Procedure: Procurement Complaint Management

# Introduction

This Procurement Complaint Management Procedure outlines how Territory Families will manage complaints specifically related to agency related procurement activities. This procedure must be followed in conjunction with the management of Territory Families complaints and investigations. Key documents include:

* Complaint Management Policy
* Complaint Management Procedure
* Complaint Investigation Policy
* Complaint Investigation Procedure

# Legislative framework

The Procurement Framework for Northern Territory Government (NTG) is set out in the *Procurement Act* and Regulations and the procurement directions made under the Act, being the [Procurement Governance Policy](https://nt.gov.au/__data/assets/pdf_file/0009/444573/procurement-governance-policy-sept-2017.pdf) and the [Procurement Rules](https://nt.gov.au/__data/assets/pdf_file/0007/434914/procurement-rules.pdf).

The Procurement Governance Policy sets out the five Procurement Principles that apply to every procurement activity, irrespective of value and risk. The Procurement Rules outline the mandatory requirements, exemptions, exceptions and process options for all NTG agencies and their personnel when undertaking procurement activities.

# Purpose

The purpose of this document is to establish a procedure to manage procurement complaints in accordance with the Procurement Rules (Rules 4.1, 4.2 and 4.3). The Rules require that:

1. The **Accountable Officer must** have a procurement complaints management procedure for their agency (Rule 4.1);
2. All procurement related complaints lodged in writing **must** be investigated (Rule 4.2); and
3. The agency should manage complaints made about its procurement activities (Rule 4.3).
4. The agency **must**ensure that the receipt or investigation of a complaint does not prejudice a supplier’s participation in future procurement activities (Rule 4.7).

As part of its Agency Procurement Management Plan, Territory Families must report on procurement related complaints for the preceding 12-month reporting period (Rule 8.3(v)).

This procedure seeks to:

1. Ensure supplier complaints are managed and resolved in a fair, efficient and consistent manner.
2. Promote community and stakeholder confidence in Territory Families’ commitment to service delivery, effective complaint management and commitment to continuous improvement.

This procedure should be considered in conjunction with the Territory Families’ Complaints Management Policy and Procedure and Territory Families’ [Complaints Investigation Policy and Procedure](https://territoryfamilies.nt.gov.au/contacts).

# What is a procurement complaint?

A procurement complaint is an expression of dissatisfaction, issue or concern expressed by a supplier or other interested party in relation to a procurement process and probity applied by Territory Families during a procurement activity. A procurement complaint may relate to the actions of staff or to procurement practices within the agency.

A procurement complaint may include a complaint by an existing supplier about the allocation of work under a panel contract.

NB: A panel contract arrangement has a standing offer with each supplier. A contract is formed under this standing offer each time goods or services are purchased from a supplier. Each purchase is a procurement activity in and of itself, and procurement principles apply.

# Minimising complaints

All Territory Families staff involved in a procurement activity have a role in minimising the prospect of a formal procurement complaint. This can be achieved through:

1. Ensuring clarity in sourcing documentation, including clearly articulating the assessment process, and the criteria against which submissions will be assessed.
2. Following all statutory and procedural requirements during the procurement process (including the declaration and management of any conflicts of interest).
3. Engaging a probity adviser for complex, contentious, sensitive or high value procurement.
4. Ensuring defensible decision-making – made with due probity and fairness to all respondents.
5. Ensuring respondents are offered a debrief and encouraged to take advantage of the offer.
6. Ensuring any debrief provides valuable and useful feedback on the evaluation of the offer, including why the respondent’s offer was unsuccessful; areas of strengths and weaknesses in their offer; and areas for improvement in future offers.
7. Dealing with any verbal grievance or expression of dissatisfaction quickly and efficiently, thereby avoiding a written complaint.

Management can assist by ensuring staff are adequately trained in procurement; understand and apply the Procurement Governance Policy and the Procurement Rules; and are assisted and supported in conducting meaningful debriefing sessions.

# Who is responsible for procurement complaints?

Should a matter necessitate a formal complaint, the Territory Families Practice Complaints and Investigation Unit (“Complaints Unit”) will be responsible for the investigation of, and response to, the complaint. The Complaints Unit may appoint an Investigation Officer, to act as the complaint handler for that purpose.

Territory Families staff who receive a query from a supplier or other interested party about the complaint process, should refer that person to the Procurement Complaints Procedure located at <https://territoryfamilies.nt.gov.au/contacts>.

Territory Families refer that complaint to the Complaints Unit for action.

# Referral of procurement complaints

Based on the Procurement Act and Rules, a procurement complaint dealing with specific issues must be referred by the Complaints Unit to the relevant agency or entity as follows:

1. Details of complaints received relating to the compliance with the Buy Local Plan **must** be referred to the Buy Local Industry Advocate (Rule 4.4).
2. Complaints received regarding NTG procurement policy **must**be referred to and managed by the Agency responsible for NTG procurement policy (Rule 4.5).
3. Complaints received regarding Procurement Review Board (PRB) processes **must** be referred to and managed by the Procurement Review Board Secretariat (Rule 4.6).

Where a complaint (or part of a complaint) is referred to another agency for management:

1. The complainant will be advised in writing that the complaint has been so referred and be provided with the relevant contact details.
2. The Responsible Officer for the Finance and Procurement Division of Territory Families and the Territory Families’ Chair of the Procurement Assurance Sub-Committee will be advised.

Referral of a complaint to another entity does not relieve Territory Families of its obligation to investigate a complaint. However, where the complaint is being managed by the other entity, the final determination of the complaint by Territory Families may be deferred until the relevant entity makes a decision. If determination of the complaint will be deferred on this basis, the Complaints Unit must advise the complainant.

In addition, throughout the procurement complaint process Territory Families will need to consider whether legal advice or a referral to the NT Police or ICAC may be needed, and if so of the need to ensure appropriate action is taken.

# Investigation – in addition to the Territory Families Investigation of Complaints and Critical Incidents Policy and Procedure

*Specific Considerations for Procurement*

1. For Procurement Complaints received by Territory Families personnel must be immediately referred to the Complaints Unit. The complaint must be in writing (letter or email) and contain:
	1. the complainant’s name;
	2. contact details;
	3. details of the Request for Offer the complaint relates to (including the Request for Offer number); and
	4. the name and address of the supplier represented.
2. The complaint should set out the details of the basis upon which it is being lodged, including:
	1. a clear statement regarding what is considered defective in the procurement process for the particular Request for Offer;
	2. copies of any information, evidence and documentation that support the complaint; and
	3. a statement regarding what the supplier seeks to achieve as an outcome of the complaint process.

## Investigation Methodology

1. The Complaints Unit, through consultation with the Deputy Chief Executive Organisational Services, may delay the award of the Request for Offer pending resolution of the complaint, where:
	1. a Request for Offer has not been awarded;
	2. there is no risk to supply; and
	3. there will be no undue cost or disadvantage to the other suppliers.
2. The Complaints Unit may take legal, probity or other expert advice as is required. Where costs are incurred the business unit responsible for the procurement activity will bear the cost of such advice.

## Decision

1. Where a complaint is found to be valid, the Complaints Unit may recommend appropriate action such as:
2. Acknowledging the action and offering an apology.
3. Reviewing the approach to be taken to future procurement of similar supplies.
4. Making recommendations to Executive Management, including the Procurement Assurance Sub Committee regarding procurement processes.
5. Re-calling the Request for Offer, but only where the Request for Offer has not been awarded and there is no risk to supply and there will be no undue cost or disadvantage to the other suppliers).
6. Taking legal advice as to any potential legal liability to NTG that might arise.
7. A decision will not purport to overturn a Request for Offer that has been awarded, as a legally binding contract with that supplier has been created.

# Procedure Flowchart

Refer to Attachment A for Territory Families’ Procurement Complaint Procedure Flowchart.

# Recording and reporting procurement-related complaints

The Complaints Unit is responsible for ensuring procurement-related complaints are documented appropriately in EDRMS; are logged into the Procurement Complaints Register; and are provided to the Chair of the Procurement Assurance Sub Committee. The Register will record the following, at a minimum:

1. The complainant’s name and the name and ABN of the supplier or other interested party that they represent.
2. The name of the complaint handler.
3. Details of the Request for Offer (including the Request for Offer number) the complaint relates to.
4. The nature of the complaint.
5. Whether the complaint (or any part of it) was referred to another agency or entity under Rule 4.
6. Working days taken to: (How many working days?)
7. respond to the initial complaint;
8. refer the complaint to another agency or entity (if applicable);
9. request and receive additional information about the complaint (if applicable);
10. take advice (if required); and
11. make a decision about the complaint;
12. The outcome.
13. Any corrective action taken.
14. Recommendations arising from the complaint (if any).

Through the collection and analysis of complaint information, the agency will identify opportunities to improve the performance of procurement processes. To assist with this, the Chair of the Procurement Assurance Sub Committee is responsible to ensure that complaints related data and recommendations are addressed by the Procurement Assurance Sub-Committee and are captured in the annual Agency Procurement Management Plan (Rule 8.3(v)).

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