

<b>Policy</b>	Complaints Management Policy and Procedure (external complaints)	
<b>Approved by:</b>	Public Guardian	
<b>Date Effective</b>	1 January 2020	
<b>Application</b>	All Office of the Public Guardian staff	
<b>Related</b>	<i>Human Rights Act 2019</i> Decision-Making Framework for the performance of the Public Guardian’s functions and powers OPG Policy for dealing with a complaint involving the Public Guardian OPG’s Structured Decision Making Framework Code of Conduct for Queensland Public Service DJAG Public Interest Disclosure Policy	
<b>Supersedes</b>	Complaints Management Policy (22 July 2015) Complaints Management Procedure (22 July 2015)	

## A. Relevant Legislation

- A1. *Human Rights Act 2019*
- A2. *Guardianship and Administration Act 2000*
- A3. *Public Interest Disclosure Act 2010*
- A4. *Crime and Corruption Act 2001*
- A5. *Public Service Act 2008*
- A6. *Public Sector Ethics Act 1994*
- A7. *Public Guardian Act 2014*
- A8. *Right to information Act 2009*
- A9. *Information Privacy Act 2009*
- A10. *Powers of Attorney Act 1998*

## B. Purpose

- B1. The purpose of this policy is to assist the Office of the Public Guardian (OPG) staff to consider, understand and respond to complaints raised by clients and people about the OPG and its staff.
- B2. The OPG operates under a process of continuous improvement, and values all forms of feedback, both positive and negative. Feedback has the power to drive improvement and is welcomed. Sometimes, this feedback may be an expression of dissatisfaction about a service, procedure, practice or policy (as defined below).
- B3. This policy sets out the principles that underpin how OPG considers and actions complaints, and the processes that are in place to properly respond to them.

## C. Definitions

- C1. A **complaint** is an expression of dissatisfaction by an external person about:
  - i. Staff conduct;
  - ii. A decision or failure/refusal to make a decision;
  - iii. Policy or procedure;

- iv. Service delivery; or
  - v. Other that is not captured above.
- C2. A complaint includes a matter raised by or on behalf of members of the public with the Attorney-General (as the minister responsible for the OPG), where the OPG has been asked to assist.
- C3. For the purpose of this policy, a complaint is **not**:
- i. Allegations against an employee that involves suspected misconduct, including official misconduct, maladministration, public interest disclosure, or whistleblowing, though a complaint can include concerns that give rise to such matters;
  - ii. Requests for information;
  - iii. Concern about OPG's organisational performance or suggestions for ways in which it can improve its services;
  - iv. Correspondence or communications expressing general concern about a situation;
  - v. Access requests made under the *Right To Information Act 2009* which have been denied; and
  - vi. Breaches of privacy, as defined in the *Information Privacy Act 2009*.
- C4. For the purpose of this policy, the following are not in scope of a complaint:
- i. a complaint raised by the OPG on behalf of a client in relation to an external entity.
  - ii. A complaint that is captured under another specific purpose document (for example, a memoranda of understanding, or protocols).
- C5. An **internal review** is a retrospective review of the systems and considerations surrounding a specific decision, complaint response, or incident, in the context that the decision was made, response provided, or the incident occurred.
- C6. Where the policy talks about timeframes, **days** refers to calendar days (rather than business days).

## D. Principles

- D1. OPG is committed to respecting and recognising the human rights and interests of our clients in the performance of our functions; and in ensuring a human rights culture governs our service delivery.
- D2. OPG is committed to upholding the rights, dignity and interests of our clients, and ensuring that complaints processes are accessible to all, and easy to navigate.
- D3. OPG is committed to supporting people to navigate our complaints system; and where OPG believes that a person needs a support person to assist them in the process, will endeavour to arrange a support person to assist in that process (article 12(3) CRPD).
- D4. OPG is committed to managing complaints processes and responses in a manner that is trauma-informed, and that prioritises individuals' safety and wellbeing.
- D5. OPG is committed to managing complaints and providing feedback in a timely way.
- D6. OPG is committed to ensuring that no individual is penalised or suffers adverse consequences for making a complaint.
- D7. OPG is committed to ensuring a culturally safe environment is provided for all individuals involved in the complaints process.
- D8. The OPG recognises the rights that all individuals have to privacy, and has developed the Privacy Statement setting out its commitment to protect this right. This is available

on the OPG website at: <https://www.publicguardian.qld.gov.au/home/opg-privacy-statement>.

- D9. The OPG also undertakes to uphold the principles of natural justice in reviewing all complaints, in respect of both the complainant and the subject or subjects of a complaint.
- D10. Further, the rights of any person who is subject to, or in any way associated with such a disclosure will be safeguarded.
- D11. OPG has adopted a 'no wrong door' policy with regards to receiving complaints. Accordingly, while the policy sets out the preferred and quickest means of submitting a complaint, complaints can be lodged through other mechanisms as required, including telephone conversations or in face to face settings.
- D12. OPG is committed to ensure that barriers for all individuals to complain are removed and reasonable adjustments are made to meet their needs in the complaints process. Translation and Interpreting services can be made available as required, and complainants are welcome to make use of a support person to assist them in making a complaints.

## E. Context

- E1. OPG is committed to providing clients with certainty that in delivering services:
  - i. they will be treated with respect;
  - ii. decisions will clearly consider their human rights; and
  - iii. where decisions are made that limit an individual's human rights, they are made in a way that is reasonable, justifiable, transparent and accountable, and the least restrictive to the individual's human rights.
- E2. OPG policy and practice is informed by a number of key items of legislation, policy and recognised principles of best practice.
- E3. The management of complaints and responses to complaints will be conducted in a manner that is consistent with relevant legislation and policy, including but not limited to the legislative frameworks described below.

### *Human Rights Act 2019*

- E4. The OPG falls within the definition of a public entity, as defined by the *Human Rights Act 2019* (HRA).
- E5. Accordingly, the following provisions of the HRA are of relevance when considering the ways in which OPG and its staff have acted:
  - i. Under section 58(1)(a) of the HRA, it is unlawful for a public entity to act or make a decision in a way that is incompatible with a human right; and
  - ii. Under section 58(1)(b) of the HRA, it is unlawful for a public entity, in making a decision, to fail to give proper consideration to a relevant human right.
- E6. The HRA sets out 23 rights that are protected under the legislation, and section 13 sets out the circumstances in which they may be limited.
- E7. Under the HRA, complaints about failures by the OPG to have due regard to its obligations under the HRA must first be raised with the OPG as a complaint.
- E8. If a complaint has not been substantively addressed by the OPG after 45 business days have passed, or the response is believed to be inadequate, a complaint may be referred by the person or their representative to the Queensland Human Rights Commission.

- E9. The Queensland Human Rights Commission website contains information about the raising of such complaints, and includes a mechanism through which they can be lodged ([www.qhrc.qld.gov.au](http://www.qhrc.qld.gov.au)). The OPG has also developed guidance for clients and their stakeholders to assist with understanding how those rights are factored into decision making processes. This information can be located on the OPG website ([www.publicguardian.qld.gov.au](http://www.publicguardian.qld.gov.au)).
- E10. OPG has developed the “*Human Rights Act 2019* Decision-Making Framework for the performance of the Public Guardian’s functions and powers” to set out the decision-making processes and considerations when exercising powers bestowed under the *Public Guardian Act 2019* and other legislation.

### **Guardianship and Administration Act 2000**

- E11. Schedule 1 of the *Guardianship and Administration Act 2000* sets out the General Principles. Further, the general principles to be applied when acting as an attorney are found in the *Powers of Attorney Act 1998*.
- E12. The General Principles inform the OPG’s decision making processes under guardianship appointments and when acting as enduring power of attorney for personal matters as articulated under [OPG’s Structured Decision Making framework](#).

### **Privacy and Public Interest Disclosures**

- E13. OPG has adopted the DJAG Public Interest Disclosure Policy, available from the DJAG website at: <https://www.justice.qld.gov.au/publications-policies/information-and-privacy/publishing-scheme/policies>.
- E14. In line with the policies set out above, and relevant to this complaints received about the OPG, the agency will ensure that conduct falling into any one or more of the below categories will be appropriately reported:
- i. Suspected corrupt conduct,
  - ii. maladministration,
  - iii. wasting of public funds,
  - iv. substantial and specific danger to public health and safety, the environment or a person with a disability, or
  - v. reprisal action.

## **F. Roles and Responsibilities**

- F1. The Complaints Manager is responsible for receiving complaints. Complaints about OPG can be sent to:

**By email to:** [Complaints@publicguardian.qld.gov.au](mailto:Complaints@publicguardian.qld.gov.au)

Or

**By post to:** Complaints Manager, PO Box 13554, Brisbane QLD 4003

Or

**By phone:** 1300 653 187

In line with the “no wrong door” policy stated above, OPG will endeavor to work with people regardless of how they submit complaints, to provide the support required to submit their complaint.

- F2. If you are deaf or have a hearing or speech impairment, you may use the National Relay Service and ask them to contact us.
- F3. If you require a translator or interpreter, you may wish to call the Translating and Interpreting Service on 131 450.

- F4. The OPG is developing a child friendly complaints form, but will always endeavor to review complaints from children and young people, regardless of the way that they have been submitted or received.
- F5. OPG has designated a Complaints Manager to receive and assess complaints, provide advice on complaints management processes, oversee the adherence to complaints management processes within the entire office, and take an active role in responding to complaints where required.
- F6. The Complaints Manager function also bears responsibility for complying with the reporting obligations as they are set out in the *Public Service Act 2008*.

## G. Complaint handling

- G1. Complaints can be classified as either “standard” or “complex”, describing the nature of the concerns, requirements to investigate and review, complicating factors, or a combination of these factors as described below:

### **Standard complaints**

This category can include low complexity complaints that require little-to-no investigation, requiring simple clarification or explanation of matters such as process, or complaints that relate to a single incident or decision requiring some investigation and information retrieval.

### **Complex complaints**

This category relates to complaints that require a higher level of investigation or information gathering. They can include matters relating to a number of incidents, a series of decisions, or individual matters of a legal or otherwise complex nature, including infringement of human rights.

- G2. A tiered internal escalation response process ensures that a complaint can be escalated and managed accordingly in response to the complainant, taking into account the specific and individual support needs of the complainant.
- G3. The tiered internal escalation process also provides an avenue for appeal and escalation. The tiers are set out below:

### **Tier 1: Local level resolution**

Local level resolution by the relevant officer at the point of service or their supervisor. Front line staff are empowered to attempt resolution of standard complexity complaints at first point of contact.

### **Tier 2: Manager resolution**

Where resolution of complaints at first point of contact have been attempted but were unable to be resolved, or the complaint is determined to be more complex, the handling of the complaint will be led by the relevant Manager.

Relevant Managers are:

- Guardianship – Regional Managers
- Legal Services & Investigations – Principal Legal Officers, Team Leader Investigations
- Community Visiting & Advocacy – Practice Managers

Corporate Services – Manager Corporate, HR Manager

**Tier 3: Complaints Manager review**

The complaint can be escalated to the Complaints Manager for management and handling. The Complaints Manager may respond directly, decide to escalate to a member of the Senior Leadership Group, or assign to another relevant officer for action.

- G4. Under normal circumstances, a complaint should first be fielded at a Tier 1 level, for review and handling. A complaint can be escalated to Tier 2 or 3 as required.
- G5. Once internal avenues have been exhausted, the complaint should be referred to an external agency based on the nature of its concern (i.e. complaints about administrative matters should be referred to the Office of the Queensland Ombudsman, complaints about clinical decisions should be referred to the Office of the Health Ombudsman, etc).
- G6. If a complaint has been referred to an external agency, that agency may choose to refer it to the OPG Complaints Manager for action in line with their process.
- G7. Timeframes for assessing and responding to complaints are as set out below (calendar days):

Figure 1 – complaint handling timeframes.

Type	Acknowledgement	Standard complaint	Complex complaint
Tier 1	2 days	10 days	20 days
Tier 2	3 days	30 days	45 days
Tier 3	3 days	30 days	45 days
Ministerial	<i>Timeframes for ministerial complaints are imposed by the Minister's office.</i>		
Internal Review	5 days	30 days	70 days

**H. Assessment & Acknowledgement**

- H1. Where a complaint is received by the Complaints Manager, they will undertake an assessment of it as soon as possible in order to review and seek to understand the complaint. It will be logged in the corporate information system (Resolve) at this time.
- H2. If it is considered that there is insufficient information to undertake such an assessment, it may be referred back to the complainant to further clarify before progressing the complaint any further.
  - i. If the complainant requires support to facilitate the lodging of their complaint, the Complaints Manager will consider the appropriateness of advocacy or providing the assistance directly.
- H3. Following an assessment of the complaint, it will be assigned to an action officer (*updating the "Assigned to" field in Resolve*). Factors to consider when identifying the appropriate action officer include:
  - i. The complaint should be responded to as closely as possible to the origin of the issue.
  - ii. What "tier" is appropriate to this particular complaint (as set out in paragraph G3

- iii. Has this specific complaint, or one similar from this complainant, been raised with OPG in the past?
  - iv. What is the nature of the complaint? Is the complaint raising concerns about corrupt conduct, and would it be more appropriate to refer to a higher tier (or external agency)?
  - v. Does the complaint raise concerns about other operational areas of the OPG?
- H4. The Complaints Manager will maintain oversight of the complaint (*to be named in the "Complaints Officer" field in Resolve*).
- H5. When a complaint is received, the agency must take reasonable steps to acknowledge receipt of the complaint as a first step. This can be done in a number of ways, including:
- i. A formal letter of acknowledgement,
  - ii. A telephone call to the complainant, or
  - iii. During a prearranged meeting.
- H6. The acknowledgement of the complaint must set out the following:
- i. Receipt of the complaint,
  - ii. A summary of the concerns,
  - iii. It is assumed that any complaint is a "standard complaint", and assessment as a complex matter should be flagged in the acknowledgement letter,
  - iv. A summary of the process for the complaint,
  - v. Set out the privacy considerations relevant to the complaint,
  - vi. The estimated due date, and
  - vii. Identifying an appropriate contact person.
- H7. Figure 1 "Complaint handling timeframes" sets out the time in which an acknowledgement must be made, as relevant to the complexity/nature of the complaint.
- H8. Ministerial complaints do not require an acknowledgement letter to be drafted by the OPG, regardless of complexity.
- H9. Where a substantive response to the complaint is made within the time allowed for the acknowledgement, an acknowledgement is not required.

## I. Addressing Complaints

### Administration of complaints

- I1. Figure 1 "Complaint handling timeframes" sets out the time in which a complaint should be reviewed and responded to in full. With the exception of complaints captured under the HRA, this deadline is self-imposed and informed by best practice, and every effort should be made to meet it.
- I2. It is understood that legitimate delays can arise which can have an impact on the agency's ability to meet those deadlines.
- I3. Where an extension of time is required to respond in a fulsome manner, the action officer's supervisor should be notified and the complainant be reasonably updated on the progress of the matter.
- I4. It is expected that, where serious or systemic issues are identified in the course of reviewing a complaint, those issues are communicated to the relevant Director, or escalated if that would not be appropriate.

### Identifying and considering human rights

15. Part 2, Division 2 and 3 of the HRA set out the human rights recognised under the HRA in full.
16. It is important that a complaint is examined under the lens of the HRA. In practice, this is done by considering three questions:
  - i. What human right (or multiple rights) are relevant to the complaint?
  - ii. Does the complaint raise concerns that the OPG has limited someone's human rights, whether by action or inaction?
  - iii. If it is established that someone's human rights have been limited, is there sufficient justification to do so?
17. This assessment should be undertaken regardless of whether a complaint specifically raises concerns about the limitation of human rights.
18. The following human rights complaints should be recorded on the HR spreadsheet:
  - i. Where an allegation has been made that specifically identifies a breach of a human right, and
  - ii. Where an allegation has been made without identifying a breach of a human right, but it is established that the complaint engages human rights.
19. The HRA recognises that human rights are not absolute and may be subject under law to reasonable limits. To lawfully limit a human right, the OPG must be **authorised by law** and **justified and reasonable**.
110. Where human rights have been limited, justification must be communicated clearly. Consideration must be given to the following:
  - i. What is the purpose of limiting the right? What is the OPG looking to achieve by the action or decision?
  - ii. An objective assessment of whether the limitation could be expected to achieve that purpose.
  - iii. Is there another, less restrictive way to achieve the objective?
  - iv. Is the importance of limiting the human right reasonable as weighed against the importance of preserving the human right?

### Privacy of disclosers and persons subject of complaints

111. Throughout the lifespan of a complaint, it is important to have regard to privacy. In practice, this can include:
  - i. The identify of a person who has made a complaint should be protected,
  - ii. If a complaint relates to the conduct of an individual, then that person's privacy should be protected, and
  - iii. If a complaint is made on behalf of another person, or relates to decisions made for another person, the privacy of that other person should be protected.
112. In order to properly investigate a complaint it may be necessary to share aspects of complaints.

### Responding to complaints

113. The substantive response to a complaint can be made in a number of ways, as appropriate to the complainant. These can include:
  - i. A formal letter,
  - ii. A telephone call to the complainant,
  - iii. During a meeting, or
  - iv. A combination of these and other options.



- I14. The appropriateness of the medium of the response will be dictated by a number of factors including the support needs of the complainant, the level to which the complaint has been escalated and the nature of the complaint.
- I15. A response should be made in clear English and always include:
  - i. An outcome of the investigation
  - ii. Articulate the steps taken to investigate the complaint
  - iii. An explanation of how and why the relevant decisions were made
  - iv. If the complaint (or any aspect of it) is substantiated, set out the next steps for remedying the issue and identifying whether the person needs support for the next steps.
- I16. All formal responses to complaints should enclose a copy of the “OPG Complaints Handling Factsheet” (located at [#4915230](#)) which sets out the appropriate avenues for escalation and rights to review.
- I17. Informal responses to complaints should direct the complainant to the appropriate next step, should they wish to further prosecute their concerns, and direct them to the OPG website for further information about this policy.
- I18. Where informal responses are made, best practice is to also adopt the response into a formal letter.
- I19. Where the OPG identifies that another agency may be an appropriate escalation point for some or all of the concerns set out in a complaint, and privacy considerations permit, the Complaints Manager may decide to refer the matter accordingly. The OPG may provide support to the complainant to make this escalation should they deem it necessary and appropriate.

### Closure of complaints

- I20. The Complaints Manager will consider the complaint to be completed and closed once the response substantively responding to the complaint is sent.
- I21. If the complainant asserts that the complaint has not been addressed in full, the Complaints Manager will assess the complaint, response, and residual concerns.
- I22. If applicable, the Complaints Manager may direct that the complaint be reopened. Should this happen, the Complaints Manager will consider all aspects of the complaint and set a new timeframe for the complaint to be responded to.
- I23. If the Complaints Manager accepts that the complaint has been adequately examined and responded to, the appropriateness of escalating it to the next tier or external review will be examined.

## J. Internal Review

- J1. Internal Reviews will be managed by the Complaints Manager, but undertaken by a separate subject matter expert who has had little to no prior involvement in the matter.
- J2. A request for an internal review should be made through the normal complaints mechanism, and clearly articulate that an internal review is sought.
- J3. Alternatively, in assessing a complaint outcome, the Complaints Manager may determine that an internal review be suitable, and may engage with the complainant as to whether they would like to pursue this avenue.
- J4. An internal review can be requested no later than three months after the original decision, incident, or complaint response. The Complaints Manager may consider a request later than this where exceptional circumstances apply.

- J5. An internal review should not consider new information that was not available at the time of the decision, complaint response, or incident.
- J6. Unless exceptional circumstances exist, a complaint, decision, or incident can only be subject to internal review once.
- J7. As a matter of course where an internal review is accepted, the reviewer will notify the original decision-maker or relevant person that a review has commenced, and subsequently furnish them with the outcomes of the internal review.

## K. Complaints recording and reporting

- K1. The OPG records its complaints in its corporate information system, Resolve.
- K2. Aspects of complaints management may also be recorded in the corporate electronic Document and Records Management System, eDocs, including responses in draft, other draft material, agendas and minutes, and ministerial complaints.
- K3. The Complaints Manager provides a monthly report on OPG complaints handling to the Deputy Public Guardian. This report sets out:
  - i. The number of complaints received in the period
  - ii. The number of complaints received from children and young people in the period
  - iii. Where complaints engage human rights protected under the HRA, and which rights are being engaged
  - iv. The status of those complaints at the close of the period
  - v. The status of complaints that have been carried forward from the previous period
  - vi. Compliance with the timeframes set out in figure 1 (regardless of extensions)
  - vii. Categories describing the nature of the complaint, being:
    - 1. Administrative decision
    - 2. Service Delivery
    - 3. Policy/procedure
    - 4. Staff conduct
    - 5. Privacy
    - 6. Complaints specifically identifying human rights issues
  - viii. Categories describing the outcomes from those complaints, being:
    - 1. Apology
    - 2. Reviewed decision – upheld
    - 3. Reviewed decision – amended
    - 4. Review policy/procedure
    - 5. Performance review
    - 6. Frivolous/vexatious
    - 7. Withdrawn by complainant
    - 8. Rejected
    - 9. Explanation
    - 10. Service improvement
    - 11. Staff training
    - 12. No action
    - 13. Referred
    - 14. Conciliation/mediation
    - 15. Unable to be resolved

16. Where protected human rights had been limited without sufficient justification
- K4. Under the *Public Service Act 2002* the OPG has an obligation to report aspects of this information (in a de-identified state) to the Department of Justice and Attorney-General.
- K5. The OPG also publishes complaints data in its Annual Report, which is tabled before Parliament each year by the Attorney-General.

Version #	Approved By and Role	Date	Changes from Last Version	E-docs #
3a	Shayna Smith, A/Public Guardian	23/06/2020	Clarified complaint handling timeframes to clarify that days means calendar days.	#4989094 v9
3	Shayna Smith, A/Public Guardian	19/12/19	Policy and procedure combined to form one document. Updated to reflect best practice in complaints handling and to reflect the commencement of the HRA	#4989094 v6
2		22/07/15	Procedure created with establishment of OPG	#2737723 v1
1		22/07/15	Policy created with establishment of OPG	#2733385 v1