



ENERGY AND WATER  
OMBUDSMAN  
Victoria **Listen Assist Resolve**



# Binding Decision Procedure and Final Stage Complaints

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## OVERVIEW

EWOV's Policy and Procedure for Final Stage complaints details the process to be applied when progressing and closing a Final Stage complaint. It outlines the three outcomes that can apply, Conciliation, Procedural Closure, Fair Offer Closure and Binding Decision and when each outcome should occur.

This document is to be read in conjunction with EWOV's:

- Complaint Upgrade Policy
- Procedural and Fair Offer Closure Policy
- No Contact Suspension of Collection Activity Policy
- Case Registration Procedure.

### What happens at Final Stage?

The Ombudsman (or Acting Ombudsman) has delegated the responsibility for deciding whether a complaint will be closed as follows for each of the outcomes:

At the point of upgrade to Final Stage, EWOV will continue investigations while assessing whether the complaint can be finalised on the following basis:

- negotiating a conciliated outcome,
- a fair offer closure
- referring the matter to the Ombudsman for a Binding Decision to be made.

EWOV will seek to finalise a complaint at Final Stage within 90 days.

### Can a conciliated outcome be achieved at Final Stage?

EWOV always seeks to achieve conciliated outcomes. This will occur when the customer and scheme participant are both satisfied with the offer/response provided and agree to resolve the matter on that basis.

### What does a Fair Offer outcome mean?

A fair offer outcome will occur when a customer is unwilling to accept what EWOV considers to be a fair offer or the scheme participant has met the merits of the complaint. It can occur at all stages of the complaint, not just at Final Stage. The complaint will be closed on the basis that a fair offer has been made.

### What is a Binding Decision?

If a negotiated outcome cannot be achieved at Final Stage, and EWOV does not believe the scheme participant's resolution proposal is fair and reasonable, the matter will be referred to the Ombudsman for a Binding Decision

to be made. A Binding Decision is a determination by the Ombudsman which, if accepted by the customer, is binding on the scheme participant. Binding Decisions are published on EWOV's website, with the names of both parties de-identified.

Once a matter is referred to the Ombudsman, the Binding Decision will be finalised within 60 days.

## How is a Final Stage complaint different to a Stage 1, 2 or 3 complaint?

Initially, EWOV handles Final Stage complaints in much the same way as Stage 1, 2 and 3 complaints. Essentially once a case is upgraded to Final Stage the Binding Decision process begins. In other words, by upgrading to Final Stage, we are preparing the documentation and investigation for a Binding Decision, although this may not eventuate as the outcome.

EWOV still provides the scheme participant with an opportunity to respond to the outstanding issues. EWOV also provides the parties with the opportunity to continue negotiating, if the scheme participant's response does not resolve the matter.

However, there are some key differences in the handling of Final Stage complaints.

## Request for a response

EWOV's initial email to scheme participants for Final Stage complaints asks them to respond within five business days, either:

- providing a full response to the issues raised and confirming that they wish to continue negotiating with the customer or
- confirming that they wish to have the matter proceed directly to a Binding Decision.

This is a very important decision for a scheme participant to make, and it should be made following consultation with senior management within its business.

It is important to be realistic in making this decision – the scheme participant should consider its position, the customer's position, and EWOV's assessment of the merits of the complaint. The fact that the matter has been upgraded to Final Stage means that EWOV believes the complaint has merit and considers that further investigation/negotiation is warranted.

## Costing structure

Final Stage complaints have a different costing structure to Stage 1, 2 and 3 complaints. While Stage 1, 2 and 3 complaints have a fixed fee applied per complaint, Final Stage complaints are billed to the scheme participant based on the amount of time (at a per minute rate) EWOV spends working on the complaint. This means that the sooner a matter is resolved, the less additional cost the scheme participant will incur. A scheme participant may

consider this, in deciding whether it wishes to settle, continue negotiating or proceed directly to a Binding Decision.

## What initiates a Binding Decision?

There are three possible ways that a Binding Decision will commence, these are:

- If the scheme participant elects to proceed straight to a Binding Decision - EWOV will complete any outstanding tasks and refer the matter to the Ombudsman.
- If no Final Stage response is received from the scheme participant - EWOV will allow seven calendar days for a response to be provided, and will then refer the matter to the Ombudsman to make a decision based on the information EWOV has at hand.
- If EWOV considers a complaint still has merit and has received a response at Final Stage which does not address the merit - EWOV will complete any outstanding tasks and refer the matter to the Ombudsman.

The progression of a Final Stage complaint towards a Binding Decision will constantly be assessed by the Conciliation Team Manager (CTM) and the General Manager Operations, prior to commencement of drafting the Binding Decision.

## How long can the parties negotiate at Final Stage?

Being independent is a key part of EWOV's investigation and negotiation processes, which means that investigations follow the principles of natural justice, allow each party a fair opportunity to explain their perspective and an equal opportunity to provide any further information that may be relevant to EWOV's investigation.

Ultimately EWOV will continue to negotiate with both parties whilst it is still feasible that a conciliated outcome can be achieved within a maximum of 90 days unless exceptional circumstances exist and the General Manager Operations approves further negotiations. *Please refer to appendix two for timeframe considerations.*

## What is the process for a Binding Decision?

Where EWOV believes it may be necessary for a matter to proceed to a Binding Decision, a full review of the complaint should be undertaken in consultation with the Conciliator's manager. Before referring the matter to the Ombudsman, the investigation checklist in Resolve should be completed. *Please refer to appendix one for EWOV's full procedure to complete a Binding Decision.*

## How does EWOV escalate a potential Binding Decision?

Where a complaint appears likely to proceed to a Binding Decision, the General Manager Operations will contact a General Manager or equivalent at the scheme participant, to notify of the potential Binding Decision in a final effort to resolve the matter without it proceeding to a Binding Decision. This step may be completed after a

Conciliation Conference. Prior to the meeting, the GM will require a timeline document, strengths and weaknesses document, and overview of the complaint.

## How do you advise the Ombudsman that you a planning on referring a complaint for Binding Decision?

Where a matter has proceeded to a point beyond the General Manager Operations meeting with the scheme participant, the General Manager Operations will provide a general overview for the Ombudsman. Generally, the Ombudsman will only be advised of the matter in detail when the General Manager Operations agrees with the recommendation that it should proceed to a Binding Decision.

In making a Binding Decision, the Ombudsman needs to be able to bring a fresh, completely independent perspective. For this reason, it is important that the Ombudsman has had very limited or no prior involvement in the complaint.

A meeting will be scheduled to plan the progression of the Binding Decision. Follow on meetings will be held as necessary, to ensure that all aspects of the investigation have been finalised and to monitor the progression of the Binding Decision.

## APPENDIX ONE: EWOV PROCEDURE TO COMPLETE A BINDING DECISION

### How does EWOV advise both parties that a Binding Decision has commenced?

Once EWOV has decided that the matter will proceed to a Binding Decision, both parties are informed of this in writing.

The following template letters should be sent:

- "Letter to customer – case proceeding to BD"
- "Letter to provider – case proceeding to BD"

### What is the process for drafting a Binding Decision?

The Binding Decision is drafted using the template in Resolve – “BD - draft decision”. When drafting the Binding Decision, the following points should be noted:

- The footers of each draft should clearly indicate the status of the document, for example “BD Draft 1 – 5 May 2010”.
- The Binding Decision should be written in plain English.
- A ‘Confidential’ watermark should be on all drafts and the final document.

### How are drafts reviewed?

The review process below should be followed once the first draft of the Binding Decision is completed:

1. Ask the Communications and Policy Manager) to review the draft for legislative/regulatory issues/requirements
2. Ask EWOV’s independent legal advisor to review the draft
3. Provide a copy of the draft Binding Decision to the General Manager Operations for review
4. Incorporate comments and changes (this step might be repeated)
5. Give a copy of the Binding Decision to the Ombudsman for comment
6. Incorporate the Ombudsman’s comments and changes and return to her (this step may be repeated)

7. Seek final review by EWOV's independent legal advisor
8. Give a copy of the final Binding Decision to the Ombudsman
9. Save the final draft in the Resolve "Case Documents" as 'Binding Decision (Date)'
10. The Ombudsman contacts the scheme participant CEO, to advise them of the draft decision and provide them with a final opportunity to consider making a revised offer of resolution prior to the Binding Decision being made

## How does EWOV notify the parties of the Binding Decision?

Once the Binding Decision has been approved, the Conciliator should follow the process as seen below. In applying this process, it is important that both the customer and the scheme participant receive the Binding Decision at as close to the same time as possible.

1. Phone the customer to ensure they will be home when the Binding Decision is to be delivered (this may be the next day if the customer is rural). When speaking to the customer, you are not permitted to advise them of the outcome of the Binding Decision prior to their receipt of it.
2. Prepare and print a covering letter for the customer (Template is "*BD to Customer*"). This should be dated the day the customer and the scheme participant will receive the Binding Decision.
3. Prepare and print a Release form for the customer (Template is "*BD Customer Release Form*").<sup>1</sup>
4. Prepare and print a covering letter for the CEO of the scheme participant, cc the scheme participant contact. (Template is "*BD to Provider*").
5. Print two original final copies of the Binding Decision.
6. Ask the General Manager Operations to approve all above documents.
7. Give all documents to the Ombudsman to sign.
8. Photocopy all documents for the file.
9. If the customer is in Melbourne, courier the documents to him/her.

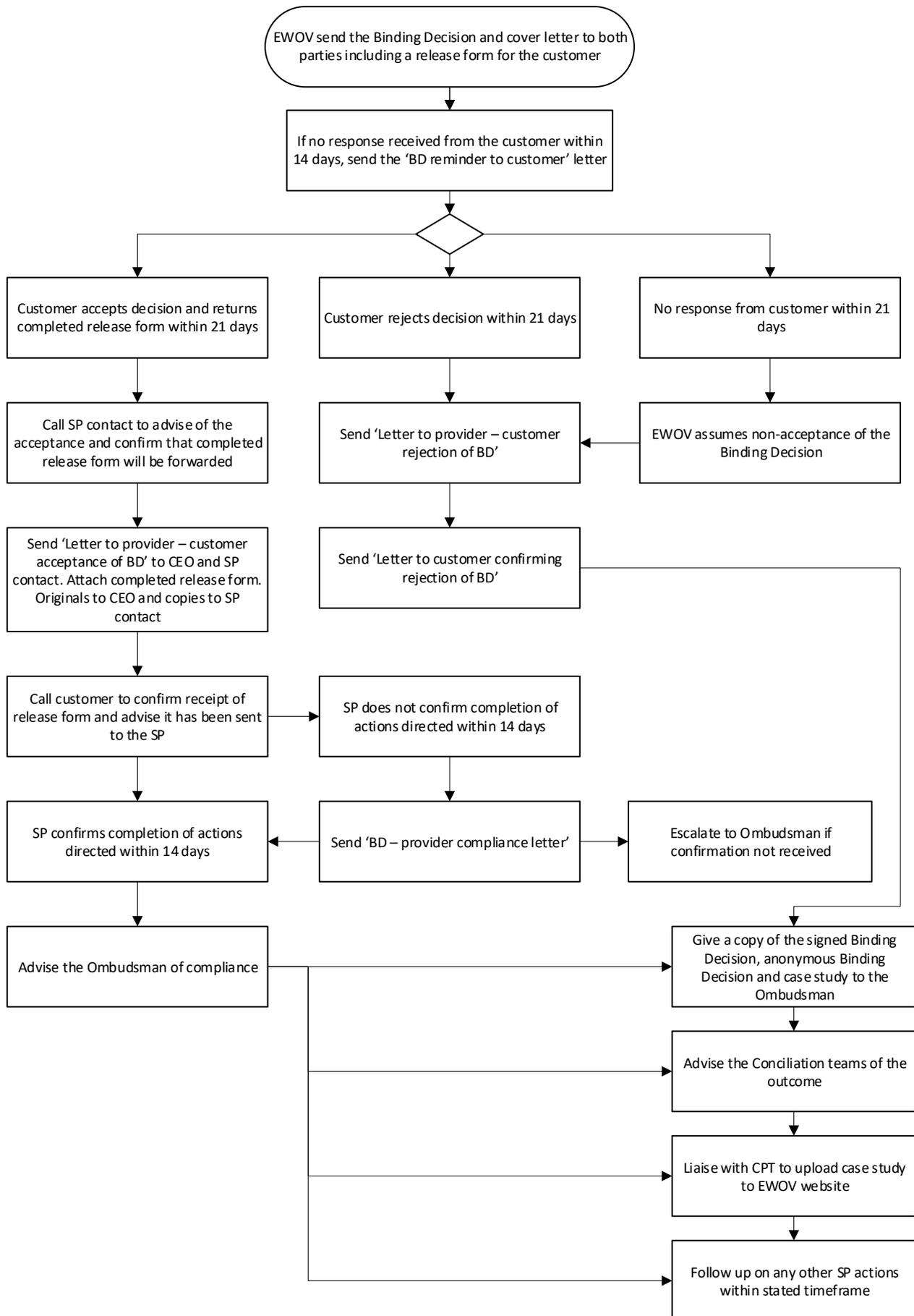
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<sup>1</sup> If there is a co-complainant or an authorised representative, then the Release Form may need to have both names on it. Note that a solicitor may not be acting as an 'authorised representative', but may simply have assisted a complainant with their case. In such circumstances, it may be appropriate to send the original Binding Decision and Release Form to the customer, and to send a copy to the solicitor. Check with the customer and solicitor, and General Manager Operations (and if appropriate obtain legal advice) about these matters.

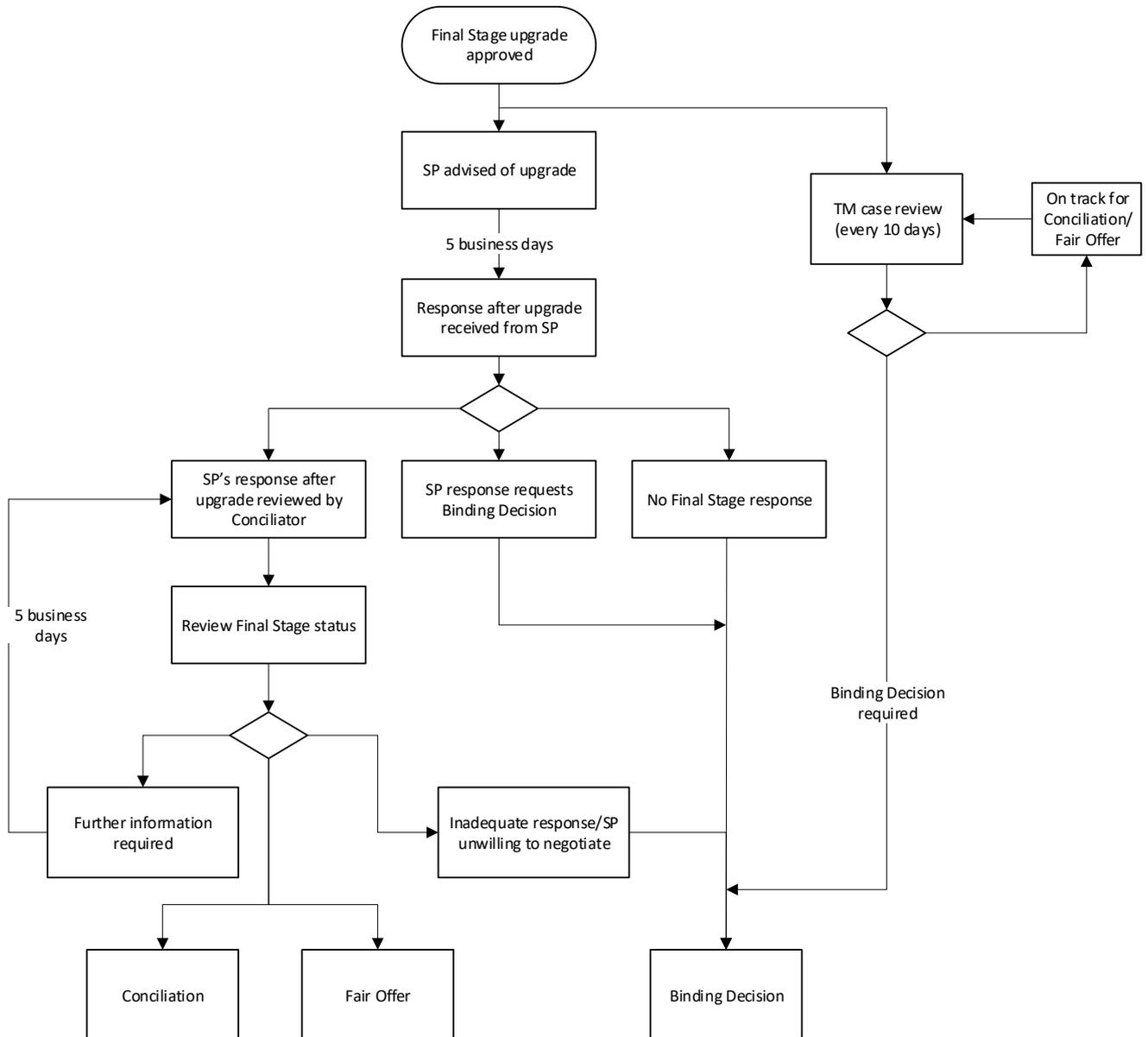
10. If the customer is rural (i.e. relatively close to Melbourne) Express Post the documents to him/her. If the documents would not arrive by the following day, send them via Registered Mail, and allow extra time for them to arrive.
11. Courier the covering letter and an original Binding Decision to the company CEO.
12. Courier a copy of the covering letter and a copy of the Binding Decision to the scheme participant contact
13. Circulate copies of the Binding Decision to the Conciliation team.
14. Save a 'de-identified' version of the Binding Decision in Resolve. Replace customer and scheme participant names with 'the customer' and 'the provider'. Save as 'BD: Anon'.
15. Tick the Story Bank field in Resolve for the Communications and Policy Team to update the EWOV intranet, website and extranet.

## Administration of a Binding Decision case

Following the issuing of the Binding Decision, the Conciliator should follow the procedure below depending on the response from the customer. All of the letters below are for the Ombudsman's signature. In all instances, if there is a co-complainant or an authorised representative, letters should be copied accordingly.



## APPENDIX TWO: TIMEFRAMES FOR COMPLETING A BINDING DECISION



## Document history

Action	Updated By	Date
Updated	TMM	June 2013
Updated format and wording of Procedural and Fair Offer closures	HMN	March 2019
Converted to PDF	HJH	May 2019