



Should we exercise discretion not to investigate a complaint that is otherwise in jurisdiction?

The Commissioner may refuse to entertain a complaint ... if he is of the opinion that –

- (a) the matter raised in the complaint is **trivial**;*
- (b) the complaint is **frivolous** or **vexatious** or is **not made in good faith**;*
- (c) the person aggrieved has **not a sufficient personal interest** in the matter raised in the complaint; or*
- (d) having regard to all the circumstances of the case, the investigation ... is **unnecessary or unjustifiable**.*

s18(1) PC Act

SHOULD INVESTIGATE	EXAMPLES
Where the complaint concerns a materially significant matter, e.g. something which may have a detrimental consequence for the individual if the matter is not sorted out	<ul style="list-style-type: none"> ○ Financial loss, including potential or future financial loss ○ Loss of amenity, such as loss of privacy due to poor/unlawful planning decision ○ Loss of a right, such as a right of review, including the failure to notify the complainant of an appeal right ○ Failing to renew a licence where the complainant held a legitimate expectation that this would occur ○ Failure to keep accurate personal records causing significant inconvenience to the complainant
Where the complaint concerns a matter of significant public interest, e.g. something which may have a detrimental consequence for others if the issue is left unresolved	<ul style="list-style-type: none"> ○ Poor record keeping ○ Poor appeal processes ○ Ineffectual complaint handling systems ○ Wide spread overcharging ○ Breaches of privacy/confidentiality agreements ○ Lack of accountable decision making ('blame' culture)
Where it is not appropriate to refer the complainant back to the agency in the first instance	<ul style="list-style-type: none"> ○ The agency has a history of poor complaints handling ○ The agency has a poor history of dealing with the particular issues complained about ○ The complainant does not have the ability to effectively take up their complaint with the agency, e.g. due to mental illness, disability, language difficulties ○ The complainant is unreasonable ○ The complaint is about multiple agencies ○ High risk or high priority complaints (See the Checklist for High Priority/High Risk Complaints)

SHOULD NOT INVESTIGATE	EXAMPLES
Matters which are trivial, insignificant, ¹ inconsequential, petty, minor	<ul style="list-style-type: none"> ○ A staff member of an agency not using the complainant's correct title
Complaints which are frivolous, vexatious or not made in good faith	<ul style="list-style-type: none"> ○ Mere assertions that there may have been defective administration ○ The complainant continues to write to us about the same issue and refuses to accept the Ombudsman's position on their complaint ○ The complainant's motives for making a complaint are to inconvenience a particular agency officer
Where the complainant has an insufficient personal interest in the matter	<ul style="list-style-type: none"> ○ Subsection 18(1)(c) should be used very infrequently to exercise discretion not to investigate a complaint and approval to do so is restricted to the Assistant Ombudsman Complaint Resolution
Where an investigation is unnecessary or unjustifiable	<ul style="list-style-type: none"> ○ An investigation is unlikely to produce anything of practical benefit to the complainant, the agency or the public and the investigation would be lengthy and resource intensive (proportionality/costs v benefits) ○ The complainant has not raised their concerns with the agency in question ○ The complaint is presently being considered by the agency, the Minister, the Coroner or another complaint-taking body ○ There is a more appropriate complaint-taking body, e.g. complaints about discrimination would be better investigated by the Equal Opportunity Commission ○ The outcome being sought by the complainant is not something the Ombudsman can achieve

- Generally speaking the most common reason to decline to investigate a complaint that is in jurisdiction is that an investigation is 'unnecessary or unjustifiable' - s18(1)(d) PC Act.
- The power to decline to investigate a complaint under subsections 18(1)(a), (b) and (c) should be used infrequently and discussed with your manager prior to exercising the discretion.
- Where a decision is made not to investigate a complaint that is otherwise in jurisdiction, you must advise the complainant of the reasons for the decision.
[\(Click here for Assessment Letters – Exercising discretion NOT to investigate\)](#)

¹ A matter which appears on the face of it to be insignificant to the complainant may have broader public considerations. For example, a person may complain that they have been overcharged \$1 on their Smartrider. The cost of an investigation would outweigh the benefit of recovering the \$1 for the complainant. However, if every Smartrider user was being overcharged \$1 an investigation may be warranted due to the widespread effect on the public and the potential cost to the agency of reimbursing a large sum of money. This sort of issue may also highlight a systemic problem with the agency's system and therefore consideration should also be given to advising the Administrative Improvement Team of the issue.