasonable factual findings
- incorrect interpretation or application of benchmarks
- inflexible application of policy or practice
- failure to have regard to the particular circumstances of the case.

The internal review may:

- in light of new or further relevant information make different findings of fact even if the earlier findings were correct on the basis of the information available at that time
- identify factual or legal errors in the complaint outcome and may decide a different preferable outcome is warranted.

Even if the internal review doesn't identify any errors of fact or law in reaching the complaint outcome, it may differently exercise any discretion including applying or departing from organisation policy or practice in order to come to the preferable outcome.

Internal review outcome and remedies

As a result of internal review, a complaint may be substantiated (whole or in part) or not substantiated.

Where a complaint is substantiated, the internal review should consider an appropriate remedy for the complainant. The remedy should comprehensively resolve the complaint.

There may be a range of options available for remedying a particular complaint. The internal review may overturn the previous complaint outcome and make a new decision.

Whether or not a complaint is considered justified, the internal review should consider and address the underlying causes or contributing factors to the complaint.

Reporting on the internal review

An internal review report should be prepared. It is the organisation's record of the internal review and should reflect the entire internal review process to arrive at the conclusion.

The report should include the complaint grounds, procedures followed, relevant information collected and considered, benchmarks considered, findings, outcome, remedies and reasoning.

It may be available internally to senior management and relevant areas for consideration and implementation of remedies. The report may also be made available for external review purposes.

Communicating the outcome

The complainant should be advised of the internal review outcome as soon as possible after the decision is made. This communication should be as open and accountable as possible subject to legal requirements.

The complainant should be advised what actions were taken in response to the complaint, the outcome, the reasons for the outcome, any remedies, and the availability of external review options.

The internal review outcome and remedies should also be communicated to relevant organisation management and officers.

Closing the complaint

The complaints management database or other complaints recording system should be updated to record the significant steps taken in the internal review, complaint outcome, date finalised and follow up actions required.

The internal review report and accompanying records should be securely stored and only accessible to authorised officers.

Monitoring the implementation of remedies

The remedies (direct benefit and systemic) that were implemented to resolve the complaint should be monitored and reported on. Where necessary, contact the complainant to confirm remedies have been implemented.

LEVEL 3: External review



Why?

To ensure that an organisation's decision-making is fair and reasonable. The organisation that is the subject of the external review can also benefit, as opportunities to improve administrative practices may be identified.

When?

A complainant dissatisfied with the management or outcome of their complaint at Level 2 should have the option to seek an external review by an appropriate external body such as the Office of the Queensland Ombudsman.

How?

The external review may produce a report or recommendations to the head of the organisation if it considers that the administrative action was taken contrary to law, unreasonable, unjust, oppressive, or improperly discriminatory.

External review organisations

The Queensland Ombudsman

The Queensland Ombudsman is an external review organisation that investigates complaints about the administrative actions and decisions of state government departments and agencies (including state schools and TAFE), local councils and publicly funded universities.

The complaints assessment and investigation service is free and independent.

The Office has three main roles:

- to give people a timely, effective and independent way to have administrative actions of agencies investigated
- to improve the quality of decision-making and administrative practice in government agencies
- oversight of the *Public Interest Disclosure Act 2010*.

Some examples of what the Queensland Ombudsman can investigate include complaints about a decision to refuse a service or subsidy, the way an application has been handled, an exclusion decision from a program or service, fees or charges levied, the conduct of an officer, a policy or procedure.

Making a complaint may result in a change of decision, improvements to services, rectification of problems, review of and changes to laws and changes to policy, procedures and practices.

In general, the Queensland Ombudsman will not investigate a matter until the complainant has tried to resolve the problem directly with the organisation concerned and has exhausted any other right of review.

For more information, visit:

www.ombudsman.qld.gov.au

Other complaints handling organisations

If the Queensland Ombudsman cannot investigate a complaint, there are other organisations that may be able to assist.

For more information, visit:

www.ombudsman.qld.gov.au/how-to-complain/what-we-can-help-with/other-complaint-handling-organisations

Key points:

- The aim is to resolve the majority of complaints at **Level 1**.
- A complainant dissatisfied with the outcome or how their complaint was managed at **Level 1** should have the option of escalating their complaint to **Level 2**.
- A complainant dissatisfied with the management or outcome of their complaint at **Level 2** should have the option to seek a review by an appropriate external body such as the Office of the Queensland Ombudsman at **Level 3**.
- At each level, either the complainant or organisation can decide to escalate the complaint to a higher level.
- In deciding what is the appropriate level, the complaint's seriousness, and the nature of previous contact with the complainant and other relevant factors should be considered.

Public

This document is released to the public space. It is approved for public distribution and readership.

We respectfully acknowledge the Traditional Owners of the lands throughout Queensland and pay respect to them, their culture and their Elders past, present and future.

© Queensland Ombudsman, 2020
4th Edition 2020

Apart from any fair dealing for purposes related to the functions of the Ombudsman or the purpose of private study, research, criticism or review, as permitted under the Copyright Act, no part of this document may be reproduced by any process without permission.

Enquiries should be made to the publishers, Queensland Ombudsman.

ISBN: 978-0-9874073-6-8

Queensland Ombudsman
Level 18, 53 Albert Street
Brisbane QLD 4000
GPO Box 3314
Brisbane QLD 4001

Phone: (07) 3005 7000
Email: ombudsman@ombudsman.qld.gov.au
Web: www.ombudsman.qld.gov.au



**QUEENSLAND
OMBUDSMAN**

Standing for fairness