

Casebook 2020

Helping agencies to
improve decision-making

February 2021



QUEENSLAND
OMBUDSMAN

Standing for fairness

Authority

The Speaker of the Queensland Parliament, the Hon. Curtis Pitt MP, has authorised publication of this casebook report under s 54 of the *Ombudsman Act 2001*.

Public

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Ombudsman's introduction

I am pleased to present our *Casebook 2020: Helping agencies to improve decision-making*.

We help agencies to improve decision-making through training, information, advice, and investigations.

This casebook provides a sample of the outcomes that we achieved for Queenslanders through our investigations.

Cases have been selected to show a range of outcomes and agencies that our work covers.

Those outcomes include rectifications that address an individual complainant's concerns as well as broader improvements to agency practices.

Many of the outcomes in the casebook were achieved through informal resolution. As well as being efficient, informal resolution meets the preference of most people and agencies for a speedy resolution that minimises delay and focuses on practical outcomes.

We have also included examples of investigations where we did not consider that there was a need for rectification. This is because 85% of our finalised investigations found that agency actions were lawful, reasonable or correct.

I hope that the casebook not only highlights the value of this Office to good public administration, but also serves as a tool for shared learning that helps build greater knowledge about issues for improving decision-making and administrative processes.

To this end, we have included an 'Ombudsman insight' alongside many of the case studies, noting issues such as the importance of providing clear reasons for decisions, conducting genuine reviews of decisions, and keeping records.

I thank all of the agencies named in the report, and the many others that we work with, for continuing to help us address the concerns of their clients and customers.

I also thank agency staff who provided information for these cases, and my staff for the hard work and professionalism in preparing this report.

Anthony Reilly
Queensland Ombudsman

Scope

Categories

Each case has been classified according to the primary action or response that we identified was required.



Improving communication

Effective communication of decisions and reasons



Improving policy, procedure or service

Detailed recordkeeping, clear policies and well communicated discretionary decisions



Proper application of legal requirements

Applying sound decision-making principles, including robust internal review practices



Investigation found agency's original decision was reasonable

Each chapter contains one example of a case where the original decision was found to be lawful, reasonable or correct. This is the outcome of around 85% of our finalised investigations.

Some cases have more than one category that applies.

How we maintain confidentiality

Maintaining appropriate confidentiality is an essential part of the Office's work. Under s 54 of the *Ombudsman Act 2001*, the Speaker of the Queensland Parliament may authorise the Ombudsman to publish a report, in the public interest, about the performance of the ombudsman's functions. This report promotes shared learning about how to improve decision-making and administrative processes. It also informs the public about the work of the Office.

The Speaker has consented to the publication of this report.

Complainant confidentiality

To maintain complainants' confidentiality, these case studies do not use real names. References to identifying features have been removed; however, in some instances the gender and cultural background have been preserved due to their relevance to the issue of concern.

Section 92 of the Ombudsman Act sets specific requirements for disclosure of information in the conduct of Ombudsman investigations. These requirements mean that the Office will not comment publicly about a complaint matter or process, unless required or appropriately authorised under the Act.

Agency confidentiality

In this report agencies are only identified when the complaint relates to functions that are uniquely provided by a specific agency, so using a pseudonym serves no purpose. Identified agencies were notified prior to publication and given the opportunity to comment on those specific cases. As these cases predate the machinery-of-government changes in November 2020, named agencies are listed as they were at the time of the investigation.

Helping agencies to improve decision-making

What we do

- investigate administrative actions of agencies
- make recommendations to agencies, generally or in particular cases, about ways of improving the quality of decision-making and administrative practices and procedures; and
- provide advice, training, information or other help to agencies, generally or in particular cases, about ways of improving the quality of decision-making and administrative practices and procedures.

From section 6, *Ombudsman Act 2001*

Our investigative role

The Queensland Ombudsman investigates complaints about Queensland Government agencies, local councils, public universities and TAFE.

Our investigative service is free and confidential. We are independent – not an advocate for either complainant or agency. The Ombudsman’s work helps agencies to improve decision-making.

How the complaints system works

Step 1 Complaint to the agency. By using the agency’s complaints process, complainants can state what happened, why it’s wrong and how they think it should be fixed.

Step 2 Internal review. If a complainant is unhappy with the agency’s response, the next stage is an internal review. This means a senior officer, from the agency involved, reviews the process and the facts of the original decision or action. That officer decides if the decision was correct or if change is needed.

Step 3 External review. If a complainant thinks there’s still a problem, they can seek an external review. Ombudsman investigations are a form of external review. In most cases, the Ombudsman will decide not to investigate a complaint unless the agency’s complaints management process (including internal review) is completed.

See Appendix B for details of the Ombudsman process.

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Improving communication

Effective communication of decisions and reasons



Better management of client expectations



Gordon incurred a fine from the State Penalties Enforcement Registry (SPER). As he was experiencing serious financial hardship, SPER approved a work and development order (WDO), which enabled him to work off some of his SPER debt by doing unpaid work with an approved partnering organisation.



Gordon sustained an injury while doing unpaid work under the WDO. He asked SPER if he would receive a 'credit' towards the debt for the period of time he was unable to work.

SPER had obtained advice that a person who is injured while performing unpaid work under a WDO would generally be entitled to reasonable medical and rehabilitation expenses, but no compensation. As the work was unpaid, no earnings were lost.

Gordon did not receive any 'credit' towards the debt he owed to SPER.

He complained to this Office that he was not informed of his rights before he agreed to the WDO.

The result

The investigation found there was insufficient information provided by SPER, and the partnering organisation, about the rights, entitlements and obligations of people working under a WDO, particularly if they were to sustain an injury.

SPER updated its fact sheets, website and other relevant WDO documentation to include information about a person's entitlements if they are injured while performing unpaid work under a WDO. This change enables SPER to better manage client expectations before a person enters into a WDO.

Give reasons, gather sufficient evidence and provide an unbiased review

Alison applied to receive emergency financial assistance to pay her bills due to an unforeseen emergency. The department declined her application. She lodged an appeal, which the department assessed and then declined.



Alison complained to this Office that the department did not provide her with adequate reasons for its decisions. Also, the same support officer had signed the decision letters for both the original application and the appeal.



The result

This Office found that insufficient evidence was gathered by the department before the original decision was made. Having the appeal decided by the same officer who made the original decision lacked independence and impartiality.

The department agreed the original decision letter did not provide sufficient reasons, which would have made it difficult for Alison to successfully appeal, and recommended a senior officer, with no prior involvement, review Alison's application. The department also agreed to change its process and procedure to ensure that future applications are responded to with sufficient reasons and appeals are conducted by an officer who is independent of the original decision.

Ombudsman insight

The community expects public agencies to have policies and procedures in place that support and inform fair and consistent decision-making.

Reviews must be seen to be genuine and not tokenistic.

Department to provide more transparency in procurement process

Sean's company bid for work in a state department procurement process. When his bid was unsuccessful he requested feedback, and was dissatisfied with the response the department supplied as it lacked detail.

Sean complained to this Office that he wanted a comprehensive response to questions he asked the department about the procurement process. He was concerned about:

- the scoring component, where he received low scores in areas where they had fully complied with the criteria and were not asked any clarification questions by the evaluation team
- how their price compared with the other bidders as a percentage
- why the process was reopened for submissions after the closing date.



Ombudsman insight

All agencies need to keep good records of their decision-making for tender processes so explanations can be provided.

The result

The investigation noted that an independent probity report did cover some of the issues raised by Sean. At the Office's request, the department agreed to provide a more thorough response to address Sean's concerns.

Administrative requirement to provide reasons even where no statutory requirement exists

Vincent and his wife were involved in a legal dispute with their neighbours about a feature near the common boundary of the properties. A relevant expert provided a report that supported the neighbours' claim.

Vincent believed some of the statements the expert made in the report were incorrect and lodged a complaint about the expert's conduct with the relevant statutory authority. The authority rejected the complaint stating it was misconceived and concluding the expert had carried out their services in accordance with the code of conduct.

Vincent contacted this Office, concerned about the lack of explanation by the authority as to why his complaint was considered to have been misconceived.

This Office found the authority's final decision did not clearly outline the specific issues considered in determining that the complaint was misconceived. In addition, the authority had not explained why the complaint was misconceived. According to the authority's website, a complaint is understood to be misconceived 'if it is clear that the complainant has failed to understand something correctly'.

The result

This Office raised the matter with the authority which indicated that there is no statutory requirement to give complainants detailed reasons for a decision. After notifying the authority it was nonetheless subject to overarching administrative principles of fairness and the need to act reasonably, this Office asked the authority to provide Vincent with a better explanation of its decision that his complaint was misconceived.

The authority agreed to do so. It also decided to reconsider its decision about the conduct of another expert Vincent had complained about.



Ombudsman insight

Even if a statement of reasons for a decision is not requested or required by law, giving clear written reasons to people affected by decisions is good administrative practice.

Giving reasons for decisions supports fairness, ensures transparency and promotes accountability in decision-making.

Experience shows that effective communication of decisions and reasons can assist in preventing or reducing complaints arising.

Clearer explanation of building legislation ensures contractors can meet obligations



Evan, a building contractor, worked on the construction of a four-storey residential apartment development. He engaged a private certifier whose report indicated that home warranty insurance was not payable because the building was more than three storeys.

Several years later, the Queensland Building and Construction Commission (QBCC) received a complaint about defective building works at the development. The QBCC contacted Evan as it could not locate a payment for home warranty insurance. Evan advised that it was not required, as the building had been certified as a four-storey residential development.

The QBCC informed Evan that multiple-unit dwellings of up to three storeys attracted an insurance premium, whereas those with more than three storeys did not. The definition of 'storey' did not include the lowest level of a building if that level mainly comprised a car park (that is, where more than 50% of the area was a car park).

The QBCC advised Evan that an insurance premium of approximately \$20,000 was payable on the development. Evan disputed this, claiming that only 35% of the lower level was designed as a car park.

The result

This Office investigated Evan's complaint and obtained a more detailed explanation of QBCC's conclusion as to why the building was considered to be three storeys. Additional information about QBCC's calculation of the car park area showed that more than 50% of the lower storey was a car park. The Office considered this explanation to be reasonable and provided it to Evan to give him a better understanding of the QBCC's conclusion.

The QBCC agreed with this Office's suggestion to ensure that more detailed information about this particular issue was made available to contractors in the industry and on its website. Information on QBCC's website has now been updated to include clearer explanations of the interpretation of concepts examined as a result of this complaint.

Public Trustee acknowledged role in communication confusion

Charlie's father Fraser died. His mother Leah was appointed executor of the Will. Leah no longer had capacity to manage complex financial matters, so under an Enduring Power of Attorney the Public Trustee became her attorney for financial matters. Charlie's brother Ryan was appointed substitute executor of the Will.

A car was bequeathed to Charlie in Fraser's Will. There were multiple calls and correspondence between Charlie, Ryan and the Public Trustee over a period of 12 months relating to legally transferring the car ownership to Charlie. The matter was also raised in hearings in the Queensland Civil and Administrative Tribunal.

Charlie complained to the Office he was not able to sell the car, or pay for repairs to the car, because the Public Trustee failed to take steps to ensure the car was legally transferred into his name. He paid the registration fees for the car in recent years, and the family paid for legal fees in order to obtain advice about the matter and the Public Trustee's responsibility in it. Charlie complained that the Public Trustee should reimburse him for the car registration fees and legal fees paid.

The result

This Office investigated whether the Public Trustee's handling of the matter was reasonable. The investigator found that as beneficiary of the car, Charlie would always have been liable for the car registration fees, and did not consider the Public Trustee responsible for those fees.

The Public Trustee acknowledged its role in the confusion about who was responsible for transferring car registration, stating in the internal review that it could have improved its communication with Charlie and his family to make matters clearer much earlier and provide more consistent information. The Public Trustee's review stated that it would assist Ryan to finalise the transfer of the car at no cost to the estate.



Ombudsman insight

Many members of the community have not experienced complex legal environments such as estate administration.

Agencies have a responsibility to be customer focussed and help people to understand why particular actions are being taken.

Department to provide clearer information around transcript availability



Adam is a respondent in a court matter. He applied for a transcript of proceedings to appeal the court decision. The department denied Adam's application for the transcript as there was no legislative authority to release it without obtaining a court order. The department explained to Adam he had the right to an internal review of that decision, which he applied for, and was again refused the transcript. He then complained to this Office.

The result

This Office found the reasons provided to Adam:

- were inconsistent about whether there was an internal review process for a refusal decision
- in one instance placed the responsibility on Adam to provide a legislative basis for the release of the transcript
- did not explain why or how Adam's information did not meet the legislative requirements
- did not sufficiently outline the decision-making process used to reach the final decision.

Self-represented parties and legal practitioners applying for transcripts of court proceedings were not provided with information to help them understand why a transcript could not be provided to them.

The department said it will provide more detailed information to applicants, including who can and cannot obtain access to a transcript in court matters, and how to apply for a court order.

PhD candidature termination was reasonable

Dev was an international student enrolled in a PhD program at a Queensland university.

After he participated in his confirmation of candidature presentation he was placed on an Under Review period and given a further four months to revise and amend his confirmation document. Under Review periods are a tiered approach to assist students provide further evidence of an ability to pass the confirmation of candidature stage. When the first period finished, Dev was placed on a second Under Review period for a month.

Dev claimed a lack of feedback on the Under Review One period meant he was not aware of any issues relating to his progress, and he was not fully and explicitly informed of the expected outcomes for the second Under Review.

Dev's candidature was terminated. He lodged an appeal with the university's appeals committee. His appeal was considered and dismissed. He exercised his right of review by the Student Ombudsman, who found the university acted properly and he was then referred to this Office.

The result

This Office's investigation considered whether the university's decision was in accordance with the university's Guideline, and whether the decision to terminate Dev's candidature was reasonable in the circumstances. The investigation found the university provided Dev with detailed feedback at both review stages, lists of tasks and multiple emails. The investigation considered that Dev should have been reasonably aware of the expectation on him, and found that the university acted reasonably in following the Guideline and relevant policy and procedure dealing with appeals and reviews.



Ombudsman insight

Natural justice, or procedural fairness, is a legal principle that is part of the common law. In the context of decision-making, natural justice means providing a person who might be adversely affected by an administrative decision with a fair hearing before the decision is made.

Essentially, this means giving the person an opportunity to comment on relevant issues and information before a decision is made.

Improving policy, procedure or service

Detailed recordkeeping, clear policies and well communicated discretionary decisions



Queensland Corrective Services is improving the management of prisoners' personal property

Prisoners at Queensland's correctional centres are allowed to have personal property, either kept in their cells or stored in a secure central location at the centre. Personal property includes running shoes, photographs, personal hygiene products and food items purchased from the centre.

Following a number of complaints from prisoners about the management of their property, an Ombudsman investigation found areas for improvement including management of prisoner complaints, communication about property and processes for managing property.

The Ombudsman recommendations included:

- Standardising the way staff record details of complaints, and providing training to ensure consistent and accurate reporting of complaints in all centres.
- Improving communication about property, including providing adequate reasons to prisoners in a timely manner, and ensuring that prisoners are advised which property items cannot be transferred to particular centres within a reasonable timeframe before the prisoner is transferred.
- Improving processes, such as checking property in the presence of a prisoner and having them agree with any record changes made, consideration of prisoners' property in regard to shared cell accommodation and ensuring that any prisoner employed in a reception store is properly supervised so they do not have access to confidential information or other prisoner property areas.

Queensland Corrective Services fully supported the recommendations, advising that strengthening its complaints management system supported its ongoing goal to position it as a mature, corruption-resistant public safety agency.



Council agrees to strengthen reasons for denial of liability claims and improve recordkeeping



During a storm, a tree branch fell and damaged the windscreen of Monisha's car. The tree was planted on council land.

Monisha wrote to her local council seeking financial compensation for the cost of replacing her windscreen. Council denied liability and explained that the extreme weather at the time would have increased the likelihood of falling branches and potential damage. Council told Monisha it responds to requests to inspect and maintain trees in accordance with its legislative responsibilities.

When Monisha sought a review of the decision, the original decision-maker conducted the review, confirming their previous decision, and stating that the matter had been investigated and all correspondence considered. Dissatisfied with council's decision, Monisha contacted this Office.

The result

This Office investigated the complaint and, after making enquiries with council, informed Monisha that the *Civil Liability Act 2003* contained principles that restricted liability claims against councils. In this case, that meant that council would only have been liable if it could be proved that council officers knew there was an issue with the tree and did not take steps to address it. This was not able to be proven.

The investigator found council's decision to deny liability was reasonable. However, concerns about the way in which council considered and responded to public liability claims were raised. The investigation was finalised with council agreeing to:

- create a clearer process for handling requests for reviews relating to liability
- raise the delegation for making decisions about liability
- provide more comprehensive reasons for denying claims
- ensure proper recordkeeping.

Reconsidering jurisdiction to investigate complaint



Samantha lodged numerous complaints with council about noise from barking dogs at a boarding kennel.

Council advised Samantha the kennel had been lawfully established under previous planning laws and refused to investigate further as the likelihood of a successful prosecution was low. Samantha requested an internal review of this decision.

On review, council advised it had limited legislative ability to compel the kennel to comply with noise nuisance laws. It concluded there was too much risk in taking enforcement action and that factors such as cost, the gathering of evidence and the public interest were relevant considerations.

This Office investigated her complaint and reached three main conclusions:

- council could have authority under the *Environmental Protection Act 1994* (EPA) to investigate the complaint
- council had failed to collect evidence about the noise to establish whether a breach of the EPA had occurred
- council had incorrectly applied its compliance and enforcement policy.

The result

Council accepted it did have jurisdiction under the EPA and agreed with this Office's recommendation that it investigate Samantha's complaint.

Ombudsman insight

Regulators are often asked for reasons as to why they have not taken discretionary enforcement action in certain circumstances.

This is when recordkeeping really matters – the decision not to act involves the exercise of significant discretion that needs to be documented and explained.

Creating compatibility in systems to support vulnerable people

A statutory authority approved Ella's financial assistance application for therapy services. She moved overseas. Ella understood the authority would make payments directly to her therapist after receiving his invoices for each session. A number of invoices had been submitted to the authority, but sending cheques by post meant payment was significantly delayed.

She corresponded with the authority about the payment delay and the resulting effect of delayed therapy. The authority advised her that its payment system did not allow for international electronic funds transfers. Ella complained to this Office.



The result

This Office identified that international electronic funds transfers could be done by the authority's shared service provider. The authority agreed to work with the service provider to make international funds transfers in Ella's case, and for others in similar circumstances.

Ombudsman insight

Complaints can be opportunities for business improvement that otherwise might not have been apparent.

Clear identification of decision-makers improves transparency



Katherine lived in a regional area and required medical treatment. She made a Patient Travel Subsidy Scheme application to the Hospital and Health Service (HHS), part of Queensland Health. It was denied on the basis she did not meet the eligibility criteria, as the specialist services were available locally. She appealed the decision. The appeal was denied, and the earlier decision upheld. Katherine complained to this Office.

Ombudsman insight

The public is entitled to expect that reviews of decisions will be undertaken by another officer of equal or greater seniority who has had no involvement with the original decision.

The result

This Office found the HHS correctly applied its Guideline and the decision was correct and reasonable.

In investigating this matter, this Office identified that while the decision-makers on application and appeal letters were different officers, the signatory of both letters was the same person. To demonstrate independence in administrative decision-making on appeal, the investigator suggested that it may avoid confusion to have the decision-makers be the signatories of the letters. The HHS agreed and implemented this change.

Council's administration fee for supervisory work deemed unlawful



Council issued Archie with a remedial notice to clear his property of overgrown vegetation, abandoned vehicles and other items. When Archie failed to comply with this notice, council issued an entry notice, allowing contractors to complete the remedial work and council's compliance officers to supervise.

Council charged Archie for the contractors' work as well as for the supervisory work of its own officers. The latter attracted an administration fee. Council relied on s 142 of the *Local Government Act 2009* as its legislative basis for recovering these costs.

The result

This Office investigated Archie's complaint, and formed the view that council's decision to charge the administration fee was contrary to the legislation. The basis for this view rested on council's failure to show its supervising officers had completed tasks outside their 'ordinary job at their ordinary salary'. Council's internal administration costs were not 'properly and reasonably incurred' because they were merely incurred as a result of permanent council officers undertaking their ordinary jobs in the usual way. When presented with this Office's view, council agreed to reimburse Archie the administration fee.

In addition to this direct benefit, council also agreed to stop charging the administration fee altogether unless it could demonstrate that its internal costs were additional to and beyond the usual salaries and entitlements of its compliance officers who had performed the work.

Improved policy for managing stock routes

Beth lodged a complaint with her regional council after discovering a drover had brought cattle on to her property to graze. The cattle had eaten the grass, which Beth was due to cut and bale that week and sell to a buyer.

Beth was unhappy a council officer had given the drover permission to enter her property. She believed that council should reimburse her for the loss of her hay supply.

This Office investigated the complaint and found that council was responsible for managing the stock route network in its area by regulating and controlling the movement of stock in the area. Council was required to monitor the network and, if deemed necessary, take compliance action.



Council informed this Office that at the time of Beth's complaint the particular stock route was at peak usage due to the drought. As a result, council's resources to address the complaint issues were lower than usual.

This Office identified that council could improve its management of stock routes so as to be better prepared to issue and manage permits, investigate alleged breaches of permits, keep accurate records of decisions and allocate resources to its investigations more effectively.

Ombudsman insight

The exercise of regulatory functions in rural and regional Queensland impacted by drought creates unique challenges. It is important that robust decision systems are put in place.

The result

Council negotiated a monetary settlement with Beth and agreed to develop a written process for issuing, managing and monitoring permits, which dealt with:

- assessing applications and managing permits in accordance with the *Stock Route Management Act 2002*
- requiring council officers to record reasons for their decisions on permit applications
- investigating breaches and taking enforcement actions.

Importantly, council recognised the resourcing difficulties it faced at the time of the complaint and decided to comprehensively update its Stock Route Management Plan to allow council to establish procedures and a framework for compliance matters.

Improving information sharing and liaison between council, debt recovery agency and debtor

Daisy and Liam bought a block of vacant land. Liam passed away a number of years later. Daisy asked council to reduce the balance of the rates on the land and cease charging interest. She also updated her address with council.

Council informed her that no rates payments had been received since the land was purchased. Daisy requested a statement of transactions so she could create a plan to pay the overdue rates, with the help of her mother, Valerie.

At Daisy's request, council liaised via email and phone with both Daisy and Valerie on the payment plan. Seven months later, council emailed Daisy informing her it had commenced legal action to recover the debt.



This Office's investigation revealed concerns about council's management of the rates account, including that council discussed the account with Valerie, despite having indicated it did not have a valid authority to speak to her. Communication issues included failure to inform Daisy that the payment plan did not prevent them from referring the matter to a debt collection agency, and failure to inform her when the debt was referred to its debt collection agency. This failure to inform Daisy her debt had been referred to a debt collection agency meant she incurred legal costs.

Council also failed to notify its debt collection agency of Daisy's new address and relied on the wrong debt recovery policy.

Ombudsman insight

It is not uncommon for agencies to use private debt recovery firms to recover public funds that are owing. It is reasonable for the community to perceive the conduct of such firms to be conduct of the agency, and care must be taken to ensure that firms are appropriately briefed and follow all appropriate procedures.

The result

This Office presented council with these concerns and suggested steps that could remedy the situation. Council agreed to reimburse Daisy her legal costs and the interest incurred.

In addition, council agreed to improve a number of policies and processes to ensure better management of debts in the future. Key improvements included developing guidelines on managing third party access to an account, and improving information sharing and liaison processes between council and the debt recovery agency.

Recordkeeping improvements better document how the decision was made

Leanne provides professional services. A recipient of her services was dissatisfied, and complained to the relevant statutory authority. The authority found her guilty of misconduct in a professional respect and fined her. Leanne then complained to this Office.

The result

This Office focused on whether the authority's decision was reasonable. The investigator advised Leanne that in their view the authority had acted according to law, reasonably and fairly in this matter.



Leanne was unhappy with this Office's decision, and requested her case be reviewed. The review was assigned to an officer who was not involved in handling her original complaint.

The review found one issue required further investigation – whether the authority's failure to consider the additional records Leanne provided to it constituted a breach of natural justice. Other matters that she raised about the original decision remained unchanged.

The review investigator found the authority did consider the additional records provided by Leanne but decided to give no weight to them. The reason that no weight was given to the additional records was the authority's concern about the reliability of the information received and the need to uphold the integrity of the process. This was not evident from the authority's records of the decision. After discussion with this Office, the authority agreed to improve the way it documents decision-making processes, the consideration of evidence and reasons for weighting of information.

Ombudsman insight

Not all evidence is equally weighted.

A well-explained decision should set out what weight was given to particular information and why.

New review after lack of recordkeeping for original decision



Brian was dissatisfied with the department's investigation of his allegations of fraudulent work activity by Larry. Brian provided the department with a substantial amount of material that he said supported his allegations of fraud. The department's response was lacking in detail as to why they declined to investigate. Brian then complained to this Office.

The result

This Office was concerned that Brian's allegations may not have been thoroughly considered, given the lack of analysis and reasoning apparent in department records. Therefore, it was suggested the department consider conducting a fresh review of the allegations made and material provided by Brian regarding Larry. Brian was satisfied with this result. The department also undertook to review the recordkeeping and decision-making processes of the relevant unit.



Council's decision on environmental complaint was reasonable

Jerry complained to the local council about environmental nuisance impact from a manufacturing business adjacent to his property. Jerry does not permanently live at this location. He is restricted to occupying his property for only four weeks of any 12-month period until a permanent residence is established.

Jerry's complaint covered noise, light, glare, dust, sawdust and smoke nuisance coming from the manufacturer. Council provided him with nuisance diaries to record instances of the six areas of concern. He submitted the diaries to council six weeks later, but they were incomplete and lacked detail. Council conducted noise monitoring and a site inspection to assess the nuisances alleged by Jerry.

Council provided Jerry with a written report concluding that environmental nuisance could not be established based on the evidence collected in its investigation. Jerry was unhappy with council's response and complained to this Office that 'council has not investigated properly because the problems that I complained about are still occurring'.

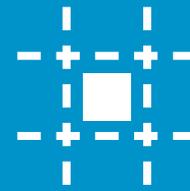
The result

This Office found that council adequately investigated the alleged nuisances from the manufacturer. Council's written response to Jerry covered each issue in accordance with council's complaint investigation process, and the outcome of the investigation was based on the evidence collected and assessed against, primarily, the *Environmental Protection Act 1994*.

As environmental nuisance could not be established based on the evidence collected, it follows that the emissions complained of have not occurred to the level required for council to take enforcement action against the manufacturer.

Proper application of legal requirements

Applying sound decision-making principles, including robust internal review practices



Misinterpretation of legislation led to possible reputational damage

The department received a complaint from a member of the public about the disturbance of flying foxes at a site where development works were occurring. When a departmental officer inspected the site they identified particular trees as being part of the flying fox roost. The department issued a warning letter to the property owner/developer stating that the roost must not be disturbed.

The environmental consultant for the development became aware of the letter and lodged an objection with the department on the basis that it had misinterpreted the relevant legislation. The department disagreed and confirmed its position.

Due to project timeframes and pressures, the environmental consultant contacted the department seeking its approval of a management plan for the site so development works could continue and would not be delayed. However, at the same time, the consultant continued with the complaint to the department about legislative misinterpretation.

Shortly before the department approved a management plan, the consultant lodged a complaint with this Office, concerned that the department had not resolved the disagreement over the identification of trees as part of the flying fox roost.

The result

This Office agreed with the consultant's concerns. The investigator presented this Office's interpretation of the legislation to the department and the latter acknowledged it had incorrectly applied the legislation. The department confirmed the identified trees were not part of a roost.

Although the department had reversed its position, the consultant remained concerned about the effect on their reputation, as the department had initially notified the property owner/developer about the warning letter.

The department accepted a recommendation to:

- review policies and procedures for inspecting alleged disturbances of flying fox roosts
- ensure processes complied with the legislation
- formally notify the consultant and the property owner/developer of the department's error, to mitigate any reputational damage to the consultant.



Ombudsman insight

As decision-makers, agencies have a responsibility to be reasonably satisfied about factual matters.

Experts can disagree about what legislation requires, especially in the absence of court interpretations. A robust internal review is an opportunity to consider competing views and remake decisions.

University refunds tuition fees for international students after visa refusal

Tanaka applied to study at a Queensland university and prepaid thousands of dollars in tuition fees.

A question on the course application form asked 'Have you ever had a visa application rejected?'. Tanaka believed this question only applied to study visas and not a tourist visa that he was denied the previous year. On that basis, he answered he had not previously had a visa application rejected.

The university received information from the relevant department that Tanaka's student visa was denied, and that he had previously been refused a tourist visa.

Following the visa refusal, Tanaka sought a refund from the university for the prepaid tuition fees.

The university advised Tanaka it was withholding the tuition fees as he provided incorrect and/or misleading information on his application. Tanaka complained to this Office.

The result

This Office investigated whether it was reasonable for the university to deny a refund of Tanaka's tuition fees in the circumstances, and whether the university's policy about refunds and the application of penalties was reasonable and lawful. This Office considered the university's policy did not appear to be in accordance with the Education Services for Overseas Students (Calculation of Refund) Specification 2014 (the specification). The specification allows for students who have been denied a visa and not commenced their studies to be refunded their tuition fees minus \$500 or 5% (whichever is the lowest amount).

The application form's visa question had also been misinterpreted in three other international student complaints to this Office. This Office suggested amending the question for clarity to, 'Have you ever had any type of visa application rejected by any country?'

As he was unable to commence his studies due to the visa refusal, the university agreed to refund Tanaka the prepaid tuition fee minus a \$500 administration fee, and amend the question about visa history on the application form. Tanaka was satisfied with the outcome.

Applicants in similar circumstances

The university stated that future refund applications by international students who have not been able to commence studies due to a visa refusal will be examined in accordance with the specification. In light of this statement, and the corrective action the university took in Tanaka's case, the investigator considered that similar complaints to this Office, and to the university since the policy commenced in August 2018, should also be re-examined. The university agreed and refunded tuition fees (less admin fees) for the three students who complained to this Office. It also reviewed university records since 2018, notifying anyone who had not received a refund that the prepaid tuition fees decision had been reviewed and a refund would be processed.



Ombudsman insight

Agencies need to ensure that their policies are clear and unambiguous before financial penalties are imposed.

Customer feedback can be used to revise language and ensure communication is clear and contemporary.

University partially refunds tuition fees for transferring students



Two international students enrolled in the same postgraduate course, at the same university. They prepaid tuition fees for two terms. Both students successfully completed one term and then sought to change education providers. They applied for a refund of the tuition fees for the remaining term they had paid for and not used.

Both were denied a refund based on a clause of the university's Refund Policy relating to extenuating circumstances. Each student appealed the decision and was advised: 'You paid one year's tuition fees in advance prior to commencement – one year is equivalent to 2 terms or 8 standard six credit point units. To date you have only enrolled in 4 standard units. As you have advised that you are transferring to another provider, [amount] will be forfeited to the university.'

When the original decisions were upheld, they separately complained to this Office.

Flawed decision-making

The university's original decisions to deny the students refunds of unspent tuition fees were based on a misinterpretation of the Refund Policy and reliance on an incorrect clause relating to extenuating circumstances. The correct part of the university's Refund Policy allowed a partial refund (full amount less an administration fee) to students who transferred to another provider after completing six months of their course. Both students had completed six months of study.

Flawed appeal process

While the university's appeal decision addressed the correct part of the policy, there was no logical connection between the points regarding amounts paid and portions of the course completed, and the conclusion that fees were forfeited.

When rejecting the students' appeals, the university did not address the issues they raised, but just repeated the original reasons provided. If an administrative process allows an appeal right, the person considering the appeal must consider and address the submission made when reaching an appeal decision. This did not occur in these cases. The appeal process itself was therefore flawed.

The result

This Office recommended that both students immediately be given a partial refund of their tuition fees and other changes to the Refund Policy and appeal process to fix identified issues.

Further complaints regarding this specific topic led to this Office recommending the university review all similar appeal decisions relating to refunds. It accepted the recommendation, conducted the review and provided refunds to a number of other students.

Department agreed to improve administrative and communication issues

Jenny was involved in a traffic incident, and the car she was driving damaged a traffic signal. Police attended the scene, but no-one was charged with an offence. Jenny received a letter from the department referencing the traffic incident and demanding payment under the *Transport Infrastructure Act 1994*, with no reasons given for the demand.

The department can recover the cost of damage where a person intentionally, recklessly or negligently causes damage to ancillary works and encroachments on a state-controlled road, whether or not an offence was committed. This is a reviewable decision under the Act and a person is entitled to a statement of reasons. If a review confirms payment is required, the chief executive must give the person a Queensland Civil and Administrative Tribunal (QCAT) information notice under the Act.

Jenny emailed the department, setting out reasons why she believed she was not liable for payment. She requested a review of the decision to make a damages claim against her. A senior officer replied that the damages claim had been reviewed, but it was unclear by whom or when it was reviewed, as neither a statement of reasons nor an information notice was given to her. Two weeks later a different senior officer advised her that she had been pre-approved for a payment arrangement with a debt recovery agent. Jenny complained to this Office.



The result

The department acknowledged it did not comply with relevant legislative requirements in communicating its decision to Jenny, including her right to an internal review of a decision, and informing her of her right to external review to QCAT. Because of those deficiencies, the department revoked the decision communicated to her and the matter was then given to a new officer for reconsideration.

The department agreed to improve its communication of decisions and reasons, and took steps to update its letter templates with QCAT review information.

The department later informed this Office when Jenny's matter was reconsidered. The new officer set aside the earlier decision to seek payment from Jenny.

Ombudsman insight

It is important that people affected by government decisions understand the reasoning for making a decision. They must also be advised of any available right of internal or external review or appeal.

Giving reasons for decisions is essential to fairness, ensures transparency and promotes accountability in decision-making.



Decision upheld to charge prisoner for repairs

Bruce is a prisoner in a Queensland correctional centre. He was charged for the cost of repairs, and to replace a sheet, after a toilet system was blocked in the cell he occupied.

He wrote a letter to the general manager of the centre complaining about being charged for repairs, stating that the damage was not intentional. In his letter he reported that the outcome of the internal breach of discipline process for the incident decided no further punishment be imposed on him, so he should not have to pay.

The general manager wrote and informed him that a review of costs had been conducted and the amount owing had been reduced. The final cost was less than the estimate after consideration of parts used in the repairs.

Bruce was still unhappy that he had to pay, and contacted this Office.

The result

This Office's investigation focused on whether the centre's decision to require Bruce to pay the reduced amount for repairs and the sheet was reasonable. The investigation found that while Bruce's letter to the general manager and his contact with this Office stated that the incident was an accident, he had pleaded guilty to the breach of discipline.

The breach hearing material shows that the decision was that he was guilty for this incident, based on his plea of guilt, the incident report and officer's report. Bruce did not request a review of the breach hearing.

While Bruce was correct that no further punishment was imposed at the breach hearing, this did not mean that the centre could not lawfully seek reimbursement from him for damage in accordance with s 314(c) of the *Corrective Services Act 2006*. The Office found the centre had acted reasonably and within the legal requirements.

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Appendix A: Jurisdiction and procedural fairness

Ombudsman jurisdiction

The Ombudsman is an officer of the Queensland Parliament empowered to deal with complaints about the administrative actions of Queensland Government departments, public authorities and local governments.

Under the *Ombudsman Act 2001*, the Ombudsman has authority to:

- investigate the administrative actions of agencies in response to a complaint or on their own initiative (that is, without a specific complaint)
- make recommendations to an agency being investigated about ways of rectifying the effects of its maladministration and improving its practices and procedures
- consider the administrative practices of agencies generally and make recommendations, or provide information or other assistance to improve practices and procedures.

The Ombudsman Act outlines the matters about which the Ombudsman may form an opinion before making a recommendation to the principal officer of an agency. These include whether the administrative actions investigated are contrary to law, unreasonable, unjust or otherwise wrong.

The Ombudsman is not bound by the rules of evidence, but considers the weight and reliability of evidence. Although the civil standard of proof does not strictly apply in administrative decision-making (including the forming of opinions by the Ombudsman), it provides useful guidance. The civil standard is based on 'the balance of probabilities'. That is, an allegation may be considered proven if the evidence establishes that it is more probable than not that the allegation is true.

'Unreasonableness' in the context of an Ombudsman investigation

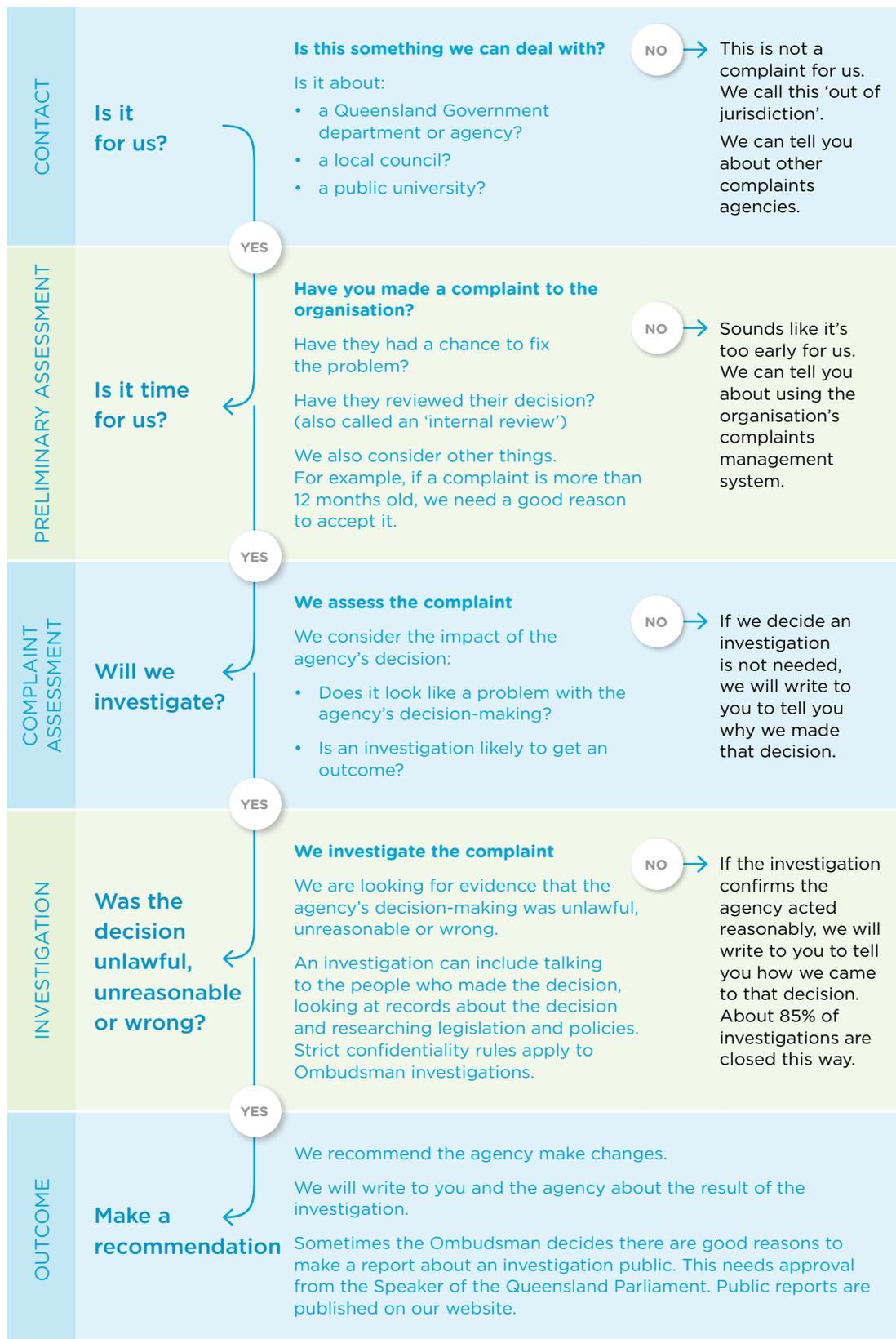
In expressing an opinion under the Ombudsman Act that an agency's administrative actions or decisions are 'unreasonable', the Ombudsman is applying the meaning of the word in the context of the Ombudsman Act. In this context, 'unreasonable' bears its popular or dictionary meaning, not the far narrower 'Wednesbury' test of unreasonableness, which involves a consideration of whether an agency's actions or decisions were so unreasonable that no reasonable person could have taken them or made them.

Procedural fairness

The terms 'procedural fairness' and 'natural justice' are often used interchangeably within the context of administrative decision-making. The rules of procedural fairness have been developed to ensure that decision-making is both fair and reasonable.

The Ombudsman must also comply with these rules when conducting an investigation. The Ombudsman Act provides that, if at any time during the course of an investigation it appears to the Ombudsman that there may be grounds for making a report that may affect or concern an agency, the principal officer of that agency must be given an opportunity to comment on the subject matter of the investigation before the final report is made.

Appendix B: The Ombudsman process





**QUEENSLAND
OMBUDSMAN**

Standing for fairness