

Effective Complaints Management

9: Assessment and Investigation

INFORMATION FOR NORTHERN TERRITORY PUBLIC SECTOR AGENCIES:

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This Fact Sheet forms part of a series designed to assist public sector agencies to ensure they have appropriate procedures in place to effectively manage customer complaints.

The Fact Sheet series has been kindly made available by the Queensland Ombudsman. It has been adapted for use in the Northern Territory.

For further information or advice, please contact the Northern Territory Ombudsman's Office on 08 8999 1818.

Assessing a complaint

Each complaint and allegation must be assessed to determine its nature, how it should be dealt with, who should be involved and whether further information or investigation is required. There should be no secrecy as to the process to be followed.

Complaints should be referred on to an appropriate person where the matter is outside your area of expertise or delegation, if the complainant requests it or if you may have a conflict of interest.

The privacy of complainants and staff named is a key consideration and information contained in a complaint should be disclosed only on a need-to-know basis. If you have to discuss the complaint with identified staff or search relevant agency files, make sure discussions remain confidential.

If a complainant alleges serious misconduct or work-related criminal conduct by a staff member, seek advice from NT Police before disclosing details of the complaint to the staff member.

The complaint file should be separate to the usual business material you may hold about the complainant.

In deciding how a matter should be dealt with, consider:

- The plausibility of the information, the reliability of its source and the apparent motivation of the complainant
- the time that has elapsed since the incident occurred
- its seriousness and significance for your agency and for the complainant
- if there has been an abuse of power
- whether it involves the broad public interest
- if a significant injustice has occurred
- what remedies would be available
- if the investigative resources required would be disproportionate to the complaint's significance and likely outcome
- if investigation could lead to improvements in your agency's processes
- if the complaint is about staff.

The next step

Your assessment may determine that further investigation is necessary to reach an appropriate outcome. In many cases, investigation will simply involve speaking to one or two people or inspecting some records. In more complex cases, investigating officers should:

- ensure they act within their power and understand their role and terms of reference
- establish a list of people to be interviewed and any files or locations to be inspected
- conduct interviews and inspect sites and documents
- gather and record information
- provide relevant information to those involved in the investigation
- give people an opportunity to comment on information adverse to them before deciding whether to act on it (natural justice)
- observe any legal requirements involved in making decisions
- research and apply any relevant law
- evaluate the evidence and make findings
- identify factors that contributed to the complaint arising
- formulate recommendations (see Fact sheet 10, *Remedies*)
- prepare a report clearly summarising the matter and results of the investigation, setting out findings and recommendations.

Decisions should be made according to the weight of evidence on the balance of probabilities.

Throughout the process, the investigating officer must be reasonable, fair and objective, and act in good faith; that is, not take advantage of the fact that complainants may not argue certain matters to their advantage.

The Western Australian Ombudsman has developed guidelines to assist public sector agencies in the conduct of administrative investigations.

For further information visit:

www.ombudsman.wa.gov.au/pdf/PCAI_investigation_guidelines-print.pdf

What if the complaint is about you?

Dealing with a complaint that concerns your own conduct requires special care. Much depends upon the nature of the complaint and what the complainant is seeking. Some issues can be resolved on the spot by way of an apology or agreement to reconsider a decision or action.

However, if there is a possibility the dispute may escalate, you should suggest to the complainant that the matter be referred to someone else or a third party appointed to mediate.

Referring matters to an external agency

Your assessment may also identify that the complaint should be referred to an external agency for review. External agencies are better placed to investigate allegations about possible criminal activity or serious misconduct. Professional registration boards deal with other matters.

Your agency may be asked by the external body to investigate the matter and report your findings to it before it decides its level of involvement. In other circumstances, the external body may decide to fully investigate the matter immediately.

It is a good idea to ensure you have a comprehensive framework to support staff to meet their ethical duty to report suspected inappropriate behaviour, maladministration or misconduct. Your framework should establish processes to manage:

Breach of discipline

All complaints alleging breaches of discipline by a public officer should be referred to the Chief Executive Officer. Acting in a manner inconsistent with the principles set out in the NT Public Sector Principles and Code of Conduct is a breach of discipline and amounts to misconduct.

Maladministration

Includes decisions or actions that are unlawful, unfair, unreasonable, improperly discriminatory, based on a mistake of fact or law, taken on irrelevant grounds, or simply wrong (see s.26 of the *Ombudsman (Northern Territory) Act 1978* for full details).

Before investigating such complaints, the Ombudsman usually asks people to first attempt to resolve their problem with the agency in question and to explore other review rights that may be available. On occasion there may be good reason to waive the opportunity.

Useful tip

Check the complainant's wishes concerning the management of the complaint.

Freedom of Information

Under the *Information Act 2002*, people have a right to access agency documents, including files, maps and plans. Some documents are exempt under the Act, such as those relating to the personal or business affairs of others. Applicants dissatisfied with the outcome of their FOI request can apply to the Information Commissioner for a review of the decision. The Information Commissioner's decisions are binding on the parties.

Police

Serious breaches of your Code of Conduct, policies and procedures and other behaviour may constitute a criminal offence that should be dealt with by the NT Police.

Other complaints handling agencies

Other agencies also investigate complaints in their specialised areas of jurisdiction (see Fact Sheet 13, *External Review*).

Follow-up

Following assessment or investigation and at other points during the complaints management process, you will need to communicate to the complainant:

- why no action, or action that does not meet his or her expectation, is being taken
- what action is proposed, such as internal investigation, referral to an external agency, or action to remedy the complaint
- anticipated timeframe for any further action and what the complainant can expect during this process.

Give a realistic timeframe rather than a promise that disappoints and keep relevant staff informed about proposed actions subject to confidentiality requirements.

Communicating the findings to complainants

There is an art to communicating the findings of an investigation to complainants. Especially when the findings do not match the complainant's desired outcomes, it is important to avoid unduly antagonising complainants by the terminology used.

Refer to the attachment to this Fact Sheet, *Communicating the Decision*, which gives some tips on what to say and what not to say when writing to complainants at the completion of your investigation.