

Effective complaint handling guidelines

3rd Edition | February 2017

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Foreword

The NSW Ombudsman's office has forty years experience in handling complaints, conducting surveys of complaint handling systems, and working with organisations to improve their systems and processes. It is now accepted that complaints should be seen in a positive light and, if handled well, can help organisations improve the way they do business and build stronger relationships with their customers.

Many organisations still fall short in handling and resolving individual complaints, as well as identifying and addressing systemic administrative problems. A 2015 survey by the NSW Customer Service Commissioner found that customers who had their complaints handled well had a higher than average satisfaction with government services. However, more than half of those surveyed had a negative perception of how their complaint was handled. Improving complaint handling processes is an important element in increasing customer satisfaction with NSW government services and has been identified as a Premier's Priority.

Valuable work has been done in recent years to ensure that organisations are better informed about how to put in place robust systems and practices for complaint management. Comprehensive advice is available in a new Australian/New Zealand Standard published in 2014: Guidelines for complaint management in organisations. In 2015, the NSW Ombudsman's office published a Complaint Management Framework and Complaint Handling Model Policy. This provides advice to organisations on best practice principles of complaint management and how to adopt the essential components of an effective complaint management system. The model policy can be replicated (or modified) by organisations to suit their particular needs.

We thought it timely to review the NSW Ombudsman's Effective Complaint Handling Guidelines, which were last reviewed in 2010. These guidelines provide practical advice for organisations on handling individual complaints, handling particular types of complaints, and dealing with people who make complaints.

When using these guidelines, keep in mind that customers are more likely to complain if they think something can be changed by making a complaint. They will be helped by up-to-date and relevant information on the complaint process and what to expect. They want to be told after their complaint is made approximately how long it will take to finalise it – and they expect this to occur in a reasonable time. Customers will generally be more satisfied if a dedicated person or team is handling their complaint, keeping them up-to-date and providing a point of contact.

In short, people want their complaint interaction with an organisation to be fair, reasonable and appropriate. When this occurs they are more likely to accept an outcome as fair and reasonable, even if it is different to what they had hoped for.



Professor John McMillan AO
Acting NSW Ombudsman

Glossary

The following terms are used throughout this publication:

ADR	alternative dispute resolution
agency	may include government departments, statutory authorities, councils, schools and community sector organisations
ATSI	Aboriginal and Torres Strait Islander
CEO	refers to the Chief Executive Officer of an agency, including a Director-General, principal officer or general manager of a council
complaint	refers to complaints, disclosures, reports, allegations
FOI	freedom of information
GM	general manager
ICAC	Independent Commission Against Corruption
NESB	non-English speaking background

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1. Introduction

It is essential that organisations provide quality customer service from the outset. If and when things go wrong, they can only be put right – and services improved – if the organisation hears about it. Complaints are important as they provide information about the effectiveness of an organisation's services, help to identify aspects that need improvement, and contribute to a better understanding about customer satisfaction and dissatisfaction. By responding positively to complaints, an organisation can improve its service provision and customer relations as well as the wellbeing of its staff.

A commitment to good complaint handling is needed at all levels of an organisation. The head of the organisation, together with senior management, should champion effective complaint handling as a way of strengthening the organisation's administration and improving relations with the public. Good complaint handling will:

- reassure customers that the organisation is committed to properly addressing and resolving any problems
- maintain or help improve relationships with the people the organisation deals with
- improve the organisation's transparency and accountability.

Organisations with a culture that values complaints are more likely to:

- **Have a people focus** – this involves being open to complaints from members of the public about standards of service delivery, the conduct of staff, and organisational policies, procedures and practices, as well as being committed to promoting and implementing an accessible complaints system as a means to address problems and enhance the performance of the organisation and its staff.
- **Be responsive** – responding to complaints in a timely manner and recognising and rewarding good complaint handling by staff.
- **Act fairly and objectively** – addressing each complaint with integrity and in an objective and impartial way.
- **Ensure no detriment** – taking all reasonable steps to ensure that people making complaints are not adversely affected because they made a complaint, or one is made on their behalf.

It is important for organisations to have a comprehensive complaint management framework to provide a clear structure for receiving, assessing, recording, responding to, reporting on, and using complaints to improve services to the public. An effective complaint management framework should be guided by three broad underlying principles – prevention, management and accountability. These principles rely on organisations developing and implementing clear and comprehensive policies and procedures about how to deal with complaints, how to deal with people who make complaints, how to resolve complaints appropriately, and how to use complaints to improve service provision in the future.

When handling complaints, it is critical for staff to recognise the inherent dignity of the person who has made the complaint and treat them with courtesy and respect. They should be given clear and comprehensive information about the process that will be followed to manage their complaint, as well as the possible outcome – including options to have the matter reviewed and how they are treated. It is now well recognised that people are likely to care as much about how their complaint is dealt with as they do about the issue that triggered the complaint. This means that following a process that is seen to be fair, treating complainants in ways they perceive to be reasonable (including with respect), and providing adequate information at appropriate times is likely to be as important to complainants as getting the outcome they were seeking.

It is also important for organisations to analyse complaints so that systemic issues and problem areas that go beyond individual complaints are identified, and improvements can be made to the overall quality of services provided. They should also regularly review the effectiveness of their complaint management system to ensure its suitability for responding to and resolving complaints – and then identify and correct any deficiencies in the operation of the system.

1.1 What is a complaint?

The first task facing an organisation developing a complaint management system is to define what constitutes a complaint. Defining a complaint narrowly will exclude less serious matters, and matters raised by people who are unfamiliar with the complaint management system or unwilling or unable to access it. Adopting a broad definition of complaints will give the organisation a much better understanding of the range of concerns held by the people they deal with, and will provide staff with an opportunity to improve relations with those who have expressed dissatisfaction about the services or products provided.

The Australian and New Zealand Standard *Guidelines for complaint management in organisations* - AS/NZS 10002:2014 (AS/NZS Complaint Management Standard) defines complaints as an:

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

Based on this standard, a complaint includes:

- A complaint about conduct, service or product – such expressions of dissatisfaction may relate to customer service, quality of service/product, failure to provide information, competence or conduct of staff, errors of judgement or misinterpretation of information, decisions being unfair, unreasonable or lacking in merit, poor administrative processes etc.
- An internal review of a complaint – a request for a review of the merits of a decision on an earlier complaint.
- An internal review about how a complaint was handled.
- An external review of a complaint or how the complaint was handled – for example, a complaint to the Ombudsman or another oversight agency.

Sometimes, when a person makes a complaint, they will not explicitly use terminology such as 'complaint' or 'dissatisfaction'. They may instead use language such as:

- I am unhappy about ...
- I don't like ...
- I disagree with your decision about ...
- I don't understand why ...
- I don't think it's fair that ...
- I am furious about ...
- That sucks!
- Why didn't ... happen?
- Why doesn't the service ...?

As well as having a clearly articulated policy about the types of matters that will be dealt with as a complaint under the organisation's complaint management system, it is also important for an organisation to consider what will not be registered as a complaint. This could be, for example:

- a request for services – unless it is a second request where there has been no response to the first
- a request for information or an explanation of policies or procedures

- a request for a review of a decision in accordance with the organisation's procedure or policy for such reviews – unless this is recorded as a complaint about the organisation's decision-making
- an expression of concern – where a response or resolution is not explicitly or implicitly expected
- an expression of opinion – for example, a submission or feedback (where a response or resolution is not explicitly or implicitly expected)

It is important to note that if part of the organisation's functions include regulating or dealing with complaints about other organisations, a complaint about such organisations would not be a complaint about the services or staff of the regulating body. Similarly, if an oversight or regulatory body is asked to conduct a merits based review of a decision made by another organisation, that is part of the decision-making process (which will not end until the right to seek a review has been exercised or expires) and not a complaint. A subsequent expression of dissatisfaction about how a review was handled would, however, be a complaint.

It is critical to be clear about the types of matters that will be treated as complaints. This is so that:

- matters are dealt with in accordance with the appropriate procedure or policy
- complaints are dealt with in a consistent and efficient manner
- complaint statistics correctly identify the numbers of complaints being made over time.
- Separately recording suggestions, inquiries and compliments will enable an organisation to build a clearer picture of what people like and don't like, and will often provide a more balanced picture of public perceptions than simply recording and acting on negative feedback.

1.2 Why people complain

People make complaints because they are unhappy with a decision, the way a service was delivered, the level of service they have received, or the behaviour of staff. It is important to find out precisely why a person is unhappy, because this may not be clear at first. It can be helpful to ask what a person making a complaint wants done. Finding out what they want to happen, or what they believe should have happened, usually clarifies the reason for the complaint and can help determine an appropriate response.

Some organisations receive a lot of complaints about things that cannot be changed, perhaps because of inadequate resources or government policy. In these situations, the feedback a complaint gives is still valuable. Perhaps the policy needs to be reconsidered or perhaps resources could be better targeted. If neither is practical or appropriate, complaints may highlight a need to better manage the expectations of the public who deal with the organisation. In many cases, customer complaints will echo and reinforce staff complaints about similar matters. The feedback collected, properly reported, may itself be a catalyst for change.

1.3 What people want when they complain

When people make a complaint they want it to be finalised in a reasonable time, they want to know approximately how long it will take after initial acknowledgement, and they want to be kept up-to-date throughout the process. They also want to:

- be patiently listened to
- be heard but not judged
- have their point of view understood
- be treated with respect and courtesy, and as an individual
- be given an explanation
- have corrective action taken as soon as possible

- be given an apology, if appropriate
- be compensated, if appropriate
- be treated fairly
- be assured the problem won't happen again
- not suffer any adverse consequences from making a complaint.

When things go wrong, many people demand no more than to be listened to, understood, respected and if appropriate given an explanation and apology. Good communication is critical – and a prompt and sincere apology will often avoid a dispute escalating and the significant time and resources that this can involve.

“The lack of information given was frustrating, as was the inability for the handler to give me a timeframe. At a few points I felt like I was being treated with disrespect when calling to get clarification about the process”¹

“Thank you for your letter and for looking into this complaint for me. Even though I find it difficult to agree with the ruling, I appreciate that it has been addressed.”²

1.4 Why people don't complain

Many people will make their concerns known to an organisation when they are not happy and have clear expectations about how their concerns should be resolved. Other people may have the skills and knowledge to lodge a complaint but will choose not to, possibly because of a previous negative experience or a feeling that nothing will change.

When people are asked why they didn't complain about a genuine grievance or poor service, they often give one or more of the following reasons:

- there was no available information on how to make a complaint
- it was too difficult to find out who to ring or go to
- it would be too time consuming
- I was worried about retribution if I complained and had to keep dealing with these people/this organisation
- I doubted it would be taken seriously
- I didn't think it would make any difference so I didn't bother
- I had received a negative reaction in the past when I raised problems
- I wanted to avoid further upset after experiencing rudeness
- I didn't want to be seen as a troublemaker
- I gave up after the initial fob-offs and telephone transfers
- I wanted to speak to a responsible manager rather than fill in a form
- I was worried someone fairly junior would be blamed for the mistake.

It is also important to acknowledge that many people who may wish to raise their concerns do not have the skills, knowledge or capacity to do so. There are a range of barriers that may have an impact on someone's ability or desire to make a complaint. These include:

1. Quote in Customer Service Commissioner NSW, *NSW Whole-of-Government Complaint Experience Survey: detailed report*, November 2015, 12.
 2. From a complainant to the NSW Ombudsman

- **Culture** – it is more acceptable to complain in some cultures than others. Some cultures may not even have a word for complaints in their vocabulary.
- **Language issues** – a lack of confidence and competence in written or spoken English may make complaining difficult.
- **Individual characteristics, including disability** – factors such as age, intellectual or physical disability, mental illness, language or literacy difficulties and financial constraints can affect a person’s ability to make a complaint.
- **Power imbalance and fear of retribution** – they may be a vulnerable person reliant on the organisation or its staff for certain services, and may fear that making a complaint will lead to further marginalisation, harassment, victimisation or loss of access to a service.
- **Relationship with service provider** – they may have developed a close dependent relationship with staff at an organisation, which may make them reluctant to complain about a worker’s actions or inactions.
- **Daily challenges** – people have busy lives and often face a range of challenges and stresses, so they don’t have the time or capacity to pursue a complaint.

The onus is on organisations to be aware of the potential for these issues to arise and to address them as far as reasonably possible. Organisations need to be particularly aware of any barriers that limit or prevent communication by some people, and be innovative and flexible in developing and implementing strategies to overcome them. This is likely to include having up-to-date and relevant information on the complaint process available to people before they make a complaint. It is also important to have a number of alternative ways that people can make complaints, to provide assistance to people who may find it challenging to articulate or lodge their complaint, and to ensure that information about the complaint management system is accessible in a variety of formats and can be adapted to meet the needs of different people.

In 2015 the NSW Customer Service Commissioner conducted a NSW whole-of-government Complaint Experience Survey and found that – of those who thought about lodging a complaint but didn’t – 55% identified it was because they didn’t think anything would change, 28% identified it was because it was too hard, and 10% identified it was due to both reasons. In addition to these reasons, 7% specified other reasons behind not lodging a complaint.

“I didn’t know the avenue through which to complain”

“The issue is still in abeyance”

“I would be seen as a trouble maker”

“I was afraid it would be used against me at a later time”

“I spoke to her supervisor, it was clear that she didn’t care and would not follow up either”³

3. Customer Service Commissioner NSW, *NSW Whole-of-Government Complaint Experience Survey: detailed report*, November 2015, 15.

2. Guiding principles for effective complaint management

The AS/NZS Complaint Management Standard sets out the following guiding principles for complaint management:

1. Enabling complaints

- People focus
- Ensuring no detriment to complainant
- Visibility and transparency
- Accessibility
- No charges

2. Managing complaints

- Responsiveness
- Objectivity and fairness
- Equity
- Privacy and disclosure
- Communication

3. Managing the parties

- Conduct of parties
- Work health and safety
- Complaint involving multiple parties
- Empowerment of staff

4. Accountability, learning and prevention

- Accountability
- Continuous improvement
- Prevention of ongoing disputes

The content covered by these guidelines is congruent with the AS/NZS Complaint Management Standard.

3. A complaint management framework

To comply with the guiding principles in the AS/NZS Complaint Management Standard, all organisations should implement a complaint management framework that includes appropriate policies and procedures, clear lines of responsibility, and appropriate delegations. The size and scale of the framework will vary depending on the functions of the organisation and the number of complaints received.

When establishing and reviewing their complaint management framework, organisations should consider:

- any statutory or regulatory requirements
- the value the organisation seeks to derive from complaints to improve their operations
- financial, operational and organisational requirements
- the number and demographics of their customers
- the nature and breadth of their interactions with the public
- the number and type of complaints they receive
- input from staff and other interested parties.

3.1 Developing a culture that values complaints

An effective complaint management framework requires an organisational culture that respects and values the rights and views of people the organisation deals with and other key stakeholders. A commitment to good complaint handling is needed at all levels of an organisation. It is the foundation on which all other components of the complaint management framework are built.

It is particularly important that the organisation's head and senior managers:

- send a clear message to staff that complaints can be a valuable source of feedback on the organisation's systems, services and staff
- emphasise to staff and the public that the focus on complaint handling is on fixing issues and improving systems, not apportioning blame
- foster a culture of disclosure when mistakes are made – e.g. that disclosed mistakes will result in rectification action, not punishment
- are active in requesting and analysing regular reporting of complaint information
- implement changes to services, systems, practices, procedures and/or products if weaknesses are identified through the management and analysis of complaints
- communicate to staff and the public changes and improvements brought about through the handling of complaints and their analysis, so that everyone can see the tangible benefits flowing from complaints.

Other ways in which organisations can foster a culture that values complaints include regular training for staff, internal communication reinforcing the value of complaints, strong support from senior management, and emphasising complaint processes during the induction of new staff.

Staff at all levels of an organisation are expected to be committed to fair, effective and efficient complaint handling. Table 1 outlines the nature of the commitment expected from staff and the way that commitment should be demonstrated.

Table 1: Commitment expected from staff, NSW Ombudsman, *Complaint Handling Model Policy*, 2015

Who	Commitment	How
Head of organisation	Promote a culture that values complaints and their effective resolution	<ul style="list-style-type: none"> • Report publicly on the organisation's complaint handling. • Provide adequate support and direction to key staff responsible for handling complaints. • Regularly review reports about complaint trends and issues arising from complaints. • Encourage all staff to be alert to complaints and assist those responsible for handling complaints to resolve them promptly. • Encourage staff to make recommendations for system improvements. • Recognise and reward good complaint handling by staff. • Support recommendations for product (where relevant), service, staff and complaint handling improvements arising from the analysis of complaint data.
Manager responsible for complaint-handling	Establish and manage the complaint management system.	<ul style="list-style-type: none"> • Provide regular reports to the head of the organisation on issues arising from complaint handling work. • Ensure recommendations arising out of complaint data analysis are canvassed with the head of the organisation and implemented where appropriate. • Recruit, train and empower staff to resolve complaints promptly and in accordance with the organisation's policies and procedures. • Encourage staff managing complaints to provide suggestions on ways to improve the organisation's complaint management system. • Encourage all staff to be alert to complaints and assist those responsible for handling complaints to resolve them promptly. • Recognise and reward good complaint handling by staff.
Staff whose duties include complaint-handling	Demonstrate exemplary complaint handling practices	<ul style="list-style-type: none"> • Treat all people with respect, including people who make complaints. • Assist people make a complaint, if needed. • Comply with this policy and its associated procedures. • Keep informed about best practice in complaint handling. • Provide feedback to management on issues arising from complaints. • Provide suggestions to management on ways to improve the organisation's complaints management system. • Implement changes arising from individual complaints and from the analysis of complaint data as directed by management.
All staff	Understand and comply with the organisation's complaint-handling practices.	<ul style="list-style-type: none"> • Treat all people with respect, including people who make complaints. • Be aware of the organisations complaint handling policies and procedures. • Assist people who wish to make complaints to access the organisation's complaints process. • Be alert to complaints and assist staff handling complaints to resolve matters promptly. • Provide feedback to management on issues arising from complaints. • Implement changes arising from individual complaints and from the analysis and evaluation of complaint data as directed by management.

3.2 Making it easy for people to make complaints

Organisations need to consider the silent, but dissatisfied, people who do not complain – but who have dealings with the organisation, who are not getting the services they are entitled to, or are unhappy with the service they receive or the conduct of the organisation's staff. This means recognising at the outset that some people have greater difficulty than others in making a complaint or participating in the complaints process. For example people with disability, people living in regional or remote areas, children and young people, older people, and people from culturally and linguistically diverse backgrounds may need extra help or different approaches to enable them to raise their concerns with an organisation.

Some of the barriers that prevent people from raising their concerns include:

- not knowing who to contact or the process to be followed
- distrust of the organisation or government
- fear that an existing service or support will be taken away if a complaint is made
- fear that they will experience discrimination or retribution if a complaint is made
- a belief that the process will be time consuming, confusing and difficult
- a belief that complaining will be fruitless as nothing will change.

It is important that organisations work to overcome these barriers and ensure systems are readily accessible, easy to use and in plain English – and preferably also in other languages commonly used by people who use their services.

One approach an organisation can take is to provide multiple channels by which people can raise concerns. Although it may seem more efficient for an organisation to prefer complainants to use a particular mechanism – for example, a website or specific phone line – this will need to be adequately resourced and supported and may be difficult for certain community members to access. For example, people who primarily use mobile phones may face high costs if they have to stay on hold with call centres. This may be a particular concern for those without a fixed address, those on low incomes, those without access to a landline, or those who do not want to use a shared landline for security or privacy reasons.

In recognition of the importance of accessibility, organisations are increasingly accepting written complaints in a number of different formats – such as via letter, fax, email or an online complaint form. As technology continues to change, it is becoming increasingly common for people to conduct their personal business via text messages, smart phone 'apps', or social media, and some people may find it quicker and less confronting to raise concerns with an organisation using these tools.

Organisations should consider the role that new technologies can play, but care should be taken to ensure that any new methods adopted to facilitate complaints are properly deployed and supported. To be most effective, social media requires constant monitoring and may need more resources than other contact methods. New technology may also place additional requirements on frontline staff. If people who have dealings with an organisation are not familiar with new technology, staff may have to temporarily fill a help desk role – answering questions about the process as well as the substance of inquiries or complaints.

Some strategies to encourage complaints from vulnerable people and people reluctant to raise concerns include:

- Publicising the organisation's complaint handling policy on its website and through other reference material available to the public – information should be available in a range of languages and alternative formats such as large print, Braille, Simple English.
- Using tools such as text headphones (TTY) and the national relay service (NRS) to enable people who have speech or hearing impairments to contact the organisation.
- Facilitating the use of accredited translators and interpreters when appropriate.
- Ensuring, where possible, that the organisation's premises are located in places that are accessible by public transport and accessible for those with limited mobility.

- Being open flexible hours, where possible.
- Helping and supporting certain individuals to make a complaint – eg accepting a verbal complaint when people are usually encouraged to put their concerns in writing.
- Accepting complaints from authorised representatives of complainants – including their family, friends, Members of Parliament, legal representatives etc.
- Accepting anonymous complaints and investigating them where appropriate (and to the extent possible given the nature and amount of information provided).

In addition to making it easier for individual complainants to raise their concerns, organisations should take steps to proactively engage people in sectors or communities that may have difficulty making a complaint or be reluctant to do so. This might include:

- Seeking feedback from vulnerable groups through visits and outreach programs, especially in rural and remote areas and Aboriginal communities (where applicable).
- Encouraging complaints and feedback from representatives and advocates who may service vulnerable groups.
- Working with, and/or providing training to, organisations that provide advocacy and support services to vulnerable people so that these organisations can effectively help vulnerable people who wish to make complaints, and make reports to authorities when necessary (eg mandatory reporting of child protection concerns).
- Developing policies or guidelines targeted to specific client groups, such as a policy for dealing with young people.
- Providing training for staff about how to deal with, and respond sensitively to, people who may need assistance to make complaints, and about issues regularly facing certain groups within the community – such as young people, Aboriginal and Torres Strait Islander people, and people with disability.

Section 5.4 provides further information about the importance of ensuring vulnerable people who make a complaint are given reasonable support and assistance to understand the processes that will be followed.

3.3 Developing policies and procedures to guide staff in managing complaints

Organisations should establish an explicit complaint management policy setting out their commitment to effectively manage complaints. This policy should be supported by procedures detailing how complaints will be managed by the organisation, who will be involved in that process and their roles.

Policy and procedures

A policy is a statement of instruction that sets out how an organisation should fulfil its vision, mission and goals. A complaint handling policy should outline an organisation's commitment to resolving complaints fairly and quickly. It should also reinforce the important role that complaints play in improving services and systems.

A procedure is a statement or instruction that sets out how the organisation's policies will be implemented and by whom. Procedures provide a standard against which the organisation and its stakeholders can measure the organisation's performance. A complaint handling procedure should describe the steps that need to be taken by staff to implement the aims of an organisation's complaint handling policy and respond to complaints.

When policies and procedures are developed and reviewed, organisations should consider:

- any relevant statutory and regulatory requirements
- financial, operational and organisational requirements
- the input of complainants, staff and other interested parties.

It is useful for policies and procedures to provide guidance for staff about:

- relevant terms and definitions, including the definition of a complaint
- guiding principles – such as accessibility, responsiveness, objectivity and fairness
- the process for managing complaints
- making and keeping adequate records about the receipt, handling and outcomes of complaints
- monitoring trends in complaints
- analysing, reporting and reviewing the subject matter and outcomes of complaints to measure the quality of the organisation's services and make system improvements
- using information from complaints to review the products, systems, services and procedures of the organisation as a whole.

The NSW Ombudsman has developed a model complaint handling policy to provide guidance to organisations on the key principles and concepts of an effective and efficient complaint management system. Most of the model policy can be used as a template and replicated by organisations. See <http://www.ombo.nsw.gov.au/news-and-publications/publications/guidelines/state-and-local-government/complaint-management-framework-june-2015>.

People who have dealings with the organisation should be informed about the complaint management policy and procedures and supported to access and use them. Policies and procedures should also be accessible to, and known by, all members of staff.

3.4 Using a three-level model of complaint handling

An organisation's complaint management framework should incorporate a three level approach to complaint handling.

- **Level 1 – frontline staff** must be adequately equipped to respond to complaints with a view to early resolution wherever possible. This includes being given appropriate authority and delegation, training and supervision. They should have clear guidance about which complaints should be escalated to level 2.
- **Level 2 – internal review** of frontline complaint handling should occur when a complainant is dissatisfied with the process and/or outcome. This allows for alternative dispute resolution or investigation of serious or complex complaints.
- **Level 3 – external review** will be done when matters have not been able to be resolved within an organisation. A matter may be referred for alternative dispute resolution or to an appropriate external organisation, such as an ombudsman or regulatory agency.

Level 1 – Frontline complaint handling

The NSW Customer Service Commissioner's 2015 whole-of-government Complaint Experience Survey found that people who made a complaint and were assigned a complaint handler had higher satisfaction than those who were not assigned a complaint handler.⁴

4. Customer Service Commissioner NSW, *NSW Whole-of-Government Complaint Experience Survey: detailed report*, November 2015, key finding 5.

Frontline complaint handlers have a responsibility to:

- register and document each complaint
- provide information about the organisation's complaint handling policy and procedures
- resolve complaints, where possible
- refer a complainant and complaint to another organisation or relevant person – eg where the complaint is not about the organisation or within its jurisdiction
- refer the complaint for a level 2 review if it is serious or complex
- inform each complainant of the decision made about their complaint, the reasons for that decision, and their right to request a review of the decision.

If a person contacts an organisation to make an enquiry or complaint, it is vital that the first contact is handled well. If the staff member dealing with the customer is impatient, dismissive or discourteous the person may be less likely to pursue the matter or alternatively want to escalate it to a more senior officer. In both of these situations, the complaint will not be resolved efficiently and confidence in the organisation may deteriorate.

Some organisations may choose not to record complaints that are resolved at the first point of contact. However, careful consideration should be given before adopting this approach – as it will mean that potentially valuable data about complaint trends and systemic issues will not be captured, and good outcomes achieved at the frontline may not be recognised.

For frontline staff to be able to respond to complaints with confidence, they need to:

- understand why people complain
- listen effectively and ask the right questions
- communicate respectfully, courteously, impartially and honestly
- express empathy
- have insight into their own reaction and response to complaints
- not take the complainant's anger or frustration personally
- provide comprehensive and clear information about the way the complaint will be handled, as well as the outcome and reasons for the outcome.

Staff whose duties include complaint handling need to have the appropriate aptitude, knowledge and skills to be able to respond to complaints effectively. Consideration should be given to recruiting people who demonstrate the attributes of a successful complaint handler.

The attributes of a successful complaint handler include:

- resilience
- analytical thinking
- empathy
- creativity
- patience
- good judgement
- discretion
- a desire to resolve issues raised by people making complaints.

The organisation's complaint handling policy and procedures should provide staff with information and guidance to handle individual complaints effectively. Staff should also have the appropriate authority, training and support to handle complaints and complainants in a manner that is lawful, reasonable and fair.

For more information on frontline complaint handling, see Section 4 – Handling individual complaints, and Section 6 – Managing people who make complaints.

Level 2 – Internal review, alternative dispute resolution and investigation

Although many complaints can be resolved by frontline staff, the serious or complex nature of some complaints or a dissatisfied complainant may mean that the complaint has to be referred to the second level.

Level 2 involves:

- **Internal review** – a more senior officer or specialist officer reviews the decision of the frontline complaint handler to confirm the original decision or take corrective action. Generally, more senior officers have a broad delegation to overturn previous decisions and apply remedies. The basic guidelines for frontline complaint handling apply equally to these cases.
- **Alternative dispute resolution** – sometimes a senior officer can help facilitate a discussion between the frontline complaint handler and the complainant, or the matter might be referred to an external mediator or facilitator. A mediator, through a formal face-to-face process of discussion, helps the parties to clarify issues and reach a solution.
- **Investigation** – sometimes an investigation is required to determine the action that should be taken when more serious allegations are raised. It is essential that external agencies are notified promptly where relevant – eg local police force, ombudsman's office or corruption agency. See also Section 5.1 – Complaints alleging criminal or corrupt conduct.

'Investigation' is a generic term to describe a fact-finding process aimed at establishing the truth. Investigations should follow a logical sequence in the pursuit of clearly identified objectives, and should be approached systematically and comprehensively. Investigators should act objectively and must not 'take sides'. An investigation usually involves:

- seeking to answer an identified question
- gathering sufficient reliable information to enable a decision to be made
- impartial fact finding
- reporting the outcome
- sometimes making recommendations.

The nature and scope of an investigation undertaken in response to a complaint will depend on the circumstances of the case and any relevant statutory and policy requirements that may apply. Those responsible for conducting investigations need to remember to:

- act reasonably and impartially
- ensure confidentiality
- avoid and manage conflicts of interests
- provide appropriate procedural fairness.
- For more information on conducting an investigation into allegations raised within a complaint, see Section 4 – Handling individual complaints.

Level 3 – External review

If any decision about a complaint is made by an organisation – including a decision to decline a complaint at the assessment stage – the complainant should be advised what steps they may take if they disagree with the organisation's decision and/or related outcomes.

Internal review, conciliation and investigation of complaints do not always result in a resolution that the complainant or organisation considers satisfactory. When the complaint is serious or the complainant's demands will continue to have an impact on the time and resources of staff, external sources of review may be appropriate. This can take a number of forms:

- **Alternative dispute resolution** – sometimes a neutral third party can help settle an escalating dispute. Private and public sector organisations use the services of professional mediators in such situations. The mediator, through a formal face-to-face process of discussion, helps the parties to clarify issues and reach a mutually agreeable solution.

- **Referral to external investigation agency** – in any jurisdiction, there will usually be a number of accountability/complaint handling bodies that receive and investigate complaints from the public about the conduct of community services and government agencies. Dissatisfied complainants can be referred to these agencies to ask for an external review of their complaint.
- **Other appeals mechanisms** – if rights of appeal to outside tribunals or other legal remedies exist, dissatisfied complainants should be advised of these avenues of redress after all others have been exhausted.

3.5 Appropriately resourcing and supporting staff who handle complaints

Properly resourcing an organisation's complaint management framework includes having sufficient numbers of skilled staff to respond to and appropriately deal with the complaints received by the organisation, as well as having adequate materials and equipment – including a system to record complaint data and track the progress of complaints.

All staff should be aware of their responsibilities for managing complaints. Complaint handlers should:

- be aware of policies and procedures about complaint handling, and how to deal with unreasonable conduct by people making complaints
- receive ongoing training in effective complaint handling and the organisation's complaint management system
- have clear delegations of authority and written guidance about their discretion to respond to issues raised with them in the course of managing complaints.

Staff whose responsibilities do not include complaint handling should be alert to identifying complaints and be aware of where/who they can refer a complaint to internally if they receive one.

Dealing with complainants, especially if complainants have been angry or aggressive, can be very difficult for staff and at times even frightening. It is perfectly normal for staff to get upset or stressed in these situations. Everyone reacts differently to stressful events. Some people react immediately after an event while others react much later. Stress can also be cumulative, perhaps resulting in an extreme reaction to a minor event that follows a chain of stressful events. It is the role of supervisors to support staff through this process and identify the type of help and support needed. This can be achieved through:

- **Defusing** – giving the staff member an opportunity to express and release their feelings, thoughts and emotions in a non-judgemental way and safe space after an incident. This should ideally take place as soon as possible after the incident.
- **Debriefing** – analysing what occurred, identifying what may have triggered the complainant's/staff member's reactions, and identifying possible solutions (individual and systemic). This should ideally happen within three days.
- **Counselling** – sometimes people are not comfortable talking to their colleagues or supervisors and would prefer to talk to someone outside the service. Supervisors should consider referring staff to a recognised counselling service – some organisations provide a free employee assistance program.

4. Handling individual complaints

4.1 Receiving complaints

When a complaint is received, details of the complaint should be recorded in accordance with the organisation's policies and procedures. Records should be kept about all subsequent action taken in relation to the complaint, and copies of relevant material (eg correspondence, evidence) filed. In short, accurate records must be kept about the receipt, handling and outcomes of each complaint.

Some organisations may choose not to record complaints that are resolved at first point of contact. However careful consideration should be taken before adopting this approach, as it will mean that potentially valuable data about complaint trends and systemic issues will not be captured.

The initial record of the complaint should identify (wherever possible):

- the contact details of the person making the complaint
- the issues raised
- the outcomes sought
- any other information required to properly respond to the matter
- any additional support the person making the complaint may need
- if the complaint is resolved at first contact, details about the resolution – such as information provided or referrals made.

4.2 Acknowledging complaints

The receipt of each complaint should be acknowledged promptly. Consideration should be given to the most appropriate medium for communicating with the person, taking into account the organisation's business needs and the expressed views of the person making the complaint. Copies of any correspondence acknowledging a complaint should be kept on file, as should details of any verbal acknowledgement.

4.3 Assessing complaints

After acknowledging a complaint, organisations should confirm whether the issues raised relate to them or are within their jurisdiction. They should also consider the outcome sought by the complainant and – if there is more than one issue raised in the complaint – whether each issue needs to be separately addressed.

When determining how a complaint will be managed, an organisation should assess the issues raised against the following criteria:

- severity
- urgency
- complexity
- health and safety implications
- impact on the individual, the general public and/or the organisation
- potential to escalate
- whether another part of the organisation, or another organisation, needs to be involved in resolving the complaint.

Assessing a complaint involves determining what action is required, which may include options other than a formal investigation. Assessment may involve considering:

- whether the complaint primarily involves a communication problem or misunderstanding that can be resolved through explanation or discussion
- whether an alternative and satisfactory means of redress or a more appropriate mechanism for dealing with the issue is available
- whether the complaint can or must be notified to a relevant government agency
- the time that has elapsed since the alleged events occurred
- the significance of the issue for the complainant and/or the organisation.

After assessing a complaint, a decision will need to be made about how to manage it. Managing a complaint may involve:

- giving the person information or an explanation
- gathering information from the person or area that the complaint is about
- investigating the claims made in the complaint.

4.4 Planning an investigation

If an investigation is warranted, an organisation should consider the most appropriate person to conduct the investigation. It is important that the investigator does not have a conflict of interests in the matter, or that any unavoidable conflict is identified and carefully managed. The basic test is – would a member of the public who knew about the personal interest reasonably perceive that it might influence the decision?

Appointing an external investigator

There are certain circumstances where it may be appropriate to appoint an external investigator to investigate a complaint. This may be where:

- the organisation does not have the necessary resources
- there is a need to ensure that the investigation is conducted by someone who has no connection to the organisation
- it is a serious matter that involves allegations about senior staff
- technical issues make it necessary to engage a person with the requisite skills and knowledge not available within the organisation.

If a decision is made to appoint an external investigator, the investigator should be given clear terms of reference about the scope of the investigation. Terms of reference provide formal guidance to investigators on precisely what they are to do to satisfy the contract. The terms should also stipulate any restrictions on the investigation, such as security and access to information requirements. It is important that the terms of reference are adhered to and a regular quality assurance process implemented by a departmental officer.

The most appropriate investigative approach will also need to be determined. This will involve considering any statutory requirements, the nature of the issue and the likely outcomes. It is often useful to characterise an investigation as either 'outcome-focused' or 'evidence-focused'.

- **Outcome-focused investigation** – this is an appropriate strategy for less serious issues and issues concerning organisational policies, procedures and practices. It aims to quickly identify and remedy problems, does not require an in-depth analysis of all available evidence, and may conclude that any issues or problems should be remedied through workplace training, amended policies or systems, an apology or mediation.

- **Evidence-focused investigation** – this should be done if an allegation has been made about conduct that could result in criminal or disciplinary action, or a finding of wrong conduct against a person that could significantly affect their reputation or interests. All reasonable lines of inquiry should be pursued – and the more serious the allegation and possible consequences, the more rigorous the investigation will need to be.

When conducting a formal investigation, it is good practice to prepare a written investigation plan. This should outline the scope and sequence of investigative activities and highlight any risks that may need to be managed. The length and complexity of the plan will depend on the nature and seriousness of the complaint being investigated. However, it should not be too rigid or detailed. It is only a tool to assist the investigator – it should be flexible and able to be revised or entirely replaced if new evidence or lines of inquiry emerge. A written plan helps keep the investigation focused and on-track, and is also useful if the investigation needs to be handed over to someone else.

Investigation plan

At the outset, investigators need to identify:

- what questions need to be answered
- what information is required to answer those questions
- the best sources of information and methods to use to obtain that information
- any risks that need to be managed and strategies that need to be implemented to do so.

An investigation plan may be as simple as documenting these points.

4.5 Obtaining, storing and reviewing evidence

During an investigation, it is important to gather sufficient reliable information so that findings and recommendations can be made. Sources of evidence fall into three categories:

- **People** – witnesses, experts, subjects of investigation.
- **Documents** – legislation, policies, electronic and other records (including photos, CCTV footage, Facebook pages, tweets, emails etc).
- **Other physical evidence** – eg site inspections, objects.

The investigator will need to determine who may have relevant information about the complaint being investigated, and what key documents are likely to be relevant and will need to be obtained. Ethical, privacy and legal issues that can arise accessing certain material, such as a person's Facebook page, also need to be considered. Information obtained during an investigation should be stored securely, consistent with relevant legislative and policy requirements. Records should be kept about all investigative activities. These do not need to be lengthy or detailed, but should allow external bodies or others within the organisation to examine the actions of the investigator and to understand the approach taken and tasks completed.

After evidence has been collected and examined, it is useful to review the overall evidence to identify any weaknesses or gaps and consider whether further lines of inquiry should be followed. It is not always possible to gather evidence establishing every aspect of 'what happened' when a complaint has been raised, but it is important to acknowledge any areas where there is insufficient evidence – rather than attempt to gloss over or minimise any problems.

Reviewing the evidence also helps to determine which evidence is the most persuasive. Although the rules of evidence do not apply in administrative investigations, applying these rules will help direct the investigator to the 'best evidence' and may help in apportioning weight to different types of evidence. The allegations made in a complaint may sometimes become the subject of legal proceedings – and evidence of a higher quality is more likely to be admissible and valuable in any related court proceedings.

The applicable rules of evidence are:

- **Relevance and cogency** – the most fundamental consideration which should be given to any piece of evidence is its relevance. Evidence must also be sufficiently cogent (reliable, convincing, truthful, sound) and compelling (of sufficient weight) that it logically supports the finding that has been made.
- **Hearsay evidence** – this is evidence based on what has been reported to a witness by others, rather than what he or she has heard directly. Although not inadmissible in administrative investigations, hearsay evidence carries less weight than direct evidence – whenever the primary source is available, you should use it in preference to hearsay evidence.
- **Opinion evidence** – a witness's opinions about a person, or about what happened or should have happened, are usually irrelevant to an inquiry unless the witness is an expert whose opinion is relevant to the subject matter of the investigation. However, opinion evidence may be useful for exploring investigative avenues and lines of questioning. It is not necessary to exclude opinion evidence from consideration entirely during an administrative investigation, but care should be taken in determining what, if any, weight it should be given in proving a fact at issue.
- **Direct and circumstantial evidence** – evidence can be either direct (evidence of what was said or done, perceived through any of the five senses) or circumstantial (evidence from which facts may be inferred). Typically, an investigator will make use of both forms of evidence although more weight should generally be given to direct evidence.

Reviewing the evidence is an important preliminary step to reaching initial or preliminary conclusions about the matters under investigation.

4.6 Making findings

Once all the relevant evidence has been gathered and reviewed, an investigation report will need to be prepared. This is an official record and will be used to make a determination about the matter, and to help decide what action will be taken in response to the complaint. The investigation report may also be subject to outside scrutiny – for example, by an oversight or investigative agency.

An investigation report should:

- be written in clear straightforward language (avoiding jargon)
- include an analysis of relevant material/evidence, not just a summary of it
- be coherent – each section of the report should follow logically from the last
- include recommendations that are reasonable, appropriate and consistent with previous matters of a similar nature dealt with by the organisation (unless special circumstances apply)
- have relevant documents or parts of documents attached.

If the draft report contains adverse comments or recommendations about a staff member (or other affected person), procedural fairness requires that this person is given the opportunity to be informed about the findings and recommendations and to make submissions.

How is procedural fairness relevant to an investigation?

Procedural fairness helps to ensure that an investigation and its outcomes are fair. It is about giving a 'fair go' to people who may be affected by a decision.

As former Chief Justice Gleeson said in *Minister for Immigration and Multicultural Affairs; Ex parte Lam*: 'Whether one talks in terms of procedural fairness or natural justice, the concern of the law is to avoid practical injustice'.⁵

The courts argue that there are two policy reasons for procedural fairness. They are to:

- increase the chances that the decision-maker will make a fair and unbiased decision
- ensure that justice is not only done but is seen to be done.

Procedural fairness can be relevant to four aspects of the investigation and decision-making process. These aspects are:

- how information is collected
- how information is used
- how potentially adversely affected people are given notice of the allegations and the opportunity to be heard (to check the accuracy of the information, protect their rights, and influence the outcome)
- how the investigator/interviewer/presiding officer communicates with a person being questioned.

The current view of the courts is that procedural fairness is made up of two definite rules.⁶ These are the hearing rule and the rule against bias.

The hearing rule has two parts. The first (the notice rule) requires that anyone likely to be affected by an action or decision is given notice of the issues in sufficient detail for them to be able to respond meaningfully. This includes:

- informing anyone whose interests are likely to be adversely affected by a decision – about the decision that is to be made and any case they need to make, answer or address
- informing anyone who is the subject of an investigation – about the substance of any allegations against them and the grounds for any proposed adverse comment.

The second part of the hearing rule requires that a person likely to be affected by a decision or action is given an opportunity to respond to adverse material, such as a proposed adverse comment and/or recommendations.

The rule against bias requires that people investigating an allegation, preparing a case or making a decision must act impartially in considering the matter. The investigator and decision-maker must have had no direct involvement in the matters being investigated – preferably neither should be the direct supervisor of any person under investigation. This is particularly important if the allegations and possible consequences are serious.

5. [2003] HCA 6; (2003) CLR 1 at para 37.

6. In some jurisdictions, a 'no evidence rule' has been incorporated as a procedural fairness requirement. The no evidence rule has been interpreted to mean that if a decision has been made that adversely affects a person's interests, and that decision was made in the absence of any probative evidence at all, it was not procedurally fair. However, in a recent Federal Court decision, the full court noted that in Australia there has been no authoritative recognition of the no evidence rule (*TCL Air Conditioner (Zhongshan) Co Ltd v Cashel Electronics Pty Ltd* [2014] FCAFC 83, at 149).

For administrative investigations or hearings, it is more common for claims to be made alleging what would amount to apprehended bias than actual bias. The general rule in relation to apprehended bias is that a decision-maker should not hear a matter if an appropriately informed and fair minded observer might reasonably believe that the decision-maker might not resolve the matter in an impartial way.⁷

In addition to ensuring an investigation complies with procedural fairness requirements, it is also important that the investigation is done in a manner that is reasonable. This is a much broader concept. The following types of considerations may be found to be 'unreasonable' – taking irrelevant considerations into account, failing to take relevant considerations into account, bad faith, dishonesty, and disregard of public policy.

In assessing the fairness of administrative procedures, ombudsmen go further than the courts. They take the view that a 'fair procedure' effectively requires compliance with five basic principles. These principles are:

- Adequate hearing – any person likely to be detrimentally affected by a decision or action is given an adequate opportunity to respond to proposed adverse comments (equivalent to one limb of the 'hearing rule' of procedural fairness).
- Adequate notice – any person whose rights or interests are likely to be detrimentally affected by a decision or action is to be informed of the issues they need to respond to (the other limb of the 'hearing rule' of procedural fairness).
- Absence of bias – the people investigating an allegation, preparing a case or making a decision must be, and must be seen to be, impartial (equivalent to the 'rule against bias' of procedural fairness).
- Adequate evidence – there must be logically probative evidence to support conclusions, findings, recommendations and decisions. This is a much broader concept than what is often referred to as the 'no evidence rule' of procedural fairness, but closer to the broad interpretation now given to the concept of 'unreasonableness' by the High Court – in, for example, *Minister for Immigration and Citizenship v Li* [2013] HCA 18⁸.
- Adequate reasons – reasons should be given to explain decisions that adversely affect a person's rights or interests.

4.7 Resolving complaints

The resolution of a complaint should be outcome-focused. The focus should be on how to best address the problem or concern as perceived by the person making the complaint, not on apportioning blame or fault.

The nature and scope of any action taken to resolve a complaint will depend on a number of factors, including:

- the circumstances of the case
- any statutory requirements
- the issue/s complained about
- the parties involved
- the likely outcome.

The options to achieve a fair and reasonable outcome to resolve a complaint, address issues of concern, or redress detriment that has resulted from substantiated issues include:

7. *Re Finance Sector Union of Australia; ex parte Illatton Pty Ltd* [1992] HCA 30; *Livesey v New South Wales Bar Association* [1983] HCA 17; *Webb v R* [1994] HCA 30.

8. *Minister for Immigration and Citizenship v Li* [2013] HCA 18. Note, in this case, the majority held that the legal standard of reasonableness is not limited to what is known as *Wednesbury* unreasonableness (ie. that a decision is 'so unreasonable that no reasonable authority could ever come to it'. See also Australian Government Solicitor Publications, 21 May 2013. <http://www.ag.gov.au/publications/express-law/el186.pdf>. Accessed 9 December 2014.

- **Communication** – a two way process of listening, discussing, explaining and negotiating.
- **Rectification** – taking corrective action to change the decisions, practices or systems that caused the original problem.
- **Mitigation** – mitigation goes beyond rectification. It involves taking corrective action about the cause of the problem, as well as taking action to lessen the adverse consequences of the original problem.
- **Satisfaction** – taking action to satisfy the reasonable concerns of the person who has suffered detriment through non-material means. Satisfaction can include actions of a symbolic nature, such as an apology on behalf of the organisation or entering into undertakings (public or private) to take action.
- **Compensation** – financial recompense for detriment sustained directly or indirectly as a result of the original problem.

The first step in deciding which remedy is appropriate is for an organisation to take responsibility for resolving the problem. If there is more than one organisation involved, they may need to work together to resolve the problem or lose facing the person. When resolving a complaint, it is important for organisations to act promptly, be fair and proportionate, look at all the circumstances, and if appropriate – for example, if there is a fundamental disagreement between a person and the organisation about what happened, whether an error was made or a loss occurred – consider whether alternative dispute resolution is an option.

4.8 Telling the complainant about the decision

It is important to respond to people who have made a complaint in a timely manner about the decisions made about their complaint. Responses to complainants should:

- use clear and courteous language
- include a description of the organisation's understanding of matters raised in the complaint
- acknowledge the documents provided, the time taken to raise the complaint and any strong emotions felt
- address all issues, even if the organisation cannot resolve them
- give reasons for decisions
- include the name and contact details of the person responsible for the matter
- include an apology if one is warranted
- outline options for review or appeal.

If, in the course of an investigation, the organisation makes any adverse findings about a particular individual, any applicable legislated privacy obligations (and exemptions) will need to be considered before the organisation shares information about findings with the person who made the complaint.⁹

4.9 Managing issues arising from a complaint

When finalising a complaint, it is useful to look at the following:

- Have systemic issues been identified through the complaint?
- Are there any systems, processes or policies that need to be improved?

9. In NSW, for example, section 18 of the *Privacy and Personal Information Protection Act 1998* (NSW) places limits on disclosure of information to a person other than the individual to whom the information relates. In January 2016 the Act was amended to provide exemptions to this provision for investigative agencies if the information concerned is disclosed to a complainant and the disclosure is reasonably necessary for the purpose of (i) reporting the progress of an investigation into the complaint made by the complainant, or (ii) providing the complainant with advice as to the outcome of the complaint or any action taken as a result of the complaint. This exemption also applies to any public sector agency or public sector official, who is investigating or otherwise handling a complaint or other matter that could be referred or made to an investigative agency, or that has been referred from or made by an investigative agency (section 24).

- What caused the problem and what could have prevented it?
- Does the relationship with the complainant need to be repaired?
- What, if anything, needs to be done to avoid escalating a difficult situation?
- What support needs to be provided to staff about whom the complaint was made?
- Have staff been supported through the investigation process?
- Do staff need additional training, counselling or supervision?

After these issues have been considered and a complaint is closed, it is important for comprehensive records to be kept about:

- how the complaint was managed
- the outcome/s of the complaint – including any aspects that were substantiated, any recommendations made to address problems identified, and any decisions made on those recommendations
- any outstanding issues that need to be followed up.

It is also important to make sure that outcomes are properly implemented, monitored and reported to the complaint handling manager and/or senior manager.

4.10 Reviewing complaints

A person who makes a complaint should be given information about the process for having their complaint reviewed if they are not happy with the outcome or the handling of the matter. If a person asks for a review of their complaint, this should be done by a staff member who is more senior than the original complaint handler, or a specialist officer who is able to review the original decision and take corrective action. Generally, staff who are authorised to review the management of complaints should have a broad delegation to overturn previous decisions and apply remedies.

If – during the course of reviewing a complaint – systemic issues or other concerns are identified, relevant senior staff should be notified and steps taken to resolve these issues.

4.11 Referring complaints to an external agency

Oversight bodies and investigative agencies may become involved during a complaint investigation, so it is critical to have a good understanding of the role of relevant agencies in the applicable jurisdiction. These are likely to include:

- the local police force
- parliamentary ombudsman
- industry ombudsman (or equivalent)
- regulatory bodies
- professional oversight bodies – eg in relation to health and legal professions
- registration bodies – responsible for maintaining standards within professions
- trade or industry bodies
- anti-corruption commissions
- independent industry regulatory bodies and government regulatory bodies – eg those responsible for ensuring fair trading
- alternative dispute resolution organisations
- civil and administrative tribunals.

Regardless of the jurisdiction, there are likely to be some legislative requirements specifying that a certain agency must be notified if particular allegations are reported or discovered. For example, criminal conduct should be reported to police, concerns about child safety to a child protection agency, and corrupt conduct to an anti-corruption agency. For more information about this issue, see Section 5.1 – Complaints alleging criminal or corrupt conduct.

In response to being notified about a complaint – depending on the circumstances of the case – an external agency may:

- conduct an investigation as an alternative to the organisation conducting an investigation
- conduct a separate investigation about the alleged conduct (or aspects of it) alongside the investigation undertaken by the organisation
- oversee, monitor or review the organisation's investigation – not all external agencies will have the power to do this.

People making complaints should be informed about relevant oversight agencies and appeal mechanisms so that they are able to take up any rights of review or appeal.

5. Handling particular types of complaints

5.1 Complaints alleging criminal or corrupt conduct

If a complaint alleges criminal conduct, or during the course of an investigation into a complaint it becomes apparent that a criminal offence may have been committed, the investigation should be suspended and consideration given to notifying the police. Complaint handlers may ask themselves, 'How sure do I need to be that a criminal offence has been committed, before I go to the police?' Involving the police may feel like a big step to take. Complaint handlers may be worried about looking foolish if they call the police too early or they may be concerned that they will be unfairly treating a person suspected of committing a crime if they involve the police before they are sure of all the facts.

Although there is no hard and fast rule, if it is suspected that an offence has been committed and there is some evidence to support this view, investigative activity should stop immediately and the matter referred to the police. It is unlikely that calling the police too early will result in any great harm. However, delaying or failing to contact the police where criminal offences are involved could result in the contamination or destruction of evidence and seriously impede a police investigation. Similarly, if an issue of corruption is raised, the matter should be referred as soon as possible to the relevant anti-corruption agency.

In some circumstances, it may be an offence to fail to inform the police of a crime. In NSW, for example, section 316 of the *Crimes Act 1900* makes it an offence to fail to inform the police of information that might help them apprehend, prosecute or convict a person who has committed a serious indictable offence – generally, offences that are punishable by five or more years imprisonment.

5.2 Anonymous complaints

Some complainants choose to remain anonymous. This may be because of a fear (sometimes justifiable, sometimes not) that reprisal action will be taken in response to their complaint. The anonymity of a complaint should not be a basis for deciding that the complaint does not raise a substantive issue. Anonymous complaints should be investigated if they are assessed as having some substance, are of reasonable seriousness, and there is sufficient information in the complaint to enable the allegations to be investigated.

Case example – anonymous complaints

Some years ago, in response to the suggestion by some police that anonymous complaints consume resources and lead to minimal results, the NSW Ombudsman decided to review all anonymous complaints made to the NSW Police Force finalised during a six month period to consider how they were made, the issues they raised, how they were investigated and the types of outcomes. We found that anonymous complaints represented 5% of complaints finalised during the period and almost half raised allegations of criminal conduct.

Police declined to investigate 41% of the anonymous complaints because there was not enough detail to identify subject officers, they were too vague or did not contain sufficient information, or because they were frivolous, vexatious or not made in good faith. We generally agreed with the police decisions not to investigate.

Our review showed that police generally investigated the remaining 59% of anonymous complaints well. A third of investigated anonymous complaints resulted in some form of management action such as counselling or increased supervision. Two anonymous complaints led to consideration of whether the subject officer's conduct warranted removal from the police. One officer was subsequently dismissed because of the allegations in the anonymous complaint.¹⁰

5.3 Complaints that appear to be vexatious and malicious

Occasionally an organisation may, in the course of assessing a complaint, find evidence to suggest that the complaint was motivated by malice – that is, to hurt another person (their career, their reputation or their livelihood). Sometimes organisations may try to use this to justify ignoring the complaint. This is the wrong approach. If the allegations nevertheless raise what would be a serious problem if true, the complaint should be taken seriously.

Malicious complaints often bring to light legitimate issues. Sometimes it takes a desire to take retribution or to express anger and frustration to make a person speak out, where they otherwise would have remained silent. A good example is where a person has been disciplined by their supervisor and subsequently makes allegations that their supervisor has been corrupt. Certainly it is possible in these kinds of circumstances that the person has fabricated the complaint. However, it is equally possible that the person had previously been aware that their supervisor had acted corruptly – and it is only the breakdown in their relationship that has driven them to share that information.

On other occasions, an organisation may find that the allegations are not supported by any evidence and there is other evidence to suggest that the complaint was made vexatiously – that is, primarily to cause annoyance. The organisation is then generally justified in dismissing the complaint because it has no substance. The complainant should be advised that no evidence was found to support the allegations. However, any further complaints from the same person should be freshly assessed to see if they have any substance.

5.4 Complaints from vulnerable people

Staff in organisations should respect the pluralism and diversity of our society and avoid any conduct that is unlawful or unfairly discriminatory. They should also provide reasonable assistance and support to those people – who because of their language, culture, age, health, abilities or location – may have difficulty accessing goods and services and making complaints.

Section 3.2 – Making it easy for people to make complaints, highlights the importance of an organisation being accessible and using multiple approaches to try to increase the likelihood that people who may be reluctant to make a complaint will do so.

As well as ensuring an organisation's complaints system is accessible to vulnerable people, it is important to make sure that once a vulnerable person has made a complaint that they are given reasonable help and support to understand:

- the process that will be followed to handle their complaint
- the likely time it will take to handle their complaint
- who they should contact if they have any questions or concerns
- the options that are available if they are unhappy with the way their complaint is being handled or the outcome of the matter.

10. NSW Ombudsman, *Annual Report 2006-2007*, p. 62.

When handling complaints from vulnerable people, it is important that an organisation does not rigidly adhere to policies or procedures if this would place the person making the complaint at a disadvantage. For example, it might be appropriate to allow a person extra time to provide information about their complaint, or to communicate more informally with them than would usually be the case.

Organisations should also allow a person to request that another person or agency help or represent them to make and progress their complaint. It may be appropriate to ask the person making a complaint about the type of help they may need to enable them to engage with the complaints process effectively.

Case example – assisting people through a crisis event

For service delivery agencies delivering critical services – such as social security payments or child support arrangements – to people who are vulnerable, it is also important to have strategies in place to help people through a crisis event. For example, a high proportion of clients of DHS Child Support have recently experienced relationship breakdown. They are also at higher risk of experiencing other crises in their lives – such as financial difficulties, being without a fixed address, being without internet or phone, or having difficulty accessing documents.

Child Support has a triage function called the Customer Review Gateway (CRG) that supports frontline staff who are unsure of the correct review mechanism for a customer's circumstances, or when a customer presents with multiple issues or difficult behaviour. This service allows these clients, contacting Child Support by phone, to be immediately transferred to the CRG service. The CRG provides detailed advice or clarification of the reasons for a decision for a customer, rectifies administrative errors on the spot rather than requiring formal review, and coordinates referrals to other specialist services. There is also a Personalised Services section that manages clients who are in great distress or exhibiting extreme behaviours.¹¹

5.5 Complaints from members of staff

Organisations should treat reports or complaints from staff members as an opportunity to identify and address organisational problems, much like complaints and suggestions from the public. Internal reports should be treated seriously and appropriate steps taken to protect internal reporters from reprisals. Instructions should also be issued to staff to abstain from any activity that is or could be perceived to be victimisation or harassment of internal reporters.

- For guidance on dealing with internal public interest disclosures see the publications section of the NSW Ombudsman's website (www.ombo.nsw.gov.au)

5.6 Complaints from multiple parties

When similar complaints are made by related parties, an organisation should try to make satisfactory arrangements to communicate with a single representative of the group. If this is not possible – for example, the complainants cannot agree on a person to represent the group – steps should be taken to ensure complainants are given consistent information and advice. For example, the organisation could meet with the group collectively or provide standard correspondence to the parties complaining.

11. Commonwealth Ombudsman, *Complaint management by government agencies: An investigation into the management of complaints by Commonwealth and ACT Government*, Report 02/2014, p. 30.

5.7 Complaints involving multiple organisations

Managing complaints that involve multiple organisations (or multiple divisions within a single organisation) can present practical challenges. Members of the public do not always know which organisation or division is responsible for addressing their problem. They will understandably become frustrated if there are disagreements about who is responsible for resolving the issue/s, or if the information and advice they receive is incomplete, duplicated or inconsistent.

Case example – Commonwealth Ombudsman

Complaints to our office that involve multiple organisations often include a complaint about a lack of communication from the agency they first approached (Agency A) – if Agency A thought that their obligation was discharged when the matter was transferred to Agency B. Agency B may then resolve the complaint and communicate to the complainant, but the complainant still expects contact and resolution from Agency A. When Agency B is not responsive or does not manage the complaint satisfactorily, Agency A can then be the subject of further complaints about matters over which it has no control.

Organisations should work together, wherever possible, to ensure complaints are handled in an efficient manner and complainants are told who is responsible for dealing with their concerns and the processes that will be followed. They should establish business rules or arrangements with other organisations to ensure that:

- it is clear who takes the lead in certain matters
- all relevant agencies are involved
- relevant information is shared appropriately – in many cases, information will only be able to be shared with the express and informed consent of the complainant
- proper consideration is given to advice
- arrangements are in place for resolving conflicts
- one organisation is responsible for ongoing communication with the complainant
- decisions are made in accordance with agreed processes and timeframes
- actions are implemented and otherwise followed up.

When organisations are frequently required to work together, consideration should be given to:

- whether steps should be taken to improve public knowledge about the correct organisation to contact about particular issues or complaints
- whether feedback on the subject of complaints should be included in regular meetings or exchanges of information
- how to capture information about complaints involving multiple organisations.

5.8 Complaints involving contractors

Many government organisations that provide services to the public do so through third parties under a contract. These contracts should always include a mechanism for dealing with complaints – either requiring the contractor to put in place their own complaints management system to a sufficient standard, or providing for a system where people can make complaints directly to the organisation.

6. Managing people who make complaints

Although a customer is not likely to get what they want in every situation – which may not be possible or reasonable – the aim should be to ensure that the customer knows that they have been fairly treated and that the organisation has done everything possible, within reason, to meet their needs. From the outset, it is critical to treat people with dignity and respect, manage expectations, manage perceptions and empathise.

Some guidelines for staff are to:

- treat complainants respectfully, pleasantly and professionally at all times
- give your name, greet the person courteously, and ask in a positive manner how you can help
- listen to what the person has to say – use good listening skills (look interested, maintain eye contact, adopt an open body posture etc)
- arrange for assistance (eg interpreter or advocate) if required
- seek clarification of any points that are not clear – in a non-judgemental way
- summarise the main points raised and ask whether they are correct
- provide information to facilitate a better understanding of a decision that has been made or action taken
- show empathy and ask what the person wants to happen
- try to meet reasonable requests that would resolve the matter
- offer solutions that can be delivered
- decide the appropriate course to adopt and, if possible, gain the agreement of the customer
- take responsibility for solving the problem on the spot if possible
- handle complaints quickly, within established timeframes
- log the complaint and action taken for later trend analysis.

6.1 Treating complainants with dignity and respect

Respect and dignity are two different, but closely related, concepts. Actual respect needs to be earned whereas dignity is a birthright. The Preamble to the *Universal Declaration of Human Rights* (proclaimed in 1948) emphasises the importance of recognising the inherent dignity of an individual in the following terms:

“...recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice, and peace in the world...”

Complaint handlers need to recognise that the dignity of individuals – that they matter and that they are worthy of care and attention from the complaint handler – is a fundamental human need. If people feel that their dignity has been threatened or damaged, they may react in a way that is perceived by others as unreasonable or an over-reaction. Violations of dignity can include anything that makes people feel unworthy or without value. This can include bullying, humiliation, demeaning criticisms or negative judgements, exclusion, being judged or treated as inferior, unfair treatment generally, and having their views dismissed or misunderstood.

Complaint handlers also need to treat all parties to a complaint with respect. The issue is not about feeling actual respect because a person has acted in a way that they deserve respect, but about treating people respectfully. Treating people with respect is the minimum standard of behaviour expected of all complaint handlers. Any sign of disrespect by a complaint handler will be interpreted as at least rudeness, and can be perceived as an indication of a lack of objectivity and impartiality, possible pre-judgement or even bias.

Depending on the circumstances of each case, if a central factor underlying a complaint related conflict situation is a fundamental human need – such as restoration of dignity – options would include all those listed under A and one or more of those listed under B.

A: From the outset

- Managing expectations – identifying and then managing the complainant's expectations about how their complaint will be dealt with and the likely outcomes (to try to ensure those expectations are reasonable/realistic).
- Managing perceptions – recognising that the complainant's views are based on their subjective perceptions about what occurred and the harm done, and explaining that any decision on the complaint by the organisation concerned has to be based on objective evidence. This means that in any 'he said/she said' situation the decision-maker is unable to accept one party's word over another in the absence of corroborating/supporting or consistent evidence.
- Showing respect – for example, by emphasising that if the outcome of the complaint is that the decision-maker is unable to substantiate the matters alleged, this does not mean the decision-maker doesn't believe the complainant.
- Empathising – for example, staff dealing with the complainant should demonstrate empathic concern for what the complainant is going through.

B: If the substantive allegations made in the complaint cannot be substantiated

- Using hierarchy strategically – if appropriate, use hierarchy strategically by having a senior member of the organisation concerned communicate directly with the complainant, either face-to-face or by phone. This is a way of showing respect, which may help to restore the complainant's dignity.
- Making a full apology – if relevant and appropriate, admit fault and apologise for any identified deficiencies in the handling of the complaint (as distinct from admissions of fault and apologies relating to the substance of the complaint if these are not warranted).
- Assuring good intentions – explain that while the organisation concerned has tried its best to address the issue raised, for various specified reasons outside its control it has been unable to objectively substantiate the matters alleged by the complainant.
- Communicating lack of power or capacity – inform the complainant that the organisation concerned is either powerless to take the matter further or does not have the resources to be able to devote any further time or attention to the issue (using the language of powerlessness rather than control or dominance).

6.2 Managing expectations and perceptions

It is not uncommon for complainants to be unaware of an organisation's role, procedures or practices for dealing with complaints. They may believe – without realising that these expectations are inappropriate – that they have the right to dictate:

- how the organisation will handle their complaint, including the priority it will be given and who will deal with it
- the type and level of involvement that they will have with their complaint
- how long it will take to deal with the complaint
- what the outcome of their complaint will be.

It is therefore important to test and manage complainant expectations at the earliest possible opportunity to minimise the likelihood of disappointment, anger or frustration.

At the beginning of the complaints process, all complainants should be informed in general terms of:

- the role of the case officer and the functions of the organisation
- the complaints processes and procedures that the organisation will follow in relation to the complaint
- how the complaint will be dealt with
- the likely timeframes for completing tasks relating to the complaint
- the responsibility of the case officer (and the organisation) in relation to the complaint and the person making the complaint.

This information can be reiterated throughout the complaints process if necessary.

Justice theory

Justice theory is a way to describe or explain how individuals react to decisions and the way they are made. The key proposition is that parties to a dispute care as much about how their dispute is resolved as they do about the outcome of the matter.

According to this theory, any decision making process involves the following dimensions:

- The decisions or outcomes of the process – which focuses on perceived fairness of decisions or outcomes.
- The procedures used – focusing on perceived fairness of the processes used to make decisions or outcomes.
- The treatment of the individual involved – in terms of both:
 - the manner the person was treated
 - the information provided to them.

The key lesson that can be learned from justice theory is that it is very important for complaint handlers to ensure that:

- The expectations of complainants about the handling and likely outcome of their complaints are realistic – this will affect the complainant's perception of whether the outcome of the complaint is reasonable.
- The procedures used by complaint handlers are seen to be fair and reasonable – complainant's expectations about the nature and level of their involvement may come into play.
- The interactions between complaint handlers and complainants are perceived to be fair and respectful. This may include whether adequate information has been given to the complainant about the progress of their complaint.

As well as establishing clear ground rules about what complainants can expect from the complaints process, it is also important to outline what is expected from complainants in return. This is because many complainants who behave unreasonably seem not to recognise that what they consider to be their 'rights' – eg the right to complain – are subject to a balancing set of 'responsibilities' that they must accept when they make a complaint. This may include a responsibility to:

- clearly identify their issues of complaint
- provide all relevant information about their complaint – to the best of their ability
- cooperate with any requests for information, inquiries or investigations
- act honestly
- treat the people handling their complaint with courtesy and respect.

6.3 Managing unreasonable conduct

Many people who make complaints are frustrated and upset. They may have suffered harm through no fault of their own and may have received poor service, been given incorrect information, treated unfairly or suffered losses because of a decision made against them. Despite this, the majority of people who make complaints are able to manage their frustration and anger and productively engage with the systems, processes and people they are interacting with.

For some people, however, anger about their complaint is translated into aggressive or abusive behaviour towards organisations and the staff handling their complaint. They may threaten harm, withhold information, provide misleading information, act dishonestly, bombard organisations with extraneous information, or demand outcomes that are not possible or appropriate in the circumstances. At the end of the process, these same complainants are often unwilling to accept decisions and continue to demand further action on their complaints – even though they have exhausted all available internal review options. Although complainants who display such unreasonable conduct may make up a small percentage of the people that an organisation has to deal with, the resources directed towards dealing with their complaints can be significant – and the people who display such behaviour can place a heavy burden on staff.

Unreasonable conduct by a complainant can be defined as any behaviour by a current or former complainant that – because of its nature or frequency – raises substantial health, safety, resource or equity issues for relevant parties. The parties that might be detrimentally affected include the organisation responsible for handling the complaint, the person responsible for dealing with the complaint, the person making the complaint (and possibly his or her family members), and other complainants and service users. Unreasonable conduct may take the form of unreasonable persistence, unreasonable demands, unreasonable lack of cooperation, unreasonable arguments and unreasonable behaviours.

Preventing conflict escalation by complainants

It will often be possible for a complaint handler to identify early in their contact with a person making a complaint that the person is starting to head down the path of engaging in unreasonable conduct. If a complaint handler believes that a person is at risk of becoming unreasonably demanding or persistent in pursuing their complaint, they should be sure to always maintain a calm demeanour, show respect, and to demonstrate impartiality and professionalism.

One approach that may help to reduce the likelihood that a complainant will become caught up in a downward spiral into unreasonable conduct is to use 'motivational interviewing' when dealing with them. Motivational interviewing is:

A collaborative, goal-oriented style of communication with particular attention to the language of change, designed to strengthen personal motivation for and commitment to a specific goal by eliciting and exploring the person's own reasons for change within an atmosphere of acceptance and compassion.¹²

The aim is for the complaint handler to guide discussion in a focused way – by informing, asking and listening – to encourage the complainant to see the benefits of changing their behaviour so they are more likely to attain their goal (resolving the complaint). The complaint handler must develop trust, build rapport, use empathic reflective listening, respect the autonomy of the person making the complaint, and remain collaborative and non-judgemental.

12. Glossary of motivational interviewing terms as supplement to William R Miller and Stephen Rollnick, *Motivational Interviewing: Helping*. <http://www.guilford.com/add/miller2/glossary.pdf>.

Strategies for managing unreasonable conduct

Once a complainant perceives a conflict with the complaint handler, the matter can escalate significantly. In such cases it is not uncommon for a complainant to lose focus on the original grievance, become increasingly frustrated and distressed, decide that the complaint handler has questionable judgement or competence or is wrong in principle, and to increasingly focus on issues of personal vindication and retribution. Once this occurs, the chance that the conflict can be resolved to the mutual satisfaction of the complainant and the complaint handler diminishes significantly.¹³

In such cases, clear boundaries have to be established and maintained. The most effective way for staff to manage unreasonable conduct by complainants is to deal with observable conduct, rather than the possible motivations or causes for that conduct. Unreasonable conduct by complainants can be divided into five broad categories – see Table 2. The table also includes information about the overall management strategy for dealing with particular types of conduct.

Table 2: Categories of unreasonable conduct by complainants

Conduct	Summary
Unreasonable persistence	This includes complainants persisting with their issues even though they have been dealt with to finality, refusing to accept final decisions and sending excessive amounts of correspondence. The strategy for dealing with unreasonable persistence is saying 'no' – not necessarily using the word but the same principle.
Unreasonable demands	This includes complainants insisting on outcomes that are unattainable, moving the goal posts, or demanding to have their complaints dealt with in particular ways. The strategy for dealing with unreasonable demands is setting limits – eg limiting how often a complainant can telephone the organisation, who they can call, for how long etc.
Unreasonable lack of cooperation	This includes complainants providing disorganised, excessive or irrelevant information, being unwilling to consider other valid viewpoints, or refusing to define their issues of complaint when they are capable of doing so. The strategy for dealing with unreasonable lack of cooperation is setting conditions – eg requiring a complainant to define their issues of complaint or organise information they have submitted with their complaint.
Unreasonable arguments	This includes complainants seeing cause and effect arguments where there are clearly none, holding conspiracy theories unsupported by evidence, and irrationally interpreting facts or laws and refusing to accept other more reasonable interpretations. The strategy for dealing with unreasonable arguments is declining and discontinuing – eg refusing to deal with complaints that are not supported by any evidence.
Unreasonable behaviours	This includes extreme anger, aggression, threats or other threatening or violent conduct. The strategy for dealing with unreasonable behaviours is setting limits and conditions about acceptable and unacceptable conduct and, if necessary, applying risk management strategies and/or security policies and procedures.

13. For a discussion about unusually persistent complainants, see Grant Lester, Beth Wilson, Lynn Griffin and Paul E Mullen, 'Unusually persistent complainants', *British Journal of Psychology* (2004) 184, pp. 352-356, and Grant Lester, 'The Vexatious Litigant', *Judicial Officers' Bulletin*, April 2005, Vol. 17 No. 3, pp. 17-19.

Some useful resources are:

- The NSW Ombudsman *Managing Unreasonable Complainant Conduct: Practice Manual* is a comprehensive guide to dealing with, preventing, identifying and responding to unreasonable conduct by people making complaints. A copy of the manual can be accessed at www.ombo.nsw.gov.au.
- The Australian and New Zealand Standard *Guidelines for complaint management in organizations* (AS/NZS 10002:2014) – Appendix E – Identifying and managing unreasonable conduct by complainants.

6.4 Restricting access

Organisations are entitled to expect that the behaviour of members of the public who are angry will stay within certain acceptable limits. If behaviour strays beyond these limits, an organisation is entitled to place and enforce limits on contacts between the organisation and the person displaying the inappropriate behaviour. Similarly, an organisation may decide it is appropriate to place limits on contact with complainants who are unreasonably persistent or demanding. For example, an organisation may limit the degree to which it will respond to a complainant's communications – subject to any statutory rights to information available to the public – including determining not to respond to correspondence unless it raises new and significant issues, or placing numerical limits on the number of inquiries the organisation will respond to in a designated period.

There are eight critical matters that must be considered by organisations considering imposing any such limitations:

- In the absence of compelling reasons to the contrary, members of the public are entitled to seek advice and assistance and use the services and facilities provided by an organisation.
- Complaints and criticism are legitimate and potentially constructive aspects of the relationship between an organisation and the public. They are a valuable means of reflecting on the operations of an organisation and improving both those operations and the quality of an organisation's relationship with the community.
- Anger is an understandable and, to some degree, an acceptable emotion on the part of members of the public frustrated with actual or perceived misconduct or other action or inaction of an organisation or its staff. It is an emotion that needs to be properly managed so that effective services can be delivered, communication can take place, and staff members and public facilities are not put at risk. It is unacceptable to unconditionally deprive any member of the community of the right to have their complaints and concerns examined or to use the services and facilities that would otherwise be provided by an organisation.
- Before applying limitations, an organisation should be prepared to try alternatives – for example, seeing whether different (generally more senior) staff are able to deal with the person in question.
- In all but the most serious of cases, limits on access and use of services and facilities should be applied only after a warning to the person that limits will be applied unless the specified unacceptable conduct stops.
- When framing reports and recommendations about imposing limits, organisations should ensure that staff avoid inflaming matters by using defamatory or otherwise derogatory language and base their recommendations on objective accounts of the person's behaviour and its impact on the organisation.
- An organisation should specify in writing to the person concerned the limits that have been imposed and the reasons they have been imposed.
- An organisation should be prepared to have any limitations it has imposed reviewed by its CEO/ Board/Council on application by the person on whom the limitations are imposed – after a reasonable period, such as three months. This creates an incentive to address the problematic behaviour.

Applying limitations on contact requires tact, discretion, flexibility and common sense. Each situation needs to be considered separately, in light of the provisions of the relevant policy.

7. Using complaints to improve service delivery

The key to improving an organisation's complaint handling and service delivery lies in ensuring a clear, consistent approach to recording complaints in sufficient detail to inform relevant staff or an external organisation about the nature of a complaint and the action taken to resolve it. The complaint management framework also needs to include regular analysis of complaint issues and trends relating to service quality and associated systems.

Complaint numbers

Many factors influence complaint numbers and numbers of complaints cannot, in themselves, be an accurate indicator of an organisation's performance. Many factors that go towards improved performance – such as an increasing focus on complaints and rigour around recording complaints – can increase complaint numbers. Promoting and improving the accessibility of a complaints system will also increase numbers. Equally, a reduction in complaint numbers may be due to a change in responsibilities rather than an improvement in an organisation's performance.

7.1 Collecting information about complaints

Organisations should have a clear system for recording and documenting all complaints. The complaint policy and procedure should reference the system and provide guidance about how to use it. Organisations should also ensure that staff have access to the system and are trained and monitored in their use of it.

To undertake effective complaint analysis, organisations should make and retain good records including:

- details of complaints
- categories or common issues raised in complaints
- the steps taken to address complaints
- complaint outcomes
- any undertakings or follow up action required to resolve the complaint or issues identified.

The confidentiality to be accorded to complainants and complaints should also be considered. In particular, personally identifiable information about any individual should only be disclosed or used in compliance with all relevant privacy laws and ethical obligations.

To maximise accountability and improve service delivery, information collection should also include:

- Records about the type of training and instruction that individuals involved in the complaint management system have received.
- The organisation's criteria for responding to requests for records made by a complainant or somebody acting on their behalf – this may include time limits, statutory rights, what kind of information will be provided, to whom and in what format.
- Specifying how and when de-identified complaint data may be disclosed to the public or other organisations to whom the complaint refers.

7.2 Analysing and reporting information about complaints

The sophistication of complaint analysis will depend on the organisation's requirements and the amount of complaint data available. If complaints are recorded in a systematic way, it should be relatively straightforward to retrieve information for reporting and analysis. At the least, agencies should run regular reports on:

- the number of complaints received
- the outcomes of complaints, including matters resolved at the frontline
- issues arising from complaints
- systemic issues identified
- the number of requests received for internal and/or external review.

Regular analysis of reports will enable trends to be monitored, the quality of customer service to be measured and improvements to be made. When conducting regular reviews of complaint data, it is important to identify whether there have been any internal or external factors (such as changes to legislation or applicable policies, organisational structures or responsibilities, resources or systems) that could have affected the period under review.

Organisations should also continually monitor their complaint management systems to ensure complaints are effectively responded to and resolved, and any deficiencies in the operation of the system are identified and rectified. Monitoring may include the use of audits, complainant satisfaction surveys, and online listening tools and alerts.

Regular reports should be made to the head of the organisation and senior management about the operation of the complaint management system, complaint trends and systemic issues, and recommendations for improvement where appropriate. Reports to management should balance the need for comprehensive and thorough information against the need for clarity and brevity.

To develop a culture that values complaints, it is critical that the head of an organisation and senior managers send a clear message to staff that complaints can be a valuable source of feedback on the organisation's systems, services and staff – and actively implement changes to services, systems, practices, procedures and/or products if weaknesses are identified through managing and analysing complaints.

7.3 Improving complaint processes

Organisations should be committed to implementing appropriate system changes arising out of analysing complaints data and continual monitoring of the system.

It is a common assumption that additional resources are needed to improve the management of complaints.¹⁴ However, it is possible to make significant improvements to the handling of individual complaints and the operation of the complaint management framework without the need for additional resources. In the first instance, organisations may wish to attempt to reduce complaint numbers. Some methods, such as improving service delivery, should lead to noticeable reductions in complaint numbers over time. Other options for reducing complaint numbers are to proactively communicate the implementation of new programs and policies and provide comprehensive explanations of decisions.

At any time that policies, procedures or processes are changed as a result of complaints or feedback, the organisation should:

- Publicise the changes to both staff and customers – this will help to overcome any perception that 'nothing ever seems to change' as a result of complaints.
- Monitor the impact (if any) of the changes through the complaint process – to see, for example, if complaint numbers have decreased.

14. Commonwealth Ombudsman, *Complaint management by government agencies: An investigation into the management of complaints by Commonwealth and ACT government*, October 2014, Report 02/2014, p. 15.

8. Some key resources

- The Australian and New Zealand Standard *Guidelines for complaint management in organizations* (AS/NZS 10002:2014).
- NSW Ombudsman *Complaint Management Framework and Complaint Handling Model Policy*, 2015 - <http://www.ombo.nsw.gov.au/news-and-publications/publications/guidelines/state-and-local-government/complaint-management-framework-june-2015>.
- NSW Ombudsman, *Public interest disclosures*. Collection of resources available online at <http://www.ombo.nsw.gov.au/news-and-publications/publications/guidelines/public-interest-disclosures>.
- NSW Ombudsman, *Complaint assessment criteria (Public Administration Jurisdiction)*, Public Sector Agencies Fact Sheet 25.
- NSW Ombudsman, *Managing unreasonable complainant conduct: Practice manual*, 2nd edition, May 2012.
- NSW Ombudsman, *Responding to unreasonable behaviour – threats, anger and aggression*, Public Sector Agencies Fact Sheet 21.
- NSW Ombudsman, *Apologies*, Public Sector Agencies Fact Sheet 1.
- NSW Ombudsman, NSW Ombudsman Fact Sheet 18 'Reasons for decisions'.
- Commonwealth Ombudsman, *Providing remedies*, Fact Sheet 3, November 2008.
- Commonwealth Ombudsman, *Compensation for defective administration*, Fact Sheet, 22 October 2015.
- NSW Ombudsman Tips for accessible complaint handling and accompanying video - My right to be heard
- NSW Ombudsman Guidelines for dealing with youth complaints
- NSW Ombudsman Complaint handling at universities: best practice guidelines
- NSW Ombudsman Tips for local councils - Building a best practice complaint management system

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