



Government Procurement (Judicial Review) Complaint Handling Policy

Government Procurement (Judicial Review) Complaint Handling Policy	
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Intended audience	External

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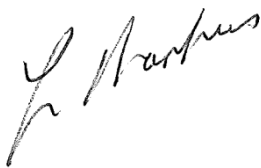


Preface

As a corporate Commonwealth entity, the Australian Institute of Health and Welfare (the Institute) is committed to compliance with its obligations of the Commonwealth Procurement Rules.

This policy is designed to provide suppliers and potential suppliers with information about how to make complaints regarding the Institute's compliance with tender and procurement processes.

I, Louise Markus, Chair of the Board of the Australian Institute of Health and Welfare, establish this policy, which supersedes any previous policies. This policy may be amended from time to time to ensure continued compliance with the Institute's tender and procurement obligations.



Louise Markus
Chair of the Board
7 December 2022



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1. INTRODUCTION

1.1 Purpose

The Australian Institute of Health and Welfare (the Institute) must comply with the Commonwealth Procurement Rules (CPRs) when procuring goods and services.

The *Government Procurement (Judicial Review) Act 2018* (GPJR Act) establishes a complaint mechanism for government procurement processes. The GPJR Act provides suppliers, and/or potential suppliers, with a mechanism for lodging a formal complaint, if they believe:

- the Institute has, or will, breach relevant CPRs relating to a covered procurement, and
- this will affect their interests.

The GPJR Act includes obligations to investigate complaints and prepare a report of the investigation. The GPJR Act also allows suppliers to make an application to the Federal Circuit Court or the Federal Court, which may grant an injunction and/or the payment of compensation by the Institute to the supplier.

Other avenues to raise complaints will continue to be available to suppliers.

1.2 Application of procedures

These procedures apply to complaints received about a tender or procurement process for a covered procurement conducted by the Institute.

1.3 What is a Covered Procurement?

A covered procurement is:

- a procurement where both Division 1 and 2 of the CPRs apply
- usually an open or limited tender using the conditions for limited tender outlined in part 10.3 of the CPRs
- where the procurement value is at or above the following thresholds:
 - (a) \$400,000 (GST incl.) for procurements other than construction services
 - (b) \$7.5 million (GST incl.) for procurements of construction services
- not otherwise exempt from compliance with Division 1 and/or Division 2 of the CPRs.

1.4 What we need from you

If you believe that the Institute has, or will, breach the CPRs in relation to a covered procurement and this will affect your interests, submit your complaint and include the following information:

- your name, the business you represent and your contact details
- identify which Institute procurement activity you are complaining about
- clearly reference the relevant paragraph(s) of the CPRs you believe have/will be breached
- if relevant, attach copies of, or references to, information to support your complaint



- whether you intend the complaint to be a formal complaint under section 18 of the GPJR Act
- explain how your interests will be affected by the alleged contravention(s)
- a clear statement about what you hope to achieve from the complaint process.

Send your complaint to the Board of the Institute:

- by email: c/- procurementcomplaints@aihw.gov.au
- by post: c/- Attention – Procurement Complaints
Finance and Commercial Services Unit
Australian Institute of Health and Welfare
GPO Box 570, Canberra ACT 2600

1.5 How the Institute will respond

The Institute will:

- Acknowledge receipt of your complaint as soon as practicable and advise you of the expected timeframe for resolution.
- Assess if your claim demonstrates that a breach has/will occur in accordance with section 18(1) of the GPJR Act.
- Seek further information about your complaint, if required.
- Determine whether the complaint meets the criteria under the GPJR Act. If so, the procurement will be suspended while we investigate, unless it is not in the public interest to do so and a Public Interest Certificate is issued.
- Immediately suspend the procurement activity if your complaint is determined to be valid. The exception to this is if a Public Interest Certificate is in force. The Institute will advise you if that is the case.
- Investigate legitimate complaints and work with you to find a solution within 10 working days. However, if the matter is complex, more time may be required to resolve the complaint. The Institute will keep you informed if an extension is required.
- Seek your written confirmation that the complaint is resolved. You will have five working days to respond to the Institute's request.
- Notify you of the outcome of the investigation process.

The Institute will handle complaints about tender and procurement processes fairly, without discrimination and as efficiently as possible.

Further information about procurement complaints is available from the [Department of Finance's Resource Management Guide 422 – Handling complaints under the Government Procurement \(Judicial Review\) Act 2018](#).



1.6 Public Interest Certificate

Public interest certificates are issued when it is not in the public interest to suspend a procurement while we investigate the complaint. If you submit a complaint that is determined by the Institute to be a GPJR Act complaint, the procurement will be suspended while the complaint is investigated. However, if a Public Interest Certificate has been issued for that complaint, a suspension will not occur.

A Public Interest Certificate will be issued by the Chief Executive Officer.

1.7 How we protect your personal information

Your personal information is protected under the *Privacy Act 1988*, which includes the Australian Privacy Principles (APPs).

To achieve a resolution, the investigation of your complaint may involve sharing your personal (including sensitive) information with other relevant areas within the Institute or a contracted service provider for the purposes of the investigation. We may also share your information with another government agency if, for example, we think that they can better assist you in relation to your complaint, or we require information from that agency to consider and resolve your complaint.

The Institute also collects and uses a range of personal information for monitoring, evaluating, reporting on and improving its services and functions, and for meeting statutory timeframes. The Institute removes identifying details about your personal and sensitive information unless it is reasonably necessary to use and disclose for these purposes.

Our [Privacy Policy](#) provides more information about how we protect your personal information and who to contact if you have a privacy related enquiry or complaint.

1.8 If you are not happy with the outcome

If you are not happy with our response to your complaint, you may:

- make an application to the [Federal Court](#) or the [Federal Circuit Court](#)
- contact the [Commonwealth Ombudsman](#) or the [Australian Government's Procurement Coordinator](#).

1.9 Further information

The Finance and Commercial Services Unit (FaCSU) manages and maintains the Institute's tender and procurement complaint handling process.

For more information or to make a complaint about a tender or procurement process, please contact:

FaCSU via email at procurementcomplaints@aihw.gov.au



2. GLOSSARY

Acronyms and abbreviations

Acronym/Abbreviation	Description
Accountable Authority	the Board of the Institute
Covered Procurement	has the meaning given by section 5 of the GPJR Act.
Federal Circuit Court	means the Federal Circuit Court of Australia.
Federal Court	means the Federal Court of Australia.
GPJR Act	<i>Government Procurement (Judicial Review) Act 2018.</i>
Institute	the Australian Institute of Health and Welfare, a corporate Commonwealth entity established by the <i>Australian Institute of Health and Welfare Act 1987</i>
Supplier	Means: (a) a person who supplies, or could supply goods or services; or (b) a partnership (or other group) of 2 or more persons that supplies, or could supply, goods or services.



3. KEY LEGISLATION AND POLICY

The following documents directly relate to this policy and must be reviewed in context to this document.

Australian Government Federal Register of Legislation

- [Government Procurement Judicial Review Act 2018](https://www.legislation.gov.au/Details/C2021C00406)
[https://www.legislation.gov.au/Details/C2021C00406]
- [Public Governance Performance and Accountability Act 2013](https://www.legislation.gov.au/Details/C2017C00269)
[https://www.legislation.gov.au/Details/C2017C00269]
- [Public Governance, Performance and Accountability Rule 2014](https://www.legislation.gov.au/Details/F2014L00911)
[https://www.legislation.gov.au/Details/F2014L00911]

Australian Institute of Health and Welfare

- [Privacy Policy](https://www.aihw.gov.au/about-us/privacy-policy/aihw-privacy-policy)
[https://www.aihw.gov.au/about-us/privacy-policy/aihw-privacy-policy]

Commonwealth Ombudsman

- [Commonwealth Ombudsman](https://www.ombudsman.gov.au/)
[https://www.ombudsman.gov.au/]

Department of Finance

- [Commonwealth Procurement Rules 2022](https://www.finance.gov.au/government/procurement/commonwealth-procurement-rules)
[https://www.finance.gov.au/government/procurement/commonwealth-procurement-rules]
- [Resource Management Guide No. 422 – Handling complaints under the *Government Procurement \(Judicial Review\) Act 2018*](https://www.finance.gov.au/publications/resource-management-guides/handling-complaints-under-government-procurement-judicial-review-act-2018-rmg-422)
[https://www.finance.gov.au/publications/resource-management-guides/handling-complaints-under-government-procurement-judicial-review-act-2018-rmg-422]
- [Procurement Coordinator](https://www.finance.gov.au/business/procurement/complaints-handling-charter)
[https://www.finance.gov.au/business/procurement/complaints-handling-charter]



4. REVISION HISTORY

Revisions to this policy are recorded below in order of most recent first.

Version No.	Date	Parts/Sections	Details
1	December 2022	All	First issue

