
Appendix A: Jurisdiction and procedural fairness

Ombudsman jurisdiction

The Queensland Ombudsman and Inspector of Detention Services (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. Sometimes agencies use non-government entities to deliver services to the community. We can also investigate those entities.

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

- investigate the administrative actions of agencies in response to a complaint or on its own initiative (that is, without a specific complaint)
- make recommendations to agencies about ways of rectifying problems with their actions, and improving their 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.

* The commencement of the *Inspector of Detention Services Act 2022* in 2023 resulted in the Ombudsman acquiring an additional title as Inspector of Detention Services. The activities in this casebook relate only to work conducted under the Ombudsman Act.