



Identifying and defining issues of complaint

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Identifying and defining the issues of a complaint is an important step in the complaint handling process. Once all the issues that the complainant raises are identified, the case officer determines whether they relate to a 'matter of administration' and are therefore in jurisdiction.¹ It is necessary to communicate to the complainant what issues are able to be investigated (those that relate to a matter of administration) and what issues are not (those that don't relate to a matter of administration). The issues that relate to a matter of administration can then be defined in the context of possible defective administration and the complainant can be advised of any alternative avenues to address those issues not in our jurisdiction.

In some cases the issues are relatively simple and easily identified in the written complaint. In other cases it is not clear exactly what the complainant is concerned about or there are multiple issues, some of which are in our jurisdiction and some of which are not. In these circumstances, it is important to clarify all the issues with the complainant and confirm them in writing (for example, by email) before commencing an investigation. This enables clear, early information to the complainant about what we will be dealing with. If this is not the key issue for them, they may withdraw the complaint or take alternative action.

Common understanding of the issues at an early stage also enables the complainant to provide further information relevant to the complaint if necessary and prevents disagreement later (for example, at the preliminary view stage that we have not understood or investigated the right issues).

Examining the issues of a complaint in terms of possible defective administration

Defective administration generally encompasses administrative decisions or actions that are flawed, unreasonable or unfair. In considering whether administration is defective, case officers can consider the principle for good decision making and administrative action at Appendix 1. However, when assessing and investigating a complaint, case officers should also examine the issues of the complaint in terms of s25(1) of the *Parliamentary Commissioner Act 1971 (PC Act)* which contains specific types of defective administration. These are set out in Appendix 2. It is important to have in mind how the complaint may constitute defective administration from the beginning of our handling of the complaint. This focuses any future investigation and ensures that inappropriate matters are not investigated.

¹ s14(1) PC Act

How to frame issues

A complaint may have more than one action or decision complained about and therefore more than one issue. It is also possible for a complaint to consist of several issues even though there is only one action or decision involved.² It is important not to rely solely on the issues as identified by the complainant - upon reading the complaint it may be clear that there are other issues that are raised by the facts.

The issues of the complaint should be translated into possible defective administration and framed in such a way that allows them to be tested, that is, proved or disproved. They should not simply be a statement of fact. Issues should relate to facts in dispute or the decision/action in dispute (where the dispute relates to the decision made/action taken on the facts rather than the facts themselves being in dispute). Examples of how to frame issues are given at Appendix 3.

Issues that have been identified may have different levels of significance relating to whether and in what way they might be investigated, the level of significance potentially being different for the complainant and the public interest. Clear identification of issues assists with prioritisation and decisions regarding investigative work.

² For example, a decision not to issue a commercial fishing licence by the Fisheries Department where the complainant states:

- (i) the decision maker took into account irrelevant considerations;
- (ii) the decision maker was biased; and
- (iii) the decision is inconsistent with stated guidelines;

is a complaint consisting of three issues even though there is only one decision involved.

APPENDIX 1 GOOD DECISION MAKING AND ADMINISTRATIVE ACTION

The following principles aim to establish the standards applicable to agencies when making administrative decisions and taking administrative action. Case officers should examine the actions and decisions of agencies against the appropriate standard when forming a view on a complaint.

Requirement	Examples
Compliance with the law	<ul style="list-style-type: none"> ○ Actions are authorised by and consistent with the letter and the spirit of the legislation ○ Decisions comply with orders, rules and regulations ○ Decisions made by delegates are properly authorised
Integrity	<ul style="list-style-type: none"> ○ Integrity or honesty is present in all actions ○ Decisions are made in good faith and for a proper purpose
Procedural fairness	<ul style="list-style-type: none"> ○ The decision maker is unbiased, impartial and has no conflict of interest ○ The person affected by the decision is given sufficient details of the case to be met and the opportunity to present his/her case ○ Reasonable inquiries into matters of dispute are made before a decision is reached
Notification of rights of review	<ul style="list-style-type: none"> ○ The person affected by the decision is informed of the available rights of review
Policy	<ul style="list-style-type: none"> ○ Policies are reasonable, and applied consistently but not inflexibly ○ The merits of an individual case is considered to determine whether an exception to policy needs to be made
Reasonableness	<ul style="list-style-type: none"> ○ Decisions are reasonable, rational and proportionate in the particular circumstances
Relevant considerations	<ul style="list-style-type: none"> ○ All relevant considerations are identified and form the basis on which the decision is made ○ Irrelevant considerations are not taken into account when making decisions
Competence	<ul style="list-style-type: none"> ○ The decision maker performed their functions with due care and attention, at a standard which is reasonably expected of public officials. ○ The advice given by the decision maker is accurate
Reasons	<ul style="list-style-type: none"> ○ Reasons for decisions set out the evidence relied upon. The conclusions reached on that evidence and the justification for the decision ○ Reasons taken into account policy, law and the circumstances of the case

Requirement	Examples
Timeliness	<ul style="list-style-type: none"> ○ Actions occurred within statutory time frames ○ Decisions are not unreasonably delayed
Proper courtesy, consideration and sensitivity	<ul style="list-style-type: none"> ○ Minimum standards of professionalism and courtesy are met ○ Codes of Conduct are complied with
Accountability and transparency	<ul style="list-style-type: none"> ○ Records are accurate, complete and available ○ Incorrect records are corrected ○ Decisions take into account the public interest and the costs and benefits to the person affected and others

APPENDIX 2
TYPES OF DEFECTIVE ADMINISTRATION – s25(1) PC ACT

Type of defective administration	Examples
Contrary to law s25(1)(a)	<ul style="list-style-type: none"> ○ Failure to comply with legal obligations eg. contractual, statutory obligations or procedures ○ Decisions or actions not authorised eg. the decision maker has acted beyond their power ○ Decision maker acting under the dictation of another rather than independently ○ Breach of procedural fairness eg. inadequate opportunity for complainant to present their case, inadequate details of the case to be met, bias of the decision maker, conflicts of interest, lack of inquiry into matters of dispute, lack of evidence to support the decision
Unreasonable, unjust, oppressive or improperly discriminatory s25(1)(b)	<ul style="list-style-type: none"> ○ Decisions or actions so unreasonable that no reasonable person would so decide or act ○ Decisions or actions inconsistent with guidelines or policy, or with other decisions involving similar facts or circumstances ○ Inflexible application of policy without regard to the merits of the individual case ○ Serious delay in making decisions ○ Failure to give notice of rights eg. rights of appeal or review ○ Irrational or unconscionable decisions ○ Decisions or actions which are punitive ○ Partial, unfair or inequitable decisions
In accordance with a rule of law or a provision of an enactment or a practice that is or may be unreasonable, unjust, oppressive or improperly discriminatory s25(1)(c)	<ul style="list-style-type: none"> ○ As above, but the focus is on the legislation or practice rather than the decision or action itself
Improper purpose or on irrelevant grounds, or taking into account irrelevant considerations s25(1)(d)	<ul style="list-style-type: none"> ○ Abuse of power eg. decisions or actions for a purpose other than that for which the power was conferred ○ Decisions or actions for personal advantage ○ Decisions made in bad faith ○ Relevant considerations not taken into account or irrelevant considerations taken into account
Reasons for decision were not, but should have been, given s25(1)(e)	<ul style="list-style-type: none"> ○ Failure to comply with statutory obligation to provide reasons for decision ○ Failure to provide reasons where it would be good administrative practice to do so ○ Inadequate reasons

Type of defective administration	Examples
Mistake of law or fact s25(1)(f)	<ul style="list-style-type: none"> ○ Decision or action based on information that is factually incorrect ○ Decision maker acted on the basis of a misinterpretation of the legal position
Wrong s25(1)(g)	<ul style="list-style-type: none"> ○ Failure to meet agency or industry standards for public administration, good judgment, integrity and the like ○ Not a decision a reasonable person would make given the information available to them ○ Decision is contrary to the weight of evidence where the evidence is clear-cut* ○ *Note: the Ombudsman would not generally substitute his/her view for that of an agency where the decision is reasonably open to the agency to make

APPENDIX 3 EXAMPLES OF HOW TO FRAME ISSUES

Some general examples

Example 1:

A complainant writes to us stating that after completing her degree as an international student she applied for an onshore sponsored visa to obtain permanent residency in Australia. She was told the processing time for the visa was four to six weeks. Eighteen weeks later she received notice of approval of a sponsored visa but it was the wrong subclass (it was for offshore sponsorship). The complainant immediately contacted the relevant agency and was told that they had made a mistake but could not now approve the correct onshore sponsored visa as the timeframe for approval had been exceeded. Although she met the criteria for the onshore sponsored visa, the delays meant that she had to leave the country.

When framing the allegations it is not enough to simply re-state the facts. In this example, the complainant is stating that:

- She was informed that the processing time of applications was 4 to 6 weeks
- The first correspondence she received from the SMC was more than 17 weeks after her application;
- She received sponsorship approval for the offshore sponsored visa and not the onshore sponsored visa she applied for;
- She was advised that she could not obtain the correct visa and she had to leave the country.

However, when framing the issues case officers should assess what they know of the complaint using an administrative law framework. For example, is the complaint about timeliness, adequacy of explanation, procedural fairness, the exercise of discretion, and so on. In this case, the allegations/issues could be stated as follows:

1. The length of time the agency took to process the visa application was unreasonable -17 weeks instead of the four to six weeks that was advised; **(serious delay; misinformation; unreasonableness)**
2. The agency erroneously approved the offshore sponsored visa and not the onshore sponsored visa the complainant applied for; **(mistake of fact)** and
3. The agency's delay in processing her application resulted in her not meeting the timeframe for approval of a sponsored onshore visa and she had to leave the country. **(unreasonable, unjust; inaccordance with a rule of law or practice that is unreasonable, unjust; inflexible application of policy)**

Example 2:

A complainant writes to us stating that he received a letter from an agency he had been previously employed with for over 30 years. The letter claimed that he had been overpaid long service leave entitlements during his employment and that he was now required to pay back over \$5,000. The letter did not provide any explanations. The complainant contacted the agency several times over the next few months to try and sort the issue out. Each time the agency responded with an explanation of the calculations, the amount owed increased in value. The complainant believes that he does not owe any money to the agency and that if he does, it should be written off as an administrative error that occurred nearly twenty years previous, subject to the Limitations Act.

In this instance, the allegations could be framed as follows:

1. The agency did not provide an adequate explanation or evidence to show how the complainant was overpaid long service leave during his employment, or why this error went unnoticed; (**no reasons for decision; breach of procedural fairness – inadequate details of case to be met; lack of probative evidence**)
2. The agency increased the amount of money it is seeking from the complainant with no clear explanation as to why this increase was incurred or how it was calculated; (**no reasons for decision**)
3. The agency is seeking repayment at the complainant's level and rate of pay on his retirement, rather than the rate of pay he was earning when he took the long service leave; and (**unreasonable, oppressive; irrelevant considerations**)
4. The agency was acting unlawfully as the debt was no longer recoverable in that it occurred in 1990, prior to the six year limit as stated in the Limitations Act. (**contrary to law; mistake of law**)

Some agency specific examples

Prisons

- The prison has failed to properly consider the complainant's grievances
- The prison's decision to refuse contact visits is unreasonable
- The prison delayed in processing a temporary transfer request
- Prison officers acted in a discriminatory manner towards [the complainant]
- [The complainant's] cell was unreasonably searched and property removed without an adequate explanation
- [The complainant] is being unfairly disadvantaged because the prison has confiscated his/her computer

Housing

- The department failed to take into account current medical information when assessing priority housing application
- There are unreasonable delays in processing housing applications
- There are unreasonable delays in fixing property maintenance issues
- The department incorrectly calculated tenant liability charges
- The department failed to adequately investigate concerns of antisocial behaviour
- The department unfairly evicted [the complainant]
- [The complainant] was unreasonably denied a transfer to ...

Local government

- Local government did not respond to complaints
- Local government failed to take action over neighbour's unauthorised structure
- Local government failed to take into account neighbour's objections over development proposal
- Local government unreasonably approved development/building
- Local government unreasonably denied insurance claim
- Local government failed to notify complainant of neighbouring building application
- Tender process not conducted fairly due to bias of local government officers
- Local government unreasonably issued Infringement Notice

Education

- The department unreasonably terminated [the complainant's] teaching practicum
- The department has not responded appropriately to complaints about bullying
- The department's decision to suspend/exclude [complainant's child] from school is unreasonable

Police

- Police failed to adequately investigate the [complainant's] concerns
- Police failed to take adequate steps to confirm that [the complainant's] licence was not suspended
- There was an unreasonable delay in returning seized property
- [The complainant's] vehicle was impounded without proper receipt
- Police issued a traffic infringement which contains misleading or incorrect information
- The police failed to bring a matter before the court within a reasonable time

Child Protection

- The department was biased in its investigation of [the complainant's] concerns
- The department failed to take action on allegations of child maltreatment
- The department failed to give adequate reasons as to why [the complainant's] children were removed from his/her care
- The department failed to policy proper procedure in relation to the apprehension of [the complainant's] children
- The department has failed to comply with a Family Court Order
- The department has not provided adequate information to [the complainant] regarding the care of his/her children