



OMBUDSMAN AN OFFICER OF
THE ACT LEGISLATIVE ASSEMBLY 

ACT Ombudsman

ASSISTED REFERRALS OF COMPLAINTS TO ACT CORRECTIVE SERVICES

JANUARY 2020

POLICY NO. 1 2020

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Purpose

It has been agreed that for a specified period the ACT Ombudsman will transfer certain complaints to ACT Corrective Services (ACTCS), rather than:

- finalising the complaint and encouraging the complainant to raise directly with ACTCS
- otherwise finalising the complaint, or
- considering a formal complaint investigation.

This policy outlines the circumstances in which this will occur – that is, when the ACT Ombudsman will consider facilitating the **assisted referral** of a complaint to ACTCS, with our Office to be updated as to the outcome of the complaint.

Background

The role of the ACT Ombudsman is to influence systemic improvements in public administration in the ACT, as well as providing assurance that those ACT Government agencies that fall within our jurisdiction act with fairness and integrity. We undertake this role through our traditional complaint-handling activities, as well as our oversight of specific ACT Government programs (e.g. the Reportable Conduct Scheme).

Under our Service Agreement with the ACT Government, we are committed to liaising with agencies to help ensure they provide accessible and effective complaint-handling processes to the public and monitoring their complaints handling mechanisms.

Where negotiated with relevant agencies, assisted referrals are utilised by our Office, with the consent of the complainant involved, either as part of a formal investigation, or as part of agreed administrative arrangements. Such arrangements are designed to:

- ensure vulnerable complainants who contact our Office can be assisted in contacting the agency/line area best able to manage their complaint quickly and effectively
- help monitor the complaints-handling processes of agencies for which we receive larger volumes, or increased numbers, of complaints
- reduce complaint volumes where possible – for the benefit of both our Office and the agency concerned
- facilitate timely identification of trends of concern from such complaint caseloads, which can be raised with the relevant agency in a proactive manner, potentially avoiding the need for formal investigatory action.

Complaints received from, or about detainees, at the Alexander Maconochie Centre (AMC) have been identified as a cohort that would benefit from assisted referral arrangements given that:

- detainees are vulnerable due to their detention and potentially limited phone access
- complaints from this cohort have continued to increase over the last 12 months, and volumes are expected to remain steady and/or increase during a significant period of policy reform underway within ACTCS.

Note:

- It is not the intention of these arrangements to undermine ACTCS complaints-handling processes. It is critical these arrangements work alongside existing complaints mechanisms. Consequently, these arrangements will be regularly monitored and reviewed to ensure they are meeting their intended outcomes as discussed below.

Managing complaints about ACTCS

Matters that are considered to be **out of jurisdiction** of the ACT Ombudsman will be closed or referred to the ACT Human Rights Commission (HRC) under the mandatory referral arrangements in place under s6B of the *Ombudsman Act 1989* (the Act).¹

Matters that are considered to be **in-jurisdiction** must be considered for investigation as per normal arrangements, with all complaints to be assessed on their individual merits. That is, officers must decide whether it is appropriate to:

- investigate a complaint under s 9 of the Act
- decline to investigate a complaint under s 6 of the Act for a number of reasons including that the complainant has not yet complained to the relevant agency

A further option is to consider whether it would be **more appropriate** to refer the complaint directly to ACTCS. The circumstances under which such 'assisted referrals' from or about an AMC detainee would be considered are discussed below and could only occur with the explicit consent of the complainant.

The above complaints pathways are summarised in the diagram at **Attachment A**. Further detail regarding processes for in-jurisdiction matters is also provided below.

When to make an assisted referral

Unless otherwise agreed with ACTCS, assisted referrals will be limited to situations where:

- The complaint relates to the immediate **SAFETY, WELLBEING or DIGNITY**² of a detainee.

Examples include:

- incidents or threats
- real or perceived fear of harm
- family members or advocates concerned about critical incidents

OR

- A 'bluey' (detainee request form) has been submitted to raise the matter with AMC management **or** a formal complaint has been made³, but the complainant has indicated that no action has been taken **and** it appears that:
 - resolution of the issue would best be facilitated with involvement from ACTCS head office, and/or a phone call to the 'right' person could address a 'one-off' issue
 - the complaint raises a practical day-to-day management issue that would be appropriately addressed in the first instance, through ACTCS' usual complaint-handling processes.

¹As agreed with ACTCS, where a mandatory referral is made to the ACT HRC about an urgent health matter, a 'duty of care' referral to ACTCS will also be made with the consent of the complainant.

² For example, the complaint relates to a person's ability to self-care (i.e. capacity to toilet, eat, communicate etc.).

³ That is an email has been sent to ComplaintsAMC@act.gov.au or a *D28.F1 Complaints form* has been completed.

Circumstances which would add further weight to a decision to make an assisted referral include:

- There is an urgent need to resolve the issue.
- The complaint relates to a detainee's ability to access the complaints process at the AMC. Examples include where the complainant is seeking:
 - confirmation that a complaint has been received
 - assistance to have their complaint considered and/or has raised concerns about reprisals
 - an update on the status of their complaint
 - access to documents held on their file

Some examples of where an assisted referral would be appropriate

Example 1

Ms A contacts our Office advising that she believes her son, a detainee at the AMC, has been injured in an incident and hospitalised. She advises that she has been unable to contact anyone at ACTCS.

Example 2

Detainee, Mr B, contacts our Office and advises he has made several requests within the AMC for copies of his records/case file. He advises he has requested appropriate forms to make a request under the *Freedom of Information Act 2016*, but still has not been provided with these.

ACT Ombudsman pre-referral processes

When receiving an AMC related in-jurisdiction complaint our Office will:

- consider further action (i.e. investigation or assisted referral to ACTCS) or close the complaint immediately (under s 6) as appropriate
- ensure the complainant **gives consent** for the matter to be referred to ACTCS
- record this consent in our systems

Where it is considered that an **assisted referral** to ACTCS is appropriate, we will:

- check that consent to refer the complaint to ACTCS was acquired*
- email the complaint through to ACTCS as per the template example at **Attachment B**, and
- close the relevant complaint in accordance with s 6 of the Act
- explain to the complainant that they will be contacted by ACTCS **within two working days** of the complaint being received
- invite the complainant to contact us again if their complaint is not acknowledged within two working days or if they are not satisfied with the ACTCS' response.

***Important:** Where this is not the case, a referral can only occur under current policy where a disclosure to ACTCS is made under s 34 of the Act. This currently requires Senior Executive approval, and would need to be discussed with ACTCS management ahead of referral. Please contact the Director, ACT Strategy and FOI if this is considered necessary.

ACT Ombudsman post-referral processes

Where an assisted referral has taken place, our Office will:

- record the referral for reporting purposes
- where the complaint relates to the immediate SAFETY, WELLBEING or DIGNITY of a detainee or staff misconduct, consider whether additional escalation of the complaint to the Executive Director, ACTCS is warranted
- assess in terms of trends of concerns and proactive feedback to be provided to ACTCS (see below)
- receive advice from ACTCS regarding finalisation of the complaint in agreed timeframes (see below)
- follow up with ACTCS where advice has not been received in these timeframes, and
- record the outcome of the complaint
- survey the complainant to confirm that they consider the matter resolved and whether further investigation is warranted (see note below).

Note: while it is always at the discretion of the ACT Ombudsman to investigate a matter under s 9 of the Act, where a matter has been referred to ACTCS under these arrangements, the policy intent is not to formally investigate unless:

- similar complaints are subsequently received by our Office and a developing trend indicating a possible systemic issue which has been discussed with ACTCS
- ACTCS takes no action in relation to the referral and/or what is considered to be insufficient action in relation to the complaint and the complainant seeks further assistance from our Office.

ACTCS processes

Where a complaint is received from the ACT Ombudsman, ACTCS will:

- acknowledge receipt of the complaint (replying to all) and contact the complainant **within two working days** of receipt
- **and**
- advise the ACT Ombudsman to ACT.Ombo@ombudsman.gov.au that processing of the complaint has been finalised **within 20 working days**. **Note:**
 - A formal investigation into complaints-handling practices at the AMC has been put in place under s 5 of the Act to facilitate complaint outcome information being provided to the ACT Ombudsman and to provide ACTCS with associated legislative protections.

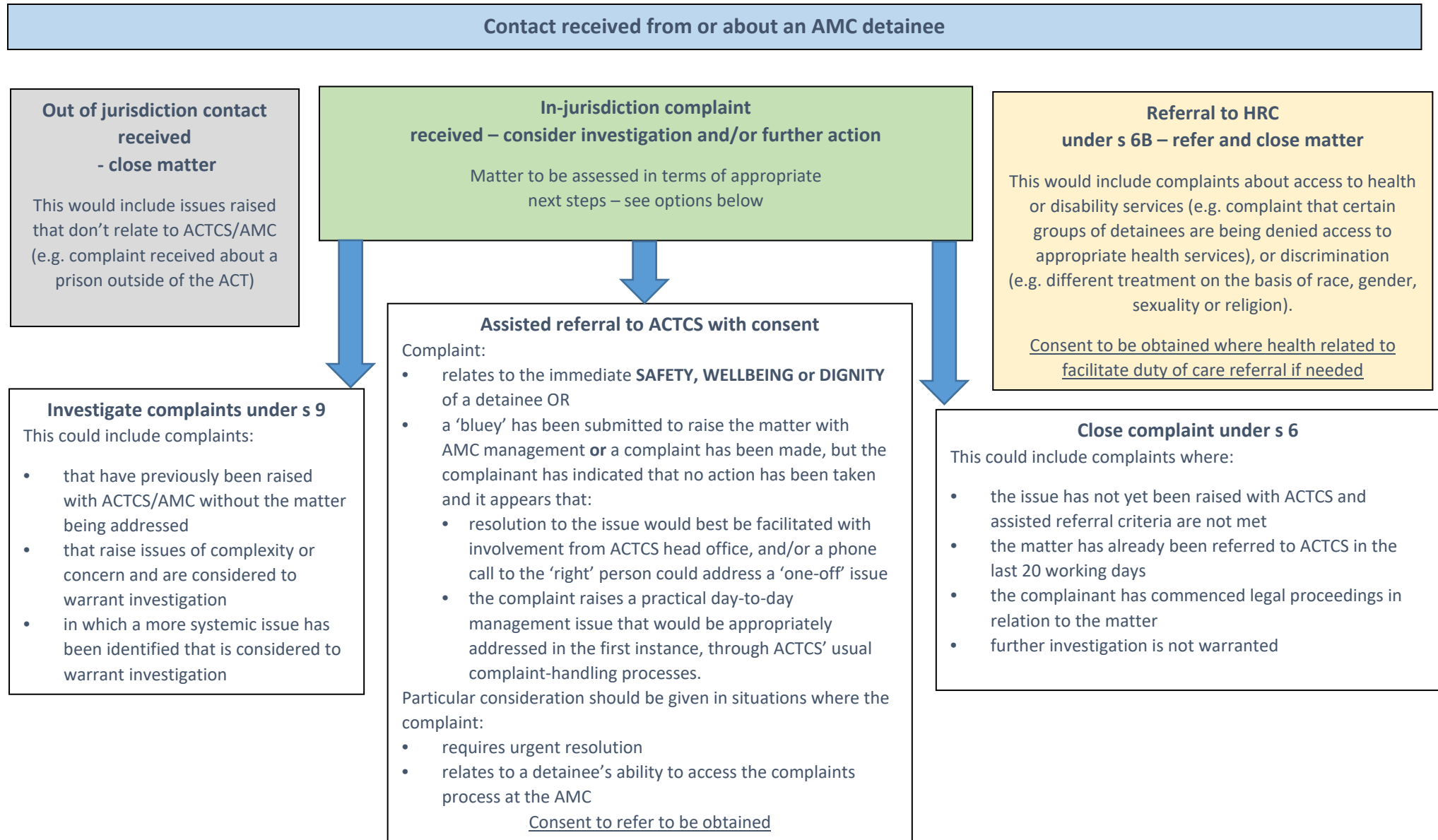
Review and engagement activities

The ACT Ombudsman and ACTCS have agreed to meet on a quarterly basis at working level to discuss:

- any outstanding referrals*
- how these arrangements are working and any impact on complaint numbers to either agency
- any 'lessons learned' and improvements that can be made to related processes by either agency, with the ACT Ombudsman to highlight any cases they would like to discuss in more detail together*
- any trends of concern identified by the ACT Ombudsman
- any quarterly report figures/content related to ACTCS

*The ACT Ombudsman will provide ACTCS with a list of any outstanding referrals and any other cases they wish to discuss **two working days** prior to a scheduled meeting.

Attachment A – Summary of ACTCS complaints pathways



Attachment B – Template email

To: ACTCSExecutivesupport@act.gov.au

Cc: ACTCSPolicy@act.gov.au; nathan.costigan@act.gov.au; ACTOmbo@ombudsman.gov.au;
Jon.Peach@act.gov.au

Our ref: ACTCS assisted referral – Our ref: 2019-XXXXXX

Dear Mr Peach

We have received a complaint from Mr/Ms XXXX (ID No: [If known]) regarding [insert complaint subject].

Mr/Ms X has raised concerns that [insert short summary of concerns]

Under the circumstances, the Office considers that ACT Correctives Services (ACTCS) is better placed to address these issues. As a result, we have obtained Mr/Ms X's consent to refer this matter to ACTCS on their behalf.

Please accept this email as notice that we have transferred responsibility for Mr/Ms X's complaint to ACTCS.

This complaint will be closed by the Office and **not** formally investigated at this stage. Consistent with the agreed assisted referral guidelines in place between our agencies you are, however, asked to:

- acknowledge receipt of the complaint (replying to all) and contact the complainant **within two working days** of receipt
- and
- advise the ACT Ombudsman that the issued raised has been addressed via email to ACTOmbo@ombudsman.gov.au **within 20 working days**.

If you would like to discuss this notice, please contact [give Officer contact if desired].

Questions or feedback regarding the agreed assisted referral processes should be directed to Ms Cathy Milfull, Director, ACT Strategy and FOI, by email at cathy.milfull@ombudsman.gov.au

Kind regards

[Firstname Lastname]

[Position title]

[Team]

ACT Ombudsman

Email: X@ombudsman.gov.au

Phone: (02) 6276 3773