

OFFICIAL:SENSITIVE

National Disability Insurance Agency
Legal, Reviews, Actuarial and Data Group

Standard Operating Procedure: Model Litigant Obligation Complaints

This document is uncontrolled in hardcopy.

In confidence and subject to legal professional privilege (and may be subject to common interest privilege, where applicable). It is recommended that the Legal Services Branch be conferred with prior to any intended distribution, to ensure that privilege is not waived.

OFFICIAL:SENSITIVE**Document Control**

Document No.	NDIA-IRPLO-SOP-013
Date	March 2025
Status	FINAL
Version	001
Document applicability	National – Legal, Reviews, Actuarial and Data Group
Owner	Director, Continuous Improvement

Approval Status Log

Version	001
Reviewed by	Director, Continuous Improvement
Endorsed by	Special Counsel, Agency Legal Services Principal Legal Officer, Integrity Agencies and Ethics
Approved by	Chief Counsel, Chief Counsel Division
Approval date	19 May 2025

Revision History

Revision	Date	Sections	Summary of Changes
1	16/05/2025	All	Original

Note: Document uncontrolled in hardcopy

NDIA-IRPLO-SOP-013-V001-FINAL

SOP: Model Litigant Obligation Complaints

OFFICIAL:SENSITIVE

Page 1 of 23

In confidence and subject to legal professional privilege (and may be subject to common interest privilege, where applicable). It is recommended that the Legal Services Branch be conferred with prior to any intended distribution, to ensure that privilege is not waived.

This document is uncontrolled in hard copy.

OFFICIAL:SENSITIVE

Contents

1. Introduction	3
1.1 Purpose	3
1.2 Scope	3
1.3 Definitions	3
1.4 Roles and Responsibilities	4
2. Checklist	7
3. Procedure	8
3.1 MLO Complaint Coordination	8
3.1.1 Receipt of MLO Complaint	8
3.1.2 Review and Acknowledgement	9
3.1.3 Escalation Pathways	10
3.2 Obtaining Information and Evidence	10
3.3 Internal Review and Consideration	10
3.4 External Review and Recommendation	12
3.5 Final Decision	13
3.5.1 If further information is required	13
3.6 Finalisation and notification	14
3.7 Process Flowchart	15
4. Annexures	16
4.1 Annexure A – Actions, timeframes, and responsible persons	16
4.2 Annexure B – MLO Complaint Threshold Assessment	18
4.3 Annexure C – Using Legal LEX	20
4.4 Annexure D – Using GovTeams	22
4.5 Annexure E – Using PDMS	23

NDIA-IRPLO-SOP-013-V001-FINAL

SOP: Model Litigant Obligation Complaints

OFFICIAL:SENSITIVE

Page 2 of 23

In confidence and subject to legal professional privilege (and may be subject to common interest privilege, where applicable). It is recommended that the Legal Services Branch be conferred with prior to any intended distribution, to ensure that privilege is not waived.

This document is uncontrolled in hard copy.

OFFICIAL:SENSITIVE

1.Introduction

1.1 Purpose

The Model Litigant Obligation Complaint Standard Operating Procedure (**MLO Complaint SOP**) outlines the Agency's process of receiving and facilitating an independent, external review of complaints which allege a breach of the Agency's model litigant obligations in the conduct of litigation. This includes, but is not limited to, applications and proceedings in the Administrative Review Tribunal (**ART**), the Federal Court of Australia (**FCA**), and the High Court of Australia (**HCA**).

All Commonwealth Agencies and Departments, as well as the external Legal Service Providers engaged on behalf of the Commonwealth, have an obligation to act as model litigants in the conduct of litigation. As a Corporate Commonwealth Entity (**CCE**), the NDIA discloses to the Office of Legal Services Coordination (**OLSC**) on a voluntary basis to adopt best practices. These disclosures are made under section 66 of the National Disability Insurance Scheme Act (**NDIS Act**).

The model litigant obligations are set out in Appendix B to the [Legal Services Directions 2017](#). To assist the Commonwealth Government in meeting its model litigant obligations, the Office of Legal Services Coordination has published a [Guidance note 3 - Compliance with the Legal Services Directions 2017](#).

1.2 Scope

This procedure applies nationally and is to be used by all staff who are engaged in the carriage or management of MLO on behalf of the Agency.

1.3 Definitions

TABLE 1 – TABLE OF KEY TERMS

Term	Definition
Model Litigant Obligations (MLO)	The Model Litigant Obligations are contained in Appendix B of the Legal Services Directions 2017 .
MLO Complaint	A complaint alleging a breach of the Agency's MLO.
MLO Complainant	The term used to refer to the person who has submitted the MLO Complaint.
MLO Coordinator	The term used to refer to the NDIA person in the Legal Operations team responsible monitoring, triaging and supporting the MLO complaint (see table 2 for Roles and Responsibilities of the MLO Coordinator).

NDIA-IRPLO-SOP-013-V001-FINAL

SOP: Model Litigant Obligation Complaints

OFFICIAL:SENSITIVE

Page 3 of 23

In confidence and subject to legal professional privilege (and may be subject to common interest privilege, where applicable). It is recommended that the Legal Services Branch be conferred with prior to any intended distribution, to ensure that privilege is not waived.

This document is uncontrolled in hard copy.

OFFICIAL:SENSITIVE

Term	Definition
Lawyer with Carriage (LWC)	The lawyer on record on behalf of the Agency in a proceeding – including Internal Legal Officers (ILO) and external Legal Service Providers (LSP).
Referral Inbox	The inbox which received the MLO complaint – including the Minister’s Office or the Complaints Branch (among others).
Independent Reviewer	An independent LSP engaged to review the complaint, to provide recommendations on whether an MLO breach has occurred, and to prepare draft correspondence in relation to the complaint.
MLO Complaint Decision Maker	<p>The NDIA employee responsible for making the final determination on whether an MLO breach has occurred.</p> <p>This is ordinarily the Chief Counsel of the NDIA, subject to any potential conflict of interest which may preclude the Chief Counsel from making the final determination.</p> <p>Where a conflict of interest arises, a suitable alternate MLO Complaint Decision Maker will be identified on a complaint-by-complaint basis. Except in extenuating circumstances, the MLO Complaint Decision Maker will be a Lawyer at SES Band 2 classification (or above).</p>

1.4 Roles and Responsibilities

TABLE 2 – TABLE OF ROLES AND RESPONSIBILITIES

Role	Responsibility
MLO Coordinator	<p>To monitor the MLO inbox; triage inbound MLO Complaints; obtain information to facilitate an independent investigation into an MLO Complaint; and communicate and report MLO Complaint outcomes.</p> <p>Communication includes between the NDIA and the MLO Complainant in relation to updates required, and dispatch of the MLO Outcome Letter to the MLO Complainant from the inbox</p> <p><small>§47E(d) - certain operations of agencies</small></p>

NDIA-IRPLO-SOP-013-V001-FINAL

SOP: Model Litigant Obligation Complaints

OFFICIAL:SENSITIVE

Page 4 of 23

In confidence and subject to legal professional privilege (and may be subject to common interest privilege, where applicable). It is recommended that the Legal Services Branch be conferred with prior to any intended distribution, to ensure that privilege is not waived.

This document is uncontrolled in hard copy.

OFFICIAL:SENSITIVE

Role	Responsibility
Internal Legal Officer (ILO) Integrity, Agencies and Ethics Team (IAE)	<p>When the MLO Coordinator recommends that the MLO Complaint Threshold is not met, the Internal Legal Officer IAE, to review the MLO Complaint and the recommendation and determine if they accept that recommendation.</p> <p>Overseeing and coordinating the MLO Complaint investigation process, ensuring compliance with applicable timeframes. This includes instructing an Independent Reviewer to undertake an impartial investigation of the complaint.</p> <p>Once received, reviewing the legal advice of the Independent Reviewer on whether a breach of the Agency's MLO has occurred and determining whether that advice should be accepted.</p>
Complaints Branch	<p>Receiving inbound complaints, and onforwarding complaints which allege a breach of the Agency's MLO to the MLO team at §47E(d) - certain operations of agencies</p> <p>Processing all complaints (or elements of complaints) which do not meet the MLO Complaint Threshold.</p>
Lawyer with carriage of ART / Litigation matter (internal and/or external)	Provide information, timelines and relevant communication to support the investigation.*
Case Manager allocated to the matter	Provide information, timelines and relevant communication to support the investigation.*
Complaint Champion (CM Assistant Director)	Assist in the timely provision of information, timelines and relevant communication to support the investigation, if required *
Case Manager Director	Assist in the timely provision of information, timelines and relevant communication to support the investigation.*
Principle Legal Officer, Dispute Resolution and Litigation Branch (DR&L PLO)	Provide information, timelines and relevant communication to support the investigation.*

OFFICIAL:SENSITIVE

Role	Responsibility
Independent Reviewer (External Law Firm)	Undertake an impartial investigation of the referred MLO Complaint and provide advice on whether a breach of the Agency's MLO has occurred, if required. This includes the provision of a draft notification to OLSC and a draft MLO Outcome Letter.
Deputy Chief Counsel Agency Legal Services	Review final MLO outcomes prior to sending to the final MLO Complain Decision Maker.
MLO Complaint Decision Maker	Make the final decision on whether an MLO breach has occurred.

** The accidental or purposeful omission of relevant information may negatively impact the integrity of the independent review, and the resulting determination.*

The roles and responsibilities set out in the [Standard Operating Procedure: Document Control](#) apply also to this procedure.

In confidence and subject to legal professional privilege (and may be subject to common interest privilege, where applicable). It is recommended that the Legal Services Branch be conferred with prior to any intended distribution, to ensure that privilege is not waived.

This document is uncontrolled in hard copy.

OFFICIAL:SENSITIVE

2.Checklist

Topic	Checklist
Pre-requisites	<input type="checkbox"/> The Agency has received a complaint which contains an identifiable alleged breach of the Agency's model litigant obligations in the conduct of litigation
Actions	<p>For all staff:</p> <input type="checkbox"/> 3.1.1 Receipt of MLO Complaint <p>For staff involved in the handling of MLO complaints, including the MLO Coordinator, IAE, and the MLO Complaint Decision Maker:</p> <input type="checkbox"/> 3.1.2 Review and Acknowledgement

NDIA-IRPLO-SOP-013-V001-FINAL

SOP: Model Litigant Obligation Complaints

OFFICIAL:SENSITIVE

Page 7 of 23

In confidence and subject to legal professional privilege (and may be subject to common interest privilege, where applicable). It is recommended that the Legal Services Branch be conferred with prior to any intended distribution, to ensure that privilege is not waived.

This document is uncontrolled in hard copy.

OFFICIAL:SENSITIVE

3. Procedure

*A simplified outline of this procedure – including relevant actions, applicable timeframes, and responsible persons – is included at **Annexure A** – Actions, timeframes, and responsible persons.*

The Agency will consider and, where appropriate, seek an independent, external review of complaints which allege a breach of the Agency's MLO.

To minimise unnecessary delay and to promote consistency and integrity in decision-making, the MLO Coordinator will first consider Annexure B – MLO Complaint Threshold Assessment whether the complaint meets the required threshold for investigation when the matter has been received in the MLO inbox. The MLO Coordinator will adopt a participant-centred approach to the consideration and handling of MLO Complaints, the threshold for further investigation is met wherever the complaint relates to the Agency's conduct in litigation, and contains sufficient information to identify an alleged breach of the Agency's MLO – even if the complaint does not expressly refer to 'MLO'.

The Agency is committed to communicating MLO Complaint outcomes **within 90 days** of receiving the complaint, where possible. Where it is not possible to communicate a complaint outcome within this timeframe, the Agency will provide a status update to the MLO Complainant within 90 days of receiving the complaint.

High-risk complaints will be prioritised and investigated in shorter timeframes, this is assessed during triage and with consultation with an Agency Legal Officer.

Complaints, or elements of a complaint, that do not relate to the Agency's MLO (or an alleged breach) will be referred to the Complaints Branch for coordination and response.

3.1 MLO Complaint Coordination

3.1.1 Receipt of MLO Complaint

MLO Complaints are received by the Agency through a variety of channels.

All MLO Complaints received by Agency staff must be recorded **in writing**, and must be **forwarded by email** to s47E(d) - certain operations of agencies as soon as possible. The email should include information such as the complainant's preferred contact method of communication, for the purposes of requesting further information and communicating a complaint outcome. If a complaint is referred for MLO assessment internally via an SES officer, the Legal Operations team can assist in seeking participant details and will forward to the MLO inbox.

Note: Where an MLO Complaint is made verbally, the complaint should be recorded in writing in the most appropriate NDIA business system in the first instance, prior to referral to s47E(d) - certain operations of agencies by email.

NDIA-IRPLO-SOP-013-V001-FINAL

SOP: Model Litigant Obligation Complaints

OFFICIAL:SENSITIVE

Page 8 of 23

In confidence and subject to legal professional privilege (and may be subject to common interest privilege, where applicable). It is recommended that the Legal Services Branch be conferred with prior to any intended distribution, to ensure that privilege is not waived.

This document is uncontrolled in hard copy.

OFFICIAL:SENSITIVE**3.1.2 Review and Acknowledgement**

Within 2 business days of receiving the complaint, an MLO Coordinator will review and assess the complaint against the [Annexure B – MLO Complaint Threshold Assessment](#) (**Annexure B – MLO Complaint Threshold Assessment**), to determine whether threshold for further investigation is met.

If the MLO Coordinator considers the threshold *is* met, they will:

1. Create a Legal LEX Matter (see **Annexure C – Using Legal LEX**).
2. Record the complaint on the MLO Complaint Tracker.
3. Send an email to the Complaints Branch acknowledging that the complaint (or elements of the complaint) has been received and will be facilitated to an independent, external assessment as an MLO Complaint.
4. Send correspondence to the MLO complainant, in the manner they have identified they wish to receive correspondence, acknowledging that the complaint has been received and will be assessed.
5. Proceed to obtain available information and evidence relevant to be considered in the independent, external investigation into the MLO complaint, in accordance with [3.2](#), below.

If the MLO Coordinator considers the threshold *is not* met, they will:

1. Draft a recommendation that the MLO Complaints threshold is not met, for review and determination by the Principal Legal Officer (PLO), IAE.
2. If the PLO, IAE **agrees** with the MLO Coordinators' recommendation that the MLO Complaint Threshold is **not** met, the MLO Coordinator will:
3. create Legal LEX Matter (see **Annexure C – Using Legal LEX**), and close the matter by selecting matter type: *IAE – MLO Complaints – Threshold not Met*;
 - a. record the complaint on the MLO Complaint Tracker; and
 - b. refer the complaint to the Complaints Branch for processing.
4. If the PLO, IAE **disagrees** with the MLO Coordinators' recommendation and determines that the MLO Complaint Threshold *is* met, the MLO Coordinator will:
 - a. create a Legal LEX Matter (see **Annexure C – Using Legal LEX**);
 - b. record the complaint on the MLO Complaint Tracker;
 - c. send an email to the Complaints Branch acknowledging that the complaint (or elements of the complaint) will be referred for

OFFICIAL:SENSITIVE

investigation to an independent, external investigator as an MLO Complaint;

- d. send correspondence to the MLO complainant, in the manner they have identified they wish to receive correspondence, acknowledging that the complaint has been received and will be assessed and inviting they provide further information about the MLO complaint; and
- e. proceed to obtain available information and evidence relevant to be considered in an independent investigation into the complaint, in accordance with [3.2](#), below.

3.1.3 Escalation Pathways for Priority Investigations

Where appropriate, MLO Complaints will be escalated for priority investigation in shorter-than-ordinary timeframes.

The MLO Coordinator in collaboration with IAE are responsible for identifying high-risk factors which may require that an MLO Complaint be investigated as a priority. High-risk factors include:

1. a participant or prospective participant is identified as requiring or receiving palliative care;
2. active media involvement;
3. multiple active complaints; and/or
4. Ministerial complaints.

Where escalation is required, the MLO Coordinator, in collaboration with IAE will negotiate a reduction in ordinary investigative timeframes with all relevant stakeholders.

The ILO, IAE is responsible for notifying the Special Counsel, IAE of the escalated complaint as soon as the escalation is identified.

The IAE lawyer will promptly instruct the external law firm, including advising that this matter is a priority investigation, highlighting the high-risk factors, to ensure the investigation is properly conducted and high-risk factors considered, if appropriate.

3.2 Obtaining Information and Evidence

The MLO Coordinator will obtain relevant information and evidence to be considered in the independent review of the complaints that meet the MLO Complaint Threshold.

Within 2 business days of determining that a complaint meets the threshold, the MLO Coordinator will:

NDIA-IRPLO-SOP-013-V001-FINAL

SOP: Model Litigant Obligation Complaints

OFFICIAL:SENSITIVE

Page 10 of 23

In confidence and subject to legal professional privilege (and may be subject to common interest privilege, where applicable). It is recommended that the Legal Services Branch be conferred with prior to any intended distribution, to ensure that privilege is not waived.

This document is uncontrolled in hard copy.

OFFICIAL:SENSITIVE

1. Identify the alleged MLO breach(es) under Appendix B to the [Legal Services Directions 2017](#) and, where necessary, isolate the elements of the complaint which do *not* relate to the alleged breach.
2. If necessary, refer the elements of the complaint which do not relate to the alleged MLO breach to the Complaints Branch for processing.
3. Send an email to the internal or external lawyer with carriage (LWC) of the ART matter to request that all relevant information to the MLO complaint be provided **within 10 business days** – copied to the appropriate DR&L PLO and the relevant Complaint Champion for visibility.
4. Forward the information provided by the LWC to the responsible Case Manager, their Director, the appropriate DR&L PLO, for their consideration – and request that any further information be provided **within 3 business days**.

Persons who are asked to provide information must take care to ensure that they provide **all relevant information** to support the timely and comprehensive investigation of the MLO Complaint. The accidental or purposeful omission of relevant information may negatively impact the integrity of the independent review, and the resulting determination.

Additional requests for the provision of further information may be made during the course of the investigation, if required.

If additional time is required to collate all relevant information, the person responsible for providing that information is asked to please contact the MLO Coordinator to negotiate an extended timeframe in which to do so.

3.3 Allocation to Integrity Agency Ethics, Agency Legal Services

Within 2 business days of receiving all relevant information to enable an independent investigation, the MLO Coordinator will:

1. Upload copies of the documents and information received to LEX.
2. Allocate the matter in LEX to the PLO, IAE for allocation to an ILO for review and coordination.
3. Update the MLO Complaint Tracker.

The ILO, IAE will review the MLO Complaint and determine whether sufficient information has been provided to enable an informed investigation into whether a breach of the Agency's MLO has occurred. If further information is required to enable an informed investigation into the MLO Complaint, the ILO will work with

OFFICIAL:SENSITIVE

the MLO Coordinator to obtain that additional information from the LWC and/or CM.

Following their review, the ILO, IAE will send the Investigation Pack to the Independent Reviewer (External Law Firm) to conduct the investigation of the complaint – which includes:

1. A Letter of Instruction to the Independent Reviewer (External Law Firm)
2. A request for fee estimate for the work
3. A copy of the original MLO Complaint
4. The information and evidence collected in [3.2](#), including the responses received from the LWC, the Case Manager, their Director, the appropriate DR&L PLO, and the relevant Complaint Champion.

The ILO, IAE will provide the Independent Reviewer (External Law Firm) with the Investigation Pack using GovTeams (see **Annexure D** – Using GovTeams), and will update LEX accordingly. The MLO inbox should be cc'd for tracking purposes.

The Independent Reviewer will provide a quote for the work required, using rates determined in the Legal Services Panel Work Order. This should be reviewed and approved by the Principal Legal Officer (IAE).

3.4 External Review and Recommendation

The ILO, IAE is responsible for Instructing the External Investigator (External Law Firm) and coordinating an independent external review of the MLO Complaint, and will be the primary point of contact between the Independent Reviewer and the Agency.

Within 10 business days of receiving the Investigation Pack, the Independent Reviewer will provide to the ILO, IAE:

1. Confirmation of receipt of the investigation pack and Letter of Instruction.
2. A draft Recommendation Report which details the review and the recommendation, regarding whether a breach of the Agency's MLO is substantiated.

The draft Recommendation Report where possible, should also include recommendations to the Agency on ways in which it can improve processes and procedures, which may be used to inform future continuous improvement initiatives.

3. Draft notification to the Office of Legal Services Coordination (OLSC) outlining the complaint and the outcome.
4. Draft MLO Complaint Outcome Letter for review by IAE and, signature by the MLO Decision Maker.

OFFICIAL:SENSITIVE

The ILO will confer with the Deputy Chief Counsel Agency Legal Services (or their nominee, such as a Special Counsel) on the draft Recommendation Report. If required, the ILO will engage further with the Independent Reviewer to confirm any outstanding issues, and once satisfied, will instruct the Independent Reviewer to issue their Recommendation Report as a final document.

3.5 Final Decision

The **MLO Complaint Decision Maker** is responsible for making the final decision on whether an MLO breach has occurred.

Within 5 business days of receiving the Recommendation Report, the ILO, IAE will review the recommendation and legal advice of the Independent Reviewer on whether the Agency has breached its MLO, before referring the MLO Complaint and Recommendation Report to the MLO Complaint Decision Maker.

The ILO will recommend whether that advice should be accepted by the Agency – and seek clearance from Deputy Chief Counsel Agency Legal Services, prior to providing to the MLO Complaint Decision Maker (the Chief Counsel) for final determination and signature of the outcome letter.

The ILO is responsible for keeping the LEX record up to date, including their recommendation and the reasons for their recommendation.

The MLO Complaint Decision Maker will make a final decision on whether an MLO breach has occurred **within 10 business days** of receiving the Recommendation Report. The MLO Complaint Decision Maker will email their decision, and signed letter to the ILO cc'ing in the MLO inbox.

3.5.1 In the event that further information is required

If further information is required for the ILO, IAE or the MLO Complaint Decision Maker to consider the advice, the ILO will request that information from the Independent Reviewer. If additional information is required from the Case Manager and/or LWC, the ILO will work with the MLO Coordinator to obtain that additional information directly from the Case Manager and/or LWC (if appropriate).

Where there is a recommendation that there has been a breach of the MLOs, further information might be sought from the LWC and Responsible Case Manager. This may include putting specific adverse findings from the investigation report to the LWC and Responsible Case Manager so they can respond and provide any additional information before a decision is made.

OFFICIAL:SENSITIVE**3.6 Finalisation and notification**

Within 2 business days of the final decision being made, the ILO, IAE will notify the MLO Coordinator of the MLO Complaint Outcome by providing the signed MLO Complaint Outcome Letter to the MLO inbox.

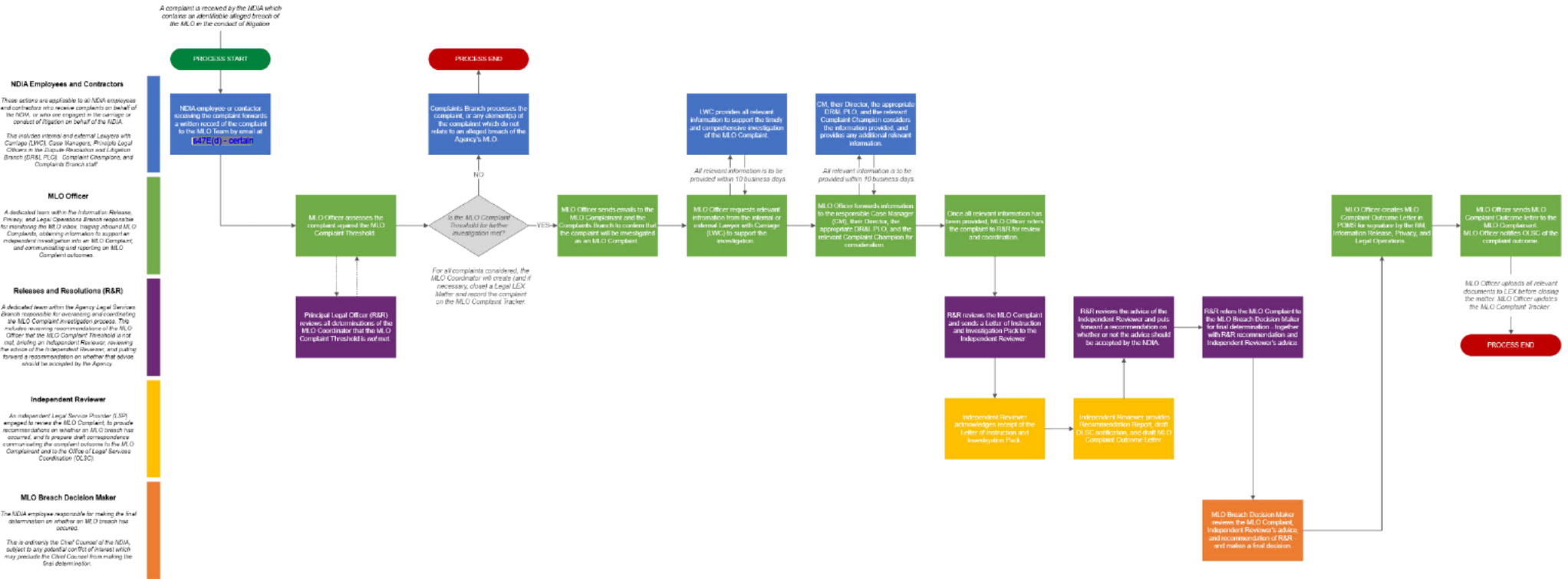
Within 2 business days of being notified of the MLO Complaint outcome, the MLO Coordinator will finalise the MLO Complaint by:

5. Sending the signed outcome letter to the MLO Complainant.
6. Ensuring that all relevant documents are uploaded in LEX, including the signed outcome letter (see **Annexure C – Using Legal LEX**).
7. Updating the MLO Complaint Tracker.
8. Notifying OLSC of the complaint outcome by email under section 66(1)(b) of the [National Disability Insurance Scheme Act 2013](#) – with attached copies of:
 - a. an approved OLSC Agency notification, in the approved template;
 - b. a copy of the Independent Reviewer's Recommendation Report; and
9. a copy of the signed MLO Complaint Outcome Letter which was provided to the complainant.
10. Finalise the LEX file.
11. Provide a copy to the IRPLO Director of Continuous Improvement to enable the team to identifying key themes and recommendations arising from MLO Complaints which may inform future training and continuous improvement.

OFFICIAL:SENSITIVE

3.7 Process Flowchart

Legal, Reviews, Actuarial and Data Group Model Litigant Obligation (MLO) Complaints



NDIA-LPC-SOP-013-V001-FINAL

SOP: Model Litigant Obligation Complaints

OFFICIAL:SENSITIVE

Page 15 of 23

In confidence and subject to legal professional privilege (and may be subject to common interest privilege, where applicable). It is recommended that the Legal Services Branch be conferred with prior to any intended distribution, to ensure that privilege is not waived.

This document is uncontrolled in hard copy.

OFFICIAL:SENSITIVE

4. Annexures

4.1 Annexure A – Actions, timeframes, and responsible persons

Action	Timeframe	Responsible Person
Complaints received to be sent to b7E(d) - certain operations of agencies	Within 1 business day	Individual / business area that received the complaint
Initial review and assessment against complaint threshold	Within 2 business days	MLO Coordinator IAE (where required)
Acknowledge receipt of the MLO Complaint	Within 2 business days of the threshold determination	MLO Coordinator
Notify the Complaints Branch of the threshold determination	Within 2 business days of the threshold determination	MLO Coordinator
Where the threshold is met – Request information and evidence	Within 2 business days of the threshold determination	MLO Coordinator
Obtain and provide relevant information to support the investigation	Within 10 business days of the request for information (or as otherwise agreed)	LWC
	Within 3 business days	Case Manager Complaints Champion CM Director DR&L PLO
Refer the complaint to IAE for review and coordination	Within 2 business days of receiving all relevant information	MLO Coordinator
Investigation package compiled and provided to Independent Reviewer	Within 3 business days of the MLO Complaint being allocated	IAE
Advice provided by Independent Reviewer	Within 10 business days*	Independent Reviewer

NDIA-LPC-SOP-013-V001-FINAL

SOP: Model Litigant Obligation Complaints

OFFICIAL:SENSITIVE

Page 16 of 23

In confidence and subject to legal professional privilege (and may be subject to common interest privilege, where applicable). It is recommended that the Legal Services Branch be conferred with prior to any intended distribution, to ensure that privilege is not waived.

This document is uncontrolled in hard copy.

OFFICIAL:SENSITIVE

Action	Timeframe	Responsible Person
Advice reviewed and a recommendation made on whether that advice should be accepted	Within 2 business days	IAE
Determination on breach	Within 10 business days	MLO Complaint Decision Maker
Finalisation and notification	Within 2 business days of the breach determination	IAE MLO Coordinator DSO

* Requests for additional information to support the investigation may impact expected timeframes for the provision of the Independent Reviewer's advice.

OFFICIAL:SENSITIVE

4.2 Annexure B – MLO Complaint Threshold Assessment

This annexure is to be used when reviewing an MLO Complaint, to determine whether the complaint meets the established threshold for further investigation.

LEX No:

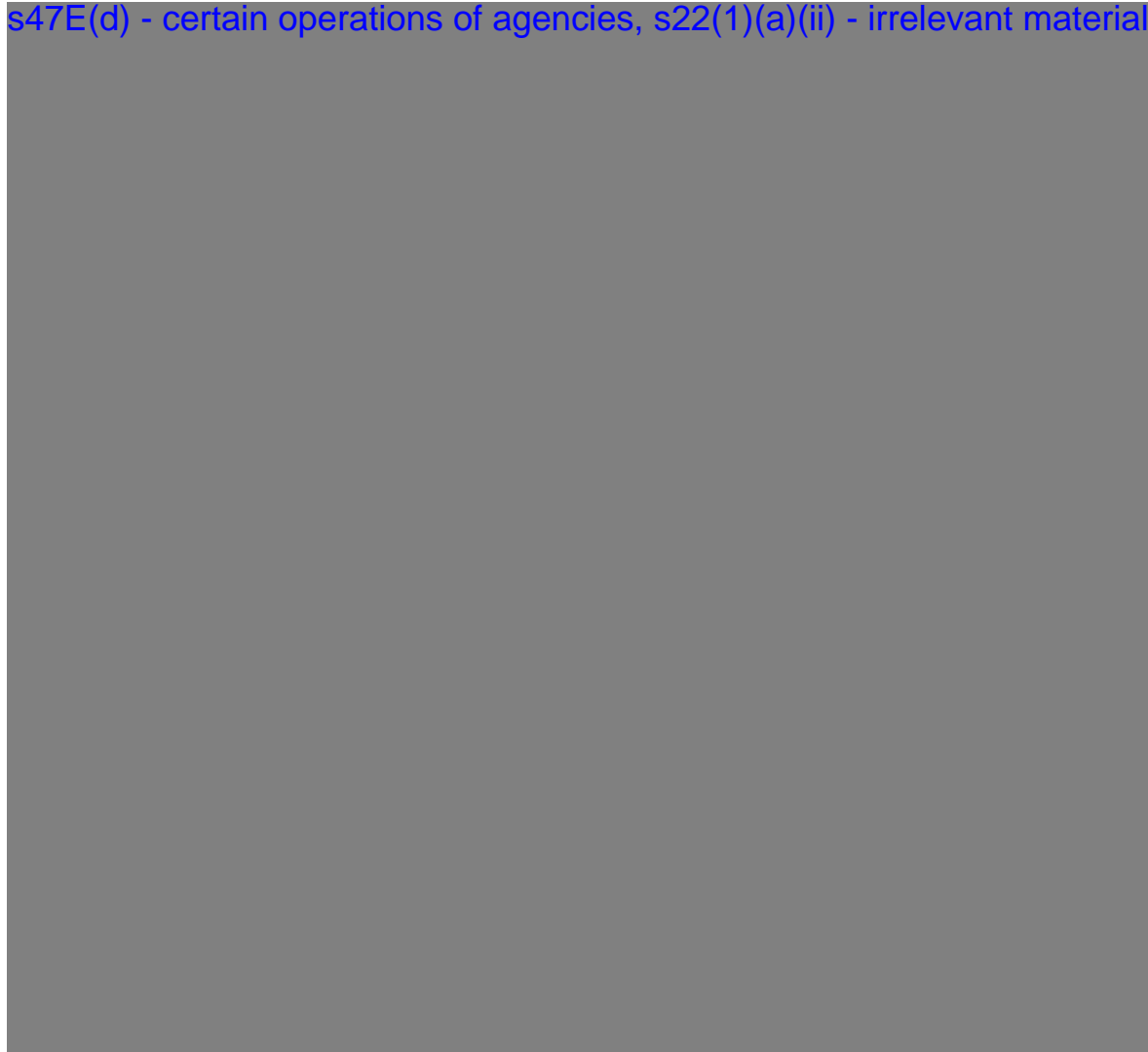
Complainant:

Date of complaint:

Tribunal / Court Proceeding Number:

Checklist for determining whether the MLO Complaint Threshold is met

s47E(d) - certain operations of agencies, s22(1)(a)(ii) - irrelevant material



OFFICIAL:SENSITIVE

In confidence and subject to legal professional privilege (and may be subject to common interest privilege, where applicable). It is recommended that the Legal Services Branch be conferred with prior to any intended distribution, to ensure that privilege is not waived.

This document is uncontrolled in hard copy.

OFFICIAL:SENSITIVE

Matrix of identified themes / complaint elements requiring investigation

s47E(d) - certain operations of agencies, s22(1)(a)(ii) - irrelevant material



OFFICIAL:SENSITIVE

4.3 Annexure C – Using Legal LEX

s47E(d) - certain operations of agencies, s22(1)(a)(ii) - irrelevant material



OFFICIAL:SENSITIVE

In confidence and subject to legal professional privilege (and may be subject to common interest privilege, where applicable). It is recommended that the Legal Services Branch be conferred with prior to any intended distribution, to ensure that privilege is not waived.

This document is uncontrolled in hard copy.

OFFICIAL:SENSITIVE

s47E(d) - certain operations of agencies, s22(1)(a)(ii) - irrelevant material



NDIA-LPC-SOP-013-V001-FINAL

SOP: Model Litigant Obligation Complaints

OFFICIAL:SENSITIVE

Page 21 of 23

In confidence and subject to legal professional privilege (and may be subject to common interest privilege, where applicable). It is recommended that the Legal Services Branch be conferred with prior to any intended distribution, to ensure that privilege is not waived.

This document is uncontrolled in hard copy.

OFFICIAL:SENSITIVE

4.4 Annexure D – Using GovTeams

s47E(d) - certain operations of agencies, s22(1)(a)(ii) - irrelevant material



OFFICIAL:SENSITIVE

In confidence and subject to legal professional privilege (and may be subject to common interest privilege, where applicable). It is recommended that the Legal Services Branch be conferred with prior to any intended distribution, to ensure that privilege is not waived.

This document is uncontrolled in hard copy.

OFFICIAL:SENSITIVE

4.5 Annexure E – Using PDMS

s47E(d) - certain operations of agencies, s22(1)(a)(ii) - irrelevant material



NDIA-LPC-SOP-013-V001-FINAL

SOP: Model Litigant Obligation Complaints

OFFICIAL:SENSITIVE

Page 23 of 23

In confidence and subject to legal professional privilege (and may be subject to common interest privilege, where applicable). It is recommended that the Legal Services Branch be conferred with prior to any intended distribution, to ensure that privilege is not waived.

This document is uncontrolled in hard copy.

Legal Services Directions 2017
The Model Litigant Obligations:

1. Consistently with the Attorney-General's responsibility for the maintenance of proper standards in litigation, the Commonwealth and Commonwealth agencies are to behave as model litigants in the conduct of litigation.

2. The obligation to act as a model litigant requires that the Commonwealth and Commonwealth agencies act honestly and fairly in handling claims and litigation brought by or against the Commonwealth or a Commonwealth agency by:

(a) dealing with claims promptly and not causing unnecessary delay in the handling of claims and litigation

(aa) making an early assessment of:

(i) the Commonwealth's prospects of success in legal proceedings that may be brought against the Commonwealth; and

(ii) the Commonwealth's potential liability in claims against the Commonwealth

(b) paying legitimate claims without litigation, including making partial settlements of claims or interim payments, where it is clear that liability is at least as much as the amount to be paid

(c) acting consistently in the handling of claims and litigation

(d) endeavouring to avoid, prevent and limit the scope of legal proceedings wherever possible, including by giving consideration in all cases to alternative dispute resolution before initiating legal proceedings and by participating in alternative dispute resolution processes where appropriate

(e) where it is not possible to avoid litigation, keeping the costs of litigation to a minimum, including by:

(i) not requiring the other party to prove a matter which the Commonwealth or the agency knows to be true

(ii) not contesting liability if the Commonwealth or the agency knows that the dispute is really about quantum

- (iii) monitoring the progress of the litigation and using methods that it considers appropriate to resolve the litigation, including settlement offers, payments into court or alternative dispute resolution, and
- (iv) ensuring that arrangements are made so that a person participating in any settlement negotiations on behalf of the Commonwealth or a Commonwealth agency can enter into a settlement of the claim or legal proceedings in the course of the negotiations
- (f) not taking advantage of a claimant who lacks the resources to litigate a legitimate claim
- (g) not relying on technical defences unless the Commonwealth's or the agency's interests would be prejudiced by the failure to comply with a particular requirement
- (h) not undertaking and pursuing appeals unless the Commonwealth or the agency believes that it has reasonable prospects for success or the appeal is otherwise justified in the public interest, and
- (i) apologising where the Commonwealth or the agency is aware that it or its lawyers have acted wrongfully or improperly.