



Procurement Complaints Handling Policy

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Approved for external information

OFFICIAL

Key information

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Approval

This document has been approved on the basis that the appropriate input has been obtained during its development.

Bettina McMahon
Chief Executive Officer

20 September 2020

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Table of contents

1	General information	4
2	Scope of this policy	4
3	Types of procurement complaints	4
4	How to lodge a complaint	5
5	Complaint handling process	7
6	Independent Internal Review for General Procurement Complaints	7
7	Public interest certificates.....	8

1 General information

This document contains information about making a complaint regarding a procurement process undertaken by the Australian Digital Health Agency ('Agency'), including complaints made under the *Government Procurement (Judicial Review) Act 2018* (Cth) ('GPJR Act').

The Commonwealth Procurement Rules state the following in relation to complaint handling in the context of procurement:

If a complaint about procurement is received, relevant entities must apply timely, equitable and non-discriminatory complaint-handling procedures, including providing acknowledgement soon after the complaint has been received. Relevant entities should aim to manage the complaint process internally, when possible, through communication and conciliation (paragraph 6.8).

As a prescribed corporate Commonwealth entity, the Agency has developed this Procurement Complaints Handling Policy ('Policy') consistent with paragraph 6.8 of the Commonwealth Procurement Rules.

2 Scope of this policy

This Policy applies to complaints by suppliers that arise in relation to a procurement process conducted by the Agency. It covers the events that occur between the time the request documentation is released and the date of contract execution, regardless of when the actual complaint is made.

This Policy does not apply to disputes that arise between the Agency and the successful contractor (if any) after contract execution. Any such disputes should be managed according to the terms and conditions of the relevant contract and the dispute resolution process contained in that contract.

3 Types of procurement complaints

There are two types of procurement complaints:

- a a complaint made under section 18 of the GPJR Act (a '**GPJR Act Complaint**'); and
- b a complaint regarding something that the Agency proposes to do, or has done, during a procurement process, that does not satisfy the requirements for a GPJR Act Complaint (a '**General Procurement Complaint**').

GPJR Act Complaints

Under the GPJR Act, a supplier can make a written complaint to the accountable authority of a Commonwealth entity about contraventions of the relevant CPRs relating to covered procurements by the Commonwealth entity, that affects the supplier's interests.

The Agency is a corporate Commonwealth entity and its accountable authority is its Board. The Board or a person authorised by the Board undertakes certain functions and powers under the GPJR Act for the Agency.

For further information, including what is a 'covered procurement', a 'relevant CPR' or a 'supplier' under the GPJR Act, please see the [GPJR Act](#) and the [Department of Finance](#) website, including [RMG 422: Handling complaints under the Government Procurement \(Judicial Review\) Act 2018](#).

General Procurement Complaints

A General Procurement Complaint is a procurement complaint that does not satisfy the requirements for a GPJR Act Complaint.

A General Procurement Complaint can be made about any aspect of the procurement process and can relate to any procurement activity.

4 How to lodge a complaint

If a supplier or potential supplier would like to make a GPJR Act Complaint or General Procurement Complaint to the Agency about a procurement process conducted by the Agency, it should lodge your complaint with the Agency in writing via email or pre-paid post to the addresses specified below.

Email:

Email address: contracts@digitalhealth.gov.au

For GPJR Act Complaints

Attention: Board of the Australian Digital Health Agency
c/o Chief Financial Officer

contracts@digitalhealth.gov.au

For General Procurement Complaints

Attention: Chief Financial Officer

or

Pre-paid Post:

Postal address: Australian Digital Health Agency
Level 25, 175 Liverpool Street
Sydney NSW 2000

For GPJR Act Complaints

Attention: Board of the Australian Digital Health Agency
c/o Chief Financial Officer

Australian Digital Health Agency
Level 25, 175 Liverpool Street
Sydney NSW 2000

For General Procurement Complaints

Attention: Chief Financial Officer

To assist the Agency in resolving complaints in a timely manner, the complaint should include the following information:

Contact details
Company name (registered name and trading name/s)*
ABN/ACN*
Registered address*
Telephone number/s*
E-mail address/es*
Name and contact details (email address and phone number/s of the person the Agency can contact regarding the complaint)*
Information on the procurement
AusTender ID (ATM ID/CN ID/SON ID)*
Name of ATM
Product or service being procured*
Relevant times and dates (i.e. issuance of tender, tender closing, and contract award)
Complaint particulars
Detailed statement of all relevant events and facts in support of complaint*
Relevant times and dates*
Whether the complaint is a GPJR Act Complaint or a General Procurement Complaint*
Provisions of the <i>Commonwealth Procurement Rules</i> that have allegedly been breached*
Statement of form of relief requested
Remedy being sought*
Complaint costs and/or tender preparation costs, if applicable*
Postponement of contract award, if applicable*
Attachments
Any other information which will be of benefit to resolve the complaint including any correspondence or other evidence

*mandatory information for those procurement complaints which are made under the *Government Procurement (Judicial Review) Act 2018* (Cth).

5 Complaint handling process

After receiving a procurement complaint, the Agency will:

- acknowledge receipt of the complaint, in writing, within a reasonable timeframe. This will usually be within five (5) working days of receiving the written complaint; assess whether the complaint meets the criteria under the GPJR Act;
- for a complaint made under the GPJR Act, suspend the relevant procurement process unless a Public Interest Certificate is issued or already in place;
- investigate and seek to resolve the issue within a reasonable timeframe. This will usually be within ten (10) - fifteen (15) working days of receiving all written correspondence and information relating to your complaint. The Agency will let the person or organisation who lodged the complaint (Complainant) know if it may take longer; and
- if the Agency requires further correspondence or information from the Complainant, the Agency will contact them to request it. The Agency will give them a reasonable timeframe to respond to any communication from the Agency. This will usually be no less than fifteen (15) working days, unless the matter is urgent.

At the end of the process, the Agency will notify the Complainant in writing of the outcome of the investigation.

When the Agency closes the complaint, it will consider lifting any suspension (if there is one in place) according to the requirements relevant to the GPJR Act Complaint or the General Procurement Complaint.

6 Independent Internal Review for General Procurement Complaints

How to request an independent internal review

If the Complainant is not satisfied with the Agency's response to a General Procurement Complaint (under the process outlined in section 5 above), they may then seek an independent internal review of that complaint.

To request an independent internal review of the complaint, the Complainant should lodge their request with the Agency in writing (by email or pre-paid post, to the address detailed in section 4 above) setting out:

- their name, business name, address and telephone contact details;
- the details provided with the complaint (detailed in section 4 above) to which the request for internal review relates;
- reference to the response received from the Agency in relation to the complaint; and
- a request for independent internal review of the complaint, including reasons for requesting a review.

Process for independent internal review

The Agency will acknowledge receipt of the request for independent internal review of a General Procurement Complaint, in writing, promptly.

The acknowledgment will identify the independent internal review officer and the expected timeframe for making the independent internal review decision.

If the Agency requires further correspondence or information from the Complainant, the Agency will contact them to request it. The Agency will give them a reasonable timeframe to respond to any communication from the Agency. This will usually be no less than ten (10) working days, unless the matter is urgent.

The Agency will advise the Complainant of the outcome of the independent internal review in writing, within a reasonable timeframe. This will usually be within the expected timeframe that was provided in the acknowledgement notice.

Complaints not resolved after an independent internal review

If the Complainant is not satisfied with the outcome of an independent internal review of a General Procurement Complaint, they can:

- contact the [Australian Government – Procurement Coordinator at the Department of Finance](#);
- contact the [Commonwealth Ombudsman](#);
- seek independent legal advice about their review rights.

7 Public interest certificates

All Public Interest Certificates issued by the Agency under the GPJR Act will be published on the Agency's website at <https://www.digitalhealth.gov.au/about-the-agency/tenders-and-offers> .