



OFFICE OF THE OFFICIAL SECRETARY TO THE
GOVERNOR-GENERAL



PROCUREMENT COMPLAINT HANDLING POLICY

November 2024

Review November 2026

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INTRODUCTION

Policy Details

Policy owner

This policy is owned and updated by the Executive branch.

Release and review history

Version	Approved by	Description	Date
1.0	Chief Financial Officer – Debbie Banerjee	Created in reference to the <i>Government Procurement (Judicial Review) Act 2018.</i>	November 2024

Purpose

This policy details what procurement processes can be the subject of a complaint of Office non-compliance with the Commonwealth Procurement Rules, how a supplier or prospective supplier can make a complaint, and how the Office will handle such complaints.

Scope

This policy applies to staff and contractor staff of the Office, and to suppliers and potential suppliers who may have cause to lodge a complaint regarding the Office's non-compliance with the Commonwealth Procurement Rules.

Legislation and standards/principles

The *Government Procurement (Judicial Review) Act 2018* (the GPJR Act) is available at: <https://www.legislation.gov.au/Details/C2018A00129/Controls/>

The Commonwealth Procurement Rules are available at: <https://www.finance.gov.au/government/procurement/commonwealth-procurement-rules>

The Department of Finance provides a detailed explanation of the GPJR Act in their Resource Management Guide RMG 422, "Handling Complaints under the Government Procurement (Judicial Review) Act 2018", available at: <https://www.finance.gov.au/publications/resource-management-guides/handling-complaints-under-government-procurement-judicial-review-act-2018-rmg-422>

Personal information of applicants is protected under the *Privacy Act 1988 (Cth)* which includes the Australian Privacy Principles and is available at: <https://www.legislation.gov.au/C2004A03712/latest/text>.

Monitoring and review

This policy will be reviewed every two years or as required to reflect changes in the broader Australian Government legislative and regulatory environment, best practices standards, and to ensure currency and relevancy to the business of the Office.

Summary

The Office of the Official Secretary to the Governor-General is required to comply with the Commonwealth Procurement Rules when procuring goods and services.

The *Government Procurement (Judicial Review) Act 2018* (GPJR Act) sets out a mechanism for suppliers and/or potential suppliers to lodge a formal complaint if they believe that the Office has breached, or will breach, the relevant CPRs relating to a 'covered procurement' as defined by the GPJR Act; and that this will affect their interests.

Suppliers, or potential suppliers, who believe they have grounds to make a complaint about non-compliance with the CPRs can submit a written complaint which will be investigated by the Office.

MAKING A COMPLAINT

Covered procurements

Under the Government Procurement (Judicial Review) Act 2018, a *covered procurement* is defined as:

- 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:
 - o \$80,000 (including GST) for procurements other than construction services
 - o \$7.5 million (including GST) for procurements of construction services
- not otherwise exempt from compliance with Division 1 and/or Division 2 of the CPRs.

Making a complaint

Suppliers and/or potential suppliers can lodge a formal complaint if they believe that the Office has breached, or will breach, the relevant CPRs relating to a *covered procurement*; and that this will affect their interests.

Complaints should be submitted in writing using the Procurement Complaint form available on the Office of the Official Secretary to the Governor-General website (<https://www.gg.gov.au/office-official-secretary-governor-general>).

Complaints should include the name of the applicant, the business they represent, and their contact details. They should clearly identify the procurement process that the applicant is complaining about, and the relevant paragraph(s) of the CPRs that they believe have or will be breached. An explanation of how the applicant's interests will be affected by the alleged breach(es) and what options they believe may resolve the issue should also be included.

Providing the requested information is not mandatory, however providing it will enable the Office to appropriately investigate a complaint in accordance with agency obligations under the GPJR Act. If an applicant chooses not to provide this information, it may prevent the Office from adequately assessing and investigating the complaint.

Protection of personal information

The Office will not provide the personal information in a complaint to any other entities outside the Office without the applicant's consent except to relevant parties in accordance with the requirements of the GPJR Act, or where required or authorised to do so by law.

The Office's Privacy Policy details how information provided to the Office is handled and protected. The Privacy Policy also details how individuals can request access to or correct the personal information the Office holds about them, and provides information on how to make an enquiry or complaint. A copy of the Office's Privacy Policy can be accessed on the Governor-General's website (www.gg.gov.au/privacy) or requested by emailing privacy@gg.gov.au.

COMPLAINT HANDLING

How the Office processes complaints

The Office will acknowledge receipt of a complaint as soon as is practicable. An assessment of whether the complaint demonstrates that a breach has occurred, or will occur, will be conducted in accordance with section 18(1) of the GPJR Act. Should additional information be required from the applicant to make this assessment, the Office will seek additional clarification from the applicant.

If the complaint is deemed to be valid, the Office will immediately suspend the relevant procurement activity, unless a Public Interest Certificate is already in force. Should this be the case, the Office will advise the applicant as soon as is practicable. If the complaint does not meet the requirements of section 18 of the GPJR Act, there is no legal requirement to suspend the procurement activity.

If a complaint is legitimate, the Office will work with the applicant to agree upon a solution within 7 working days. Should the matter be more complex and require additional time, an extension of the response time frame will be made and the applicant advised.

Upon conclusion of the Office's investigation and once a resolution has been developed with the applicant, the applicant must provide written confirmation that the complaint has been resolved within 5 working days. Upon finalisation of the matter, the Office will provide a written report informing the applicant of the outcome of the investigation.

Public Interest Certificates

Paragraph 57 of RMG 422 identifies that where a procurement complaint is received and it is not in the public's interest to suspend the procurement, entities may issue a Public Interest Certificate (PIC) stating that it is not in the public interest for the procurement to be suspended while complaints are being investigated or applications of injunctions are being considered.

In an instance where a Public Interest Certificate has been issued by the Office, the Public Interest Certificate will be published on the Office's website. The Office will notify suppliers in writing that a PIC is in force.

Review rights

Under section 9 of the GPJR Act, should the matter not be resolved to the satisfaction of the applicant, an application may be made to the Federal Circuit Court of Australia which may grant an injunction and/or order the payment of compensation.

Complaints can also be raised with the Commonwealth Ombudsman (www.ombudsman.gov.au) or with the Australian Government Procurement Coordinator. Further information about their complaints handling process is available at:

<https://www.finance.gov.au/business/procurement/procurement-coordinator-complaints-handling-charter>.