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| Preliminary inquiries policy |
| Version 2 – February 2023 |

# Purpose

1. This document sets out the role of preliminary inquiries when the office of the National Health Practitioner Ombudsman (the NHPO) is assessing complaints.
2. Our office strives for fair and positive change in the regulation of registered health practitioners for the Australian community. We provide an independent complaints service that is free and open to all to ensure our health practitioner regulation system is accountable and fair.
3. We serve the public interest by identifying opportunities to address concerns early and less formally. This is why we finalise most complaints without the need for in-depth formal investigation. We look for opportunities to use our early resolution processes at the assessment stage, including our:
   * + preliminary inquiry process
     + early resolution transfer process.
4. We are committed to efficiently resolving complaints by minimising delay and focusing on achieving practical outcomes.
5. Our early resolution processes are designed to make engaging with our office easier and more straightforward. In contrast, our investigations are more comprehensive, which means it can take longer to gather and assess the relevant information.

## Early resolution principles

1. Our guiding principles when taking an early resolution approach are:
   * + we are flexible and timely in our approach. Different approaches might be needed for different types of complaints and if a timely outcome is unlikely to be achieved through an early resolution process, it should not be used.
     + we work collaboratively and informally with the complainant and the organisation they have complained about to pursue positive and practical outcomes
     + we use our time as efficiently and effectively as possible, and encourage communication by phone wherever possible
     + we provide organisations that are the subject of the complaint with an adequate opportunity to resolve a person’s concerns. Organisations must take ownership for resolving matters to prevent our office needing to undertake a formal investigation.
     + we maintain our independence and impartiality at all times. We do not advocate for the complainant or the organisation that is the subject of the complaint. Instead, we make decisions based on evidence and without taking sides.

# The role of preliminary inquiries

1. Under s. 7A of the Ombudsman Act 1976 (Cwlth), we can conduct preliminary inquiries to determine whether:
   * + we have jurisdiction to investigate a complaint
     + to exercise discretion not to investigate a complaint.
2. The guiding principle for preliminary inquiries is to efficiently and effectively assess complaints to maximise the use of our resources and ability to provide high-quality services.
3. Obtaining basic information about a complaint may facilitate a quick decision about the outcome without commencing a formal investigation. Preliminary inquiries can also result in many other benefits such as:
   * + ensuring the decision to investigate a complaint is based on the merits of the complaint issue, rather than the need to obtain information from the organisation being complained about to understand the complaint issue
     + enabling us to promptly provide the complainant with information that resolves their concern
     + providing the organisation being complained about with the opportunity to demonstrate that it has already addressed the complaint issue
     + reducing complaint fatigue by not requesting a vulnerable complainant provides our office with relevant information or documents.
4. Making preliminary inquiries is not the same as undertaking an investigation. However, s. 7A also protects an organisation from contravening any laws by disclosing information to us in response to our preliminary inquiries.

# Deciding whether to make preliminary inquiries

1. We use preliminary inquiries to obtain basic information about a complaint from the organisation being complained about at the assessment stage of our complaint-handling process.
2. Before deciding to make preliminary inquiries, we consider whether other complaint-handling pathways are available. We may, for example, explore whether it would be appropriate to transfer the complaint to the relevant organisation as part of our early resolution transfer process.
3. If it is clear at the assessment stage that a complaint warrants investigation, we will not make preliminary inquiries. Preliminary inquiries are not used to conduct a pseudo investigation without enlivening our formal investigation powers.
4. We only make preliminary inquiries once in relation to each complaint. This ‘only one’ rule is an important way to reflect the distinction between making preliminary inquiries and conducting an investigation. In exceptional cases, a follow up inquiry may be necessary and appropriate. For instance, if an organisation misunderstood a request for information, we may make further inquiries to clarify the request.

## When we may decide to make preliminary inquiries

1. We may decide to make preliminary inquiries where we:
   * + need more information to decide whether we can, or should, investigate a complaint
     + are seeking an answer to a straightforward and/or limited inquiry.

## When we will not make preliminary inquiries

1. We will not make preliminary inquiries where it appears from the information already available that:
   * + an investigation is warranted
     + there are sufficient grounds to decline to investigate the complaint.

Table 1: Examples of actions which may require preliminary inquiries or an investigation

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| We will consider making preliminary inquiries if we are: | We will consider commencing an investigation if we are: |
| * obtaining specific correspondence or documents (for example, a copy of the organisation’s complaint response or outcome letter to the complainant) * asking the organisation if a complaint has already been made/finalised and what the outcome was * obtaining a copy of an internal policy or procedure from the organisation (that is not publicly available) * asking if a decision relevant to the complaint issue has been made, and if not, when it will be made * asking if the organisation took action following an early resolution transfer or other agreed resolution | * obtaining extensive correspondence or documents (for example, all documents about the complainant’s interaction with the organisation) * asking questions about an identified systemic issue * asking the organisation to agree to making a systemic improvement * asking more questions following preliminary inquiries * asking questions about more than one complaint issue * seeking a detailed analysis or an explanation of the organisation’s views on an issue |

## Making preliminary inquiries

1. Once it has been decided that making preliminary inquiries is likely the best and most appropriate way to progress the complaint, we provide written notice of our preliminary inquiries to the organisation that is the subject of the complaint under section 7A of the Ombudsman Act .
2. Written notice of preliminary inquiries generally includes:
   * + the complainant’s name (if the complainant has consented to its release)
     + sufficient details about the complainant’s concerns to enable a response
     + the information request
     + when the organisation should provide the information by. This is generally two weeks for simple information requests.
3. We also inform the complainant that we are making preliminary inquiries into their complaint.
4. The organisation is then responsible for providing our office with the requested information by the due date via the agreed secure information exchange platform. If the organisation is unable to meet the required deadline, it must contact our office to request an extension of time.
5. Once we have received the information, we assess it to consider whether fair and reasonable steps have been taken in relation to the complaint.

# Possible outcomes

1. After our assessment of the available information, we may decide to take no further action and finalise the complaint or decide that the complaint requires further examination.
2. We may decide not to take further action if:
   * + the matter is outside our jurisdiction or there is a compelling reason to exercise discretion not to investigate
     + the organisation has already provided a reasonable explanation or resolution to the complaint which means an investigation is unnecessary.
3. The outcomes of preliminary inquiries where we decide not to take further action generally depend on the individual circumstances of the complaint. Outcomes may include:
   * + a remedy for the complainant (for example, an update about the status of a matter or a better explanation of a decision)
     + agreed arrangements between the complainant and the organisation to progress the matter
     + improvements to the organisation’s processes
     + providing deidentified information about the complaint in submissions, own motion investigations or analysis of systemic issues to influence improvement in the National Registration and Accreditation Scheme.
4. If we find that the organisation has not yet had an opportunity to respond to the complaint, we may decide that the matter should progress through the early resolution transfer process.
5. If we believe that the complaint requires further consideration, or the organisation’s response demonstrates the complaint has not been adequately resolved, we will decide to investigate the complaint under s. 12 of the Ombudsman Act.
6. We let the complainant know the outcome of our preliminary inquiries (in writing wherever possible) with a detailed explanation of why this decision was made.

# Privacy

1. We collect and use information in line with our privacy policy. We:
   * + use the information gathered through the complaint process to manage or resolve concerns, or to address issues arising from the complaint
     + record all complaints and relevant information in our case management system
     + may disclose information publicly (either in data or a case study or story) in a de-identified format, such as in our annual report.
2. Please contact our complaints and FOI team with any further questions about how we record complaints on 1300 795 265 or by [email](mailto:complaints@nhpo.gov.au) at <complaints@nhpo.gov.au>.

# Policy review

1. The Ombudsman will review this policy every three years in consultation with staff and relevant stakeholders.

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| **Responsible work area** | Complaints and FOI unit |
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