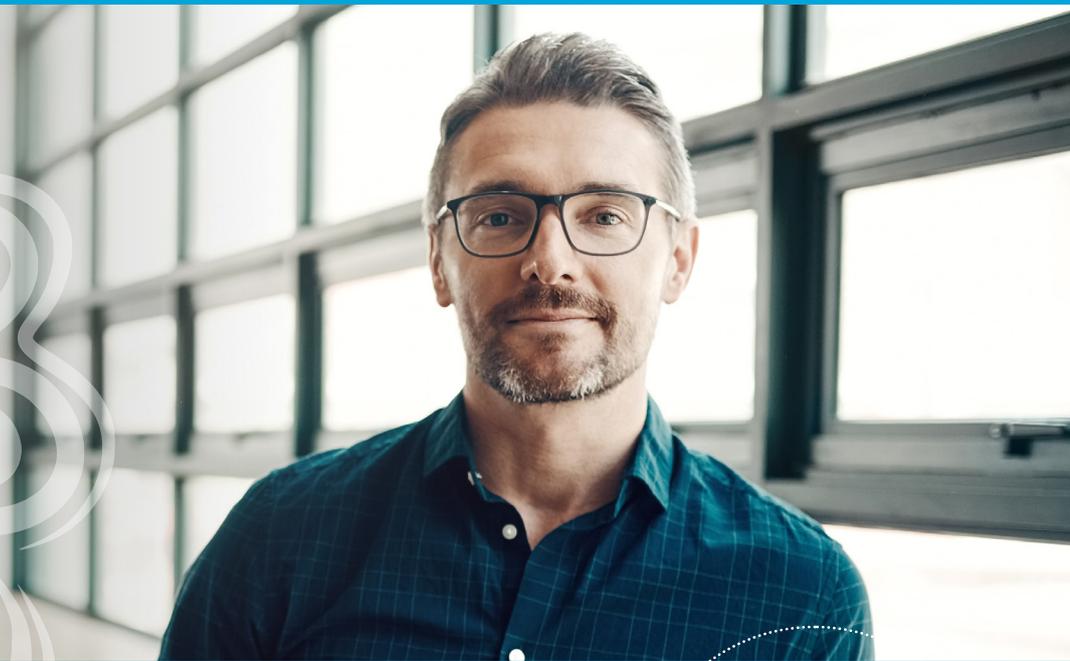




QUEENSLAND
OMBUDSMAN



Including
reference to the
Queensland Public Service
Customer Complaint
Management Framework
and Guideline

Complaints management

RESOURCE

Contents

Complaints management	1
Benefits of complaints management	1
What is a complaint?	1
Direct Interest	2
How to recognise a complaint?	2
How should complaints be managed?	3
What is a complaints management system?	3
CMS core components	3
The CMS model	3
CMS framework	4
Queensland Public Service Customer Complaint Management Framework and Guideline	4
The Australian Standard	4
CMS statutory requirements	4
Human rights in complaints management	5
<hr/>	
LEVEL 1: Frontline complaints handling (early resolution)	7
<hr/>	
LEVEL 2: Internal assessment	14
<hr/>	
LEVEL 2: Internal investigation	17
<hr/>	
LEVEL 2: Internal review	23
<hr/>	
LEVEL 3: External review	28

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

Our role

Our role is established under these three acts:

- *Ombudsman Act 2001*
 - Under the Ombudsman Act, the Office of the Queensland Ombudsman investigates complaints about the actions and decisions of state government departments and agencies (including state schools and TAFE), local governments and public universities. Our complaints assessment and investigation service is free and independent.
 - We give people a timely, effective and independent way to have administrative actions of agencies investigated.
 - We improve the quality of decision-making and administrative practice in government agencies.
- *Public Interest Disclosure Act 2010*
 - We review the management of public interest disclosures, provide education and advice to agencies as the oversight agency.
- *Inspector of Detention Services Act 2022*
 - We promote the humane treatment of detainees and the prevention of harm through reviews, inspections and independent reporting.

Terminology

In this resource, we use the word 'agency' to describe all of the Queensland state government departments, local councils, public universities and government authorities that we can investigate.

The *Public Sector Act 2022* refers to public sector entities and public service entities, and to public service employees and public sector employees.

The Australian Standard refers to organisations.

The *Public Records Act 2002* refers to public authorities.

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

Benefits include:

- increased customer satisfaction
- improved agency 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 agency 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, the 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 agency'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?

A complaint is an expression of dissatisfaction with an agency's:

- actions taken, decision made or service provided
- failure to take action or delay in providing a service, taking action or making a decision

For which a resolution is sought, reasonably expected or legally required.

This broad definition is also consistent with the Australian Standard AS 10002:2022 – *Guidelines for complaint management in organizations* (the Australian Standard).

Legislative definitions

Section 264(4) of the *Public Sector Act 2022* (PSA) defines a customer complaint as 'a complaint about the service or action of a public sector entity, or its staff, by a person who is apparently directly affected by the service or action'.

Examples:

1. a decision made, or a failure to make a decision, by a public sector employee of the public sector entity
2. an act, or failure to act, of the public sector entity
3. the formulation of a proposal or intention by the public sector entity
4. the making of a recommendation by the public sector entity
5. the customer service provided by a public sector employee of the public sector entity.

Section 268 of the *Local Government Act 2009* (LGA) 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.

Direct Interest

Most complaint management system (CMS) documents will mention the concept of an 'affected person' or a 'person who is apparently directly affected' to reflect the legislation and outline what it means.

Agencies may decline to deal with a matter on the basis that a person is not directly affected by the issues they have raised. CMS documents will usually make this clear.

Failure to properly assess this aspect may result in a matter improperly being dealt with through the complaints process – opening up a circumstance where the person may have a direct interest.

Who is considered to be 'apparently directly affected'?

Apparently:

- as far as one knows or can see
- according to what seems to be true or what is likely, based on what you know

Directly affected:

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

Direct interest in administrative action includes persons whose rights or interests are, or could be, impacted in some way.

Internal policy and procedure definitions

An agency's CMS documents 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 agency'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 agency
- used the word 'complaint' or similar
- indicated or informed that the agency's action is wrong or unfair
- is affected by the agency'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
- if the complaint appears to have merit
- 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 agency'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 complaint outcomes to improve systems, decision-making and service delivery.

A best-practice CMS has five distinct functions:

6. Receiving
7. Recording
8. Processing
9. Responding
10. Reporting.

CMS core components

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

- CMS documents
- complaints database or recording system
- other resources.

Each government agency is required by law to establish and implement a CMS that meets legislative requirements.

Complaints management documents

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

The documents 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 effective and accessible information and communication technology (e.g. public 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 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.

Queensland Public Service Customer Complaint Management Framework and Guideline

The Queensland Public Service (QPS) Customer Complaint Management Framework is supported by the QPS Customer Complaint Management Guideline (the Guideline). The Guideline provides more detailed information regarding customer complaints management and outlines agency responsibilities relating to record keeping, timeframes, training and managing unreasonable conduct.

The Framework and Guideline align with section 264 of the PSA.

Defined agencies, should ensure their CMS is aligned with the Framework and Guideline.

The Framework and Guideline do not apply to complaints made and/or managed pursuant to other legislation and/or relevant complaint management processes, such as:

- human rights complaints
- privacy complaints
- corrupt conduct
- public interest disclosures
- employee grievances and complaints that are contractual in nature.

The Australian Standard

The Australian Standard provides detailed guidance on managing customer complaints and should be reviewed for alignment.

CMS statutory requirements

Departments and public sector entities

Section 264 of the PSA requires each public sector entity to establish and implement a system for managing customer complaints that complies with the Australian Standard.

Local governments (councils)

Section 268 of the LGA requires each council to adopt a process for resolving administrative action complaints that complies with the requirements set out in section 306 of the LGR. 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

Section 8 of the PSA provides that councils and public universities are not defined as public sector entities.

Human rights in complaints management

The introduction of the *Human Rights Act 2019* (HRA) 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 CMS documents.

The HRA 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 section 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

Section 8 of the HRA defines 'compatible with human rights' as an act or decision that:

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

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 stated rights protected under the Act and see what rights are relevant to your situation.

It is important to note that the rights are drawn from international covenants and some of the human rights contain a number of elements setting out several rights.

Step 2: Consider the impact

Will your decision limit or restrict any of the relevant rights you have 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 cannot 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.

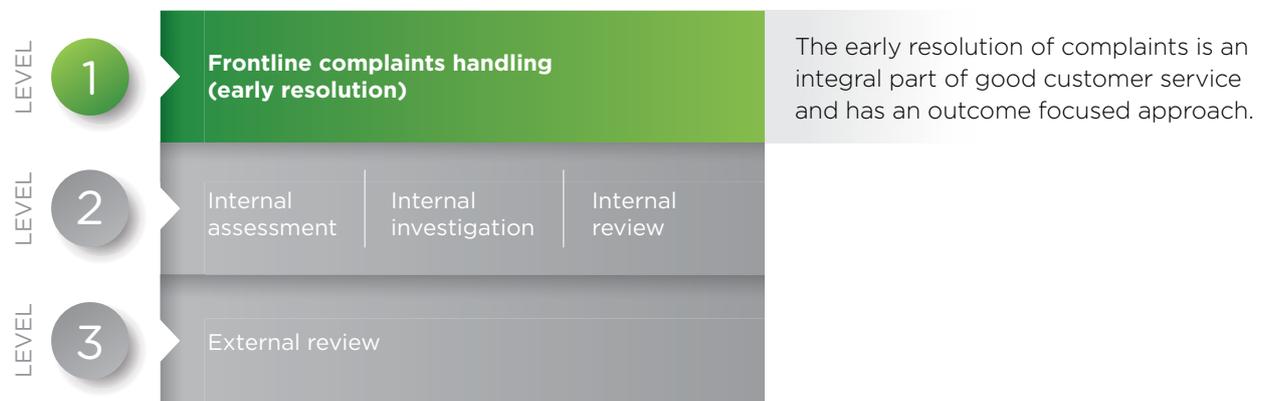
If it is possible to modify your proposed action or decision, do so then reassess for compatibility.

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.

Public sector entities should provide their final response to complainants within 30 business days after the original complaint was received.

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

How an agency 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.

Complaints may be made in variety of ways, including;

- in person or over the phone
- in writing via email, text, letter or online complaint forms
- posting comments on an agency's social media channel
- via digital applications

Social media

According to the Australian Standards, agencies that allow for comments or posts on their respective social media websites, should monitor and act on complaints received in this manner. However, agencies are not obligated to monitor third party websites for complaints about them.

It would be good practice for agencies to respond and redirect a complainant to their CMS, if they become aware of the comment through tagging.

Vulnerability

Vulnerable people are those who are especially susceptible to detriment due to their circumstances. This includes disability, age, literacy levels, gender, trauma and stress.

There should be a helping bias in favour of vulnerable people, who are more likely to use representatives to help them.

CMS documents should consider vulnerability at all stages of a complaint to ensure adequate support is provided for vulnerable persons.

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 agency's CMS documents.

Representatives

An agency should accept representative complaints from an authorised representative.

It is important for complaint handlers to establish the representative is authorised to act on behalf of the complainant, before proceeding, in order to avoid potential privacy breaches.

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 ask questions to identify if dissatisfaction is implied and Frontline staff should consider the substance of the contact. This will confirm that a complaint is being made rather than an enquiry or service request.

Example: John has an intellectual disability. In March, he starts ringing regularly asking for a printout of the services he received from your agency. At the third request, a service officer looks at John's record and sees this type of contact was unusual before March. She asks John why he needs the printout. John says the lady who provides his in-home services has stopped coming. The service officer identifies an implied complaint about in-home services.

Source: Better-Practice-Complaint-Handling-Guide-February-2023.pdf (ombudsman.gov.au)

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.

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 agency'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 promptly acknowledged, preferably in the same way the complaint was received or the way requested by the complainant.

According to the Guideline, and the Australian Standard, acknowledgement of a complaint should occur within three business days, if possible.

An acknowledgement should clearly indicate:

- the receipt of the complaint including relevant agency reference numbers
- information about the complaints process (such as a copy of the agency's complaint management policy)
- proposed response timeframe
- the contact officer's details.

The agency's CMS documents should include guidance on acknowledging complaints, including the 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 agency 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?

Agencies 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 HRA.

Is the complaint covered by the CMS?

The CMS policy/procedures should clearly outline specific complaints excluded, the applicable legislation or agency'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 agency's CMS documents 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 agency
- the outcomes requested and apparent systemic or public interest issues
- the possibility of serious breaches of human rights.

Declining the complaint

An agency's CMS documents 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 agency to handle their complaint. If the complainant provides consent, the complaint may be referred to the correct agency.

If the complainant is dissatisfied with the agency'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, or unsuitable for early resolution, should be referred for internal assessment.

The complainant 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 complainant.

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

Complaints that may be outside the scope of the CMS and will be managed through different pathways.

Typically, agencies will have separate policies and procedures relating to these topics:

- employee complaints about their employment
- corrupt conduct
- public interest disclosures
- complaints regarding privacy and release of personal information
- human rights.

Resolving the complaint

Early resolution of complaints is strongly encouraged by the Australian Standard and the Guideline.

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
- providing a better explanation
- providing a refund or 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 agency.

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 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.

The outcome advice response should clearly advise the complainant of:

- what actions were taken by the department in response to the complaint
- the outcome(s) of the complaint
- the reasons for decisions made
- any remedy or resolutions that have been offered
- information about other remedies that may be available to the complainant, such as seeking an internal or external review and the applicable timeframes.

Good communication is important for ensuring procedural fairness and provides way of improving complainant satisfaction and unnecessary escalation.

Your agency's policies, should provide guidance on how to communicate outcomes. It is important to ensure the circumstances of the complainant are also considered, including any identified communication needs.

Recording the complaint

The *Public Records Act 2002* (PRA) governs recordkeeping in Queensland.

As defined under the PRA public authorities must make and keep full and accurate records of their activities, manage their public records responsibly and dispose of public records only if authorised. Public authorities are further defined in the PRA and include:

- departments
- Ministers and Assistant Ministers
- the Governor
- organisations created by a minister or through legislation
- Commissions of Inquiry
- Government Owned Corporations
- officers of the court
- local governments.

For local governments, the LGA makes the requirement to record all administrative action complaints.

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

Response timeframes

Relevant timeframes and service standards should be included in the agency's CMS documents, which should be and published on the agency's website.

For agencies defined as a public sector entity under the PSA, a final response should be provided to a complainant within 30 business days, after the complaint was originally received by the agency.

Where an agency determines that a timeframe for a response is not likely to be met, the agency should proactively advise the complainant of this, at the earliest opportunity, and advise the new expected timeframe and provide the agency contact details.

Queensland Public Service Customer Complaint Management Framework and Guideline timeframes - Level 1



Complainants should be acknowledged within **3 business days**, and provided information about how long it is expected to take, and the next steps.

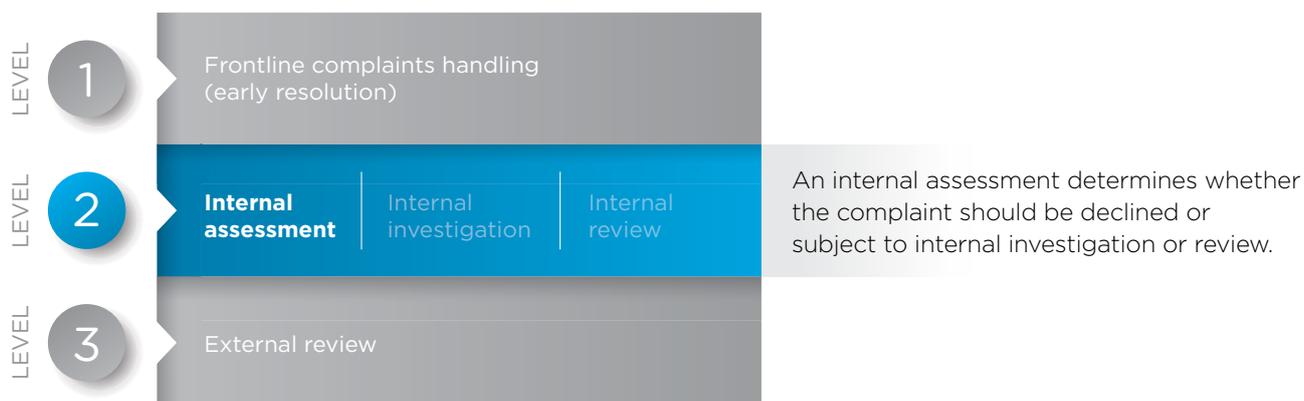


Agencies have **30 business days** to handle the Level 1 complaint and advise an outcome.



Complainants should be advised that they have **20 business days** to request an internal review of a Level 1 decision.

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

For public sector entities, responses should be provided to the complainant within **20 business days** from receipt of the request for an internal review.

Acknowledging the complaint

A complaint referred for internal assessment should be acknowledged within three business days, 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, agency 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 for 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

For public sector entities, responses should be provided to the complainant within 20 business days from the receipt of the request for an internal review.

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 options and the applicable timeframes for lodgment.

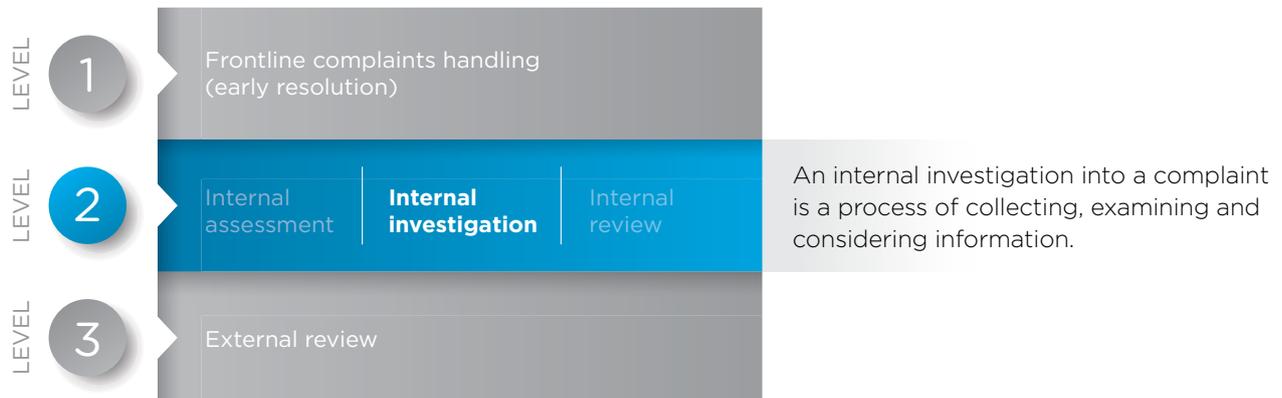
As recommended by the Guideline, agencies should communicate the following minimum internal review requirements clearly to complainants, including:

- the timeframe for lodgment of a complainant's internal review request with the agency
- how the complainant's submission should be made (taking into account the complainant's known support needs)
- that the complainant needs to outline why they are asking for an internal review
- what the complainant's responsibilities are as part of an internal review
- what outcomes are being sought by the complainant
- what supports are available to assist complainants to apply for an internal review.

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 agency.

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 agency's CMS should address internal investigations.

For public sector entities, responses must be provided to the complainant within **20 business days** from the receipt of the request for an internal review.

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 agency'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 HRA 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 agency policies/directives/guidelines, other recognised standards and relevant previous agency 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 agency'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 agency'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 agency.
- 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

For public sector entities, responses must be provided to the complainant within 20 business days from the receipt of the request for an internal review.

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 and must explain the minimum internal review requirements, including:
 - the applicable timeframe to lodge an internal review request
 - how the submission should be made (taking into account the complainant's known support needs)
 - the reasons why they are requesting an internal review (why they are dissatisfied)
 - what the complainant's responsibilities are as part of an internal review
 - what outcomes are being sought by the complainant
 - what supports are available to assist complainants to apply for an internal review.

Closing the complaint

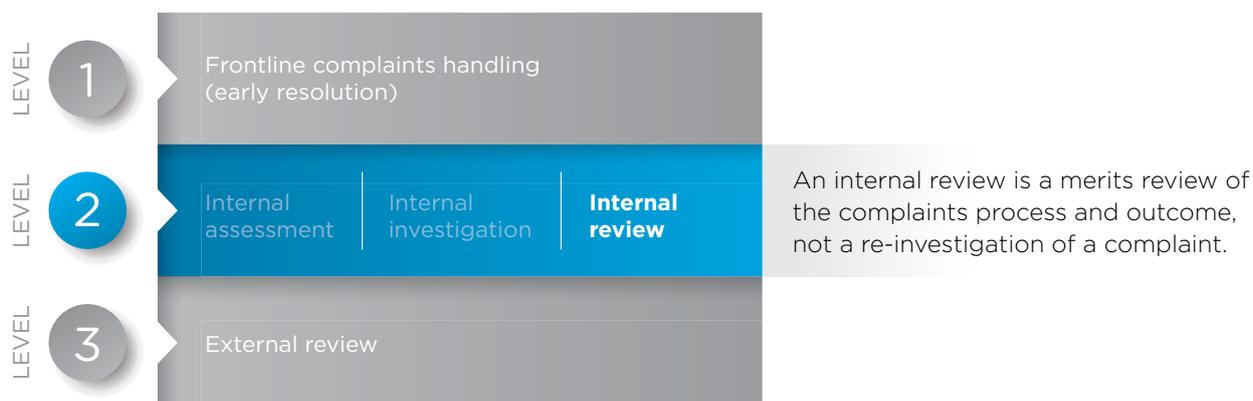
The complaints management database or other complaints recording system should be updated to record the significant steps taken to address the complaint, outcome, date finalised and follow up actions required.

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 merits review.

It 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 within 20 business days (for public sector entities) from the receipt of the complaint outcome response, 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.

Internal review responses must be provided within **20 business days** (for public sector entities) from the receipt of the request for an internal review.

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

Internal review requests

For defined public sector entities (under the PSA), internal review requests should be received within 20 business days from the receipt of the original complaint outcome response..

Requests received outside the timeframe should still be considered, when there are reasonable grounds to do so.

If delays are expected, agencies should proactively advise complainants of the progress and establish a new timeframe.

Acknowledging the complaint

A complaint referred for internal review should be acknowledged within three business days, 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

An internal review is a merits review. This involves determining, based on the information and facts available at the time, if the original decision made was the correct one.

This includes whether the actions and decisions made by the agency were lawful, reasonable, fair and not improperly discriminatory.

It is not a re-investigation of a complaint, but an impartial review of a decision made about a complaint undertaken by an appropriate officer (i.e. either at the same level as the first decision-maker or more senior), independent from the original process.

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 agency'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 agency'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 agency 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 agency'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.

Response timeframes

Agencies defined in the PSA as a public sector entity, must provide their internal review response within 20 business days from the receipt of a request for an internal review..

If the timeframe is not likely to be met agencies should provide progress advice and an amended timeframe for the response.

For non-public sector entities, internal review responses should be communicated as soon as possible, after the decision is made in line with the CMS documents.

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 of the complaint
- the reasons for the outcome
- any remedies
- the availability of external review options.

The internal review outcome and remedies should also be communicated to relevant agency 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 agency's decision-making is fair and reasonable. The agency 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 agency 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 agency 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 agency 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 acknowledge the Traditional Owners of the land throughout Queensland and their continuing connection to land, culture and community. We pay our respects to Elders past and present.

© Queensland Ombudsman, 2023
7th Edition 2023

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: 978-0-6457780-6-9

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**

