



# Procurement Complaints Handling Process

## Contents

1. Introduction .....	2
2. Applicable Procurement Activities.....	2
3. Initial Course of Action.....	3
Initial Action .....	3
Independent Internal Review .....	3
Costs.....	3
4. Other Courses of Action.....	3
Alternative Dispute Resolution .....	3
Alternative Dispute Resolution Costs .....	4
Commonwealth Procurement Coordinator .....	4
Commonwealth Ombudsman.....	4

## 1. Introduction

The *Government Procurement (Judicial Review) Act 2018 (the Act)* establishes an independent complaint mechanism for government *procurement* processes.

*The Act* applies to contraventions of the *relevant CPRs* relating to *covered procurements* by *relevant Commonwealth entities*. *The Act* applies to contraventions, or proposed contraventions, which occurred after the commencement of *the Act*.

Under *the Act*, *suppliers* can make a written complaint to the *accountable authority* of the *relevant Commonwealth entity* about contraventions that affect the *supplier's* interests.

*The Act* includes obligations for *accountable authorities* of *relevant Commonwealth entities* to investigate such complaints and to prepare a report of the investigation.

*The Act* also allows *suppliers* to make an application to the *FCC* or the *Federal Court* which may grant an injunction and/or order the payment of compensation by the *relevant Commonwealth entity* to the *supplier*.

Other avenues to raise complaints, which are separate to the complaint mechanism established by *the Act*, will continue to be available to *suppliers*, including the Australian Government Procurement Coordinator and the Commonwealth Ombudsman.

## 2. Applicable Procurement Activities

An applicable procurement activity under *the Act* is a *covered procurement* under *the Act* is a *procurement* where both Division 1 and 2 of the *CPRs* apply.

The following *procurements* are not *covered procurements* for the purposes of *the Act*:

- *Procurements* undertaken by Commonwealth entities<sup>1</sup> that are not subject to the *CPRs*.
- *Procurements* valued below the *relevant procurement* thresholds specified in paragraph 9.7 (Division 1) of the *CPRs* (i.e. *procurements* that are not subject to Division 2).
- *Procurements* from standing offers under panel arrangements, as paragraph 9.12 of the *CPRs* indicates that these *procurements* are not subject to Division 2 of the *CPRs*. However, the process to establish a panel arrangement will generally be subject to Divisions 1 and 2 of the *CPRs*, and therefore would be captured by *the Act*.
- *Procurements* that are exempt from Division 2 in accordance with Appendix A of the *CPRs*, including such *procurements* in which the *relevant Commonwealth entity* voluntarily elects to conduct them in accordance with some or all of the rules of Division 2 for better practice.
- *Procurements* where, under paragraph 2.6 of the *CPRs*, an *official* applies measures determined by their *accountable authority* to be necessary for the maintenance or restoration of international peace and security, to protect human health, for the protection of essential security interests, or to protect national treasures of artistic, historic or archaeological value. Where such measures are applied, Division 1 and 2 do not apply in full to the *procurement*.
- *Procurements* which are part of a class of *procurements* that has been determined by the Finance Minister to not be *covered procurements* for the purposes of *the Act*.

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<sup>1</sup> Paragraph 2.2 of the *CPRs* defines the *NCEs* and prescribed *CCEs* that **must** comply with the *CPRs*.

### 3. Initial Course of Action

#### Initial Action

Where you have a complaint about an ACIAR procurement process you may request a review and written response by the ACIAR Procurement Complaints Officer. Complaints are to be sent to:

Procurement Complaints Officer  
ACIAR House  
GPO Box 1571, Canberra, ACT 2601.

The Procurement Complaints Officer will respond to the request within 10 working days.

#### Independent Internal Review

If you are dissatisfied with the response from the Procurement Complaints Officer to your complaint, you can request an independent internal review. Any request for internal review should be sent within 28 days of the date of the response to:

Chief Financial Officer  
ACIAR House  
GPO Box 1571, Canberra, ACT 2601

Reviews will be dealt with in accordance with relevant Agency's policies and the requirements of the *Commonwealth Procurement Rules 2014*.

#### Costs

There is no cost associated with requesting an internal review.

### 4. Other Courses of Action

If you are dissatisfied with the response from the Independent Internal Review to your complaint, the following courses of action are available to you.

#### Alternative Dispute Resolution

If you are dissatisfied with the response from the Independent Internal Review to your request to your complaint, and you believe a dispute with ACIAR exists in relation to the complaint, you may request ACIAR enter into an alternative dispute resolution process as set out below.

Subject to your agreement, the following dispute resolution process (or modified version thereof) would be used in an attempt to resolve the complaint:

- (a) the Chief Executive Officer (or his or her delegate) will try to settle the complaint by direct negotiation with you;
- (b) if unresolved, and you believe a dispute exists, you may give the agency a written notice (including email) setting out the details of the dispute;
- (c) within 10 business day, each party will nominate a representative, not having prior direct involvement in the complaint or procurement process;
- (d) the representatives will try to settle the dispute by direct negotiation;
- (e) failing settlement within a further 10 business days, the parties may agree to refer the dispute to an independent third person with power:
  - (i) to intervene and direct some form of resolution, in which case the parties may agree to be bound by that resolution, or
  - (ii) to mediate and recommend some form of non-binding resolution;
- (f) if a resolution is not reached within a further 20 business days, you may commence any other course of action open to you.

### **Alternative Dispute Resolution Costs**

Each party will bear its own costs of participating in any alternate dispute resolution process. The parties will bear equally the cost of any third person engaged for the purposes of paragraph (e).

The agency will co-operate fully with any process dispute resolution instigated by the parties subject to relevant government policies and legislation.

Any request for alternative dispute resolution should be sent within 28 days of the date of the Independent Internal Review letter to:

Chief Financial Officer  
ACIAR House  
GPO Box 1571, Canberra, ACT 2601

### **Commonwealth Procurement Coordinator**

If you are dissatisfied with the outcome of the ADR process you may be able to lodge a complaint with the [Procurement Coordinator](#) via the [Online complaint form](#).

### **Commonwealth Ombudsman**

If you are dissatisfied with the Procurement Coordinator's final decision, there may be other courses of action available for you to consider, such as approaching the Commonwealth Ombudsman.