

Good decisions

We have a suite of good decisions resources:

- [Video](#) - a brief overview, that could be used in staff inductions or yearly training updates
- [Checklist \(PDF 62.8KB\)](#) - a prompt for officers to print and keep at their workstation
- [Resource \(PDF 543.9KB\)](#) - a valuable reference with a detailed rundown of the stages of decision-making
- [Training](#) - interactive, practical training, with group exercises and case studies.

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Try watching this video on www.youtube.com, or enable JavaScript if it is disabled in your browser.

Today people expect organisations will operate consistently and fairly and that there are systems throughout organisations to ensure that this happens. Good administrative decision-making is integral in this process.

Good decision-making lies at the heart of good administration. Even a decision about a seemingly simple matter can have a serious impact on the community. So it is important that organisation have systems in place to support fair and consistent decision-making.

Considering human rights in good-decisions

The introduction of the *Human Rights Act 2019* ([Human Rights Act](#)) means that human rights considerations now form part of decision-making and complaints management approaches by public agencies.

In relation to decision-making, this means that all decision-makers are required to identify and consider all relevant human rights when applying discretion.

This should be appropriately reflected in public agencies policies and procedures relevant to the decision-making.

The Human Rights Act requires all public agencies in Queensland to act compatibly with human rights and to

give proper consideration to human rights before making a decision.

Compatible with human rights is defined in s 8 of the Act. Section 8 says that an act or decision will be compatible with human rights if:

- it does not limit a human right, or
- it limits a human right only to the extent that is reasonable and demonstrably justifiable, in accordance with s 13 of the Act.

This means that every act, policy or decision by a public agency must be assessed for compatibility with these rights.

To carry out these responsibilities, when acting or making decisions public agencies should follow these steps.

Step 1: Identify relevant rights

Look through the list of the 23 rights protected under the Act and see what rights are relevant to your situation.

Step 2: Consider the impact

Will your decision limit or restrict any of the relevant rights you've identified?

No: If rights are not being limited, you are acting compatibly with human rights. Yes: If human rights are being limited, or if you are unsure, you should move to step 3.

Step 3: Determine whether the limit is reasonable and justified

Ask yourself the following questions about the decision or action you are proposing:

- Is it lawful?
- What law or regulation allows you to limit a person's rights? If you can't identify a law or regulation then you may not be able to limit rights.
- Is there a purpose?
- What is the aim of the limitation? Does it achieve a legitimate purpose?
- Is it reasonable?
- Will what you are doing effectively achieve your purpose?
- Is it necessary?
- Is this the least restrictive way to achieve your purpose?
- Is it fair and balanced?
- Do the benefits outweigh the harm caused by the limitation?

If you answer no to any of these questions, your proposed action or decision is unlikely to be compatible with human rights.

If it is possible to modify your proposed action or decision, do so then reassess for compatibility.

If it is not possible to modify the proposed action or decision, you will need to document the nature and extent of the incompatibility and the process used to consider human rights.

This is a general guide only. You may wish to seek legal advice if you need more detailed guidance on a specific issue, or consult the Queensland Human Rights Commission website for more information:

www.qhrc.qld.gov.au

Source - Queensland Human Rights Commission, [Acting compatibly with human rights poster](#).

The Human Rights Act provides that it is unlawful for a public agency to act or make a decision in a way that is not compatible with human rights, or to fail to give proper consideration to a human right.

It also provides that a human right may only be subject under law to reasonable limits that can be 'demonstrably' justified.

An agency will require sufficient records to demonstrate all relevant human rights were identified and any limitations are reasonable and justified in order to support the lawfulness of discretionary decisions.

Section 25 of the Human Rights Act also provides that a person has the right not to have the person's privacy unlawfully or arbitrarily interfered with, or reputation unlawfully attacked. The scope of this right is very broad and includes protections in relation to personal information and data collection.

If a person believes a human right has been breached they may also make a human rights complaint to the agency responsible for the breach.

Human rights complaints can be reviewed by the Human Rights Commissioner.

Here is a quick ten step guide to good decision making. To learn more about becoming a great decision-maker, [register for our Good decisions training.](#)

1. Maintain a document trail

Comprehensive and timely record-keeping is central to good decision-making.

The *Public Records Act 2002* requires public agencies to make and keep full and accurate records of their activities.

Decision-making is a key agency activity. All information relevant to a decision-making process should be recorded.

Records should be made simultaneously or as soon as practicable. If this is not done, the reliability of the record may be called into question.

Good records:

- provide decision-makers with detailed information
- explain decisions
- help decision-makers prepare a statement of reasons
- enhance accountability and transparency.

2. Identify the power to make a decision

Clear legislative authority is necessary for a decision that may adversely affect someone's rights or interests.

The legislative power to make a decision may be limited by specified factors including time. Even if legislation or your organisations policy does not specify a timeframe, the decision-maker must take action as soon as practicable.

Check you have identified the source and limits of the power to make the decision.

3. Consider the authority and suitability of the decision-maker

Legislation usually establishes who is authorised to make a decision.

An authorised person or body must exercise the decision-making power personally. An exception is the express power of delegation. This is where legislation provides for delegation of authority.

The *Acts Interpretation Act 1954* sets out the rules for exercising delegated authority. Delegations must be in writing and signed by the authorised body or person delegating the power.

A decision-maker should not be involved in a decision where a conflict of interests exists, even if the decision-maker has the proper delegation or authority.

A conflict of interests occurs when private interests interfere or appear to interfere with official duties. It may arise from financial or personal interests. There can be an actual, perceived or potential conflict of interest.

A conflict of interest should be recorded and reported to management to be resolved in the public interest.

Check your authority and suitability to make the decision by considering delegations and any conflict of interests.

4. Identify relevant matters

Decision-makers must identify all relevant matters at the outset.

If the relevant matters aren't correctly identified and considered, the decision-maker is more likely to make a poor decision.

Check you have identified relevant matters by considering the legislation and organisations policy.

5. Follow procedures

Following procedures is a vital part of good decision-making.

Procedures are the steps needed to achieve a specific legislative or policy purpose and may be directed to gathering relevant information.

Statutory procedures are set out in legislation. Strict compliance is usually required.

Administrative procedures are developed by organisations. The procedures must be consistent with the law, reasonable in the particular circumstance and not based solely on cost or convenience.

Check you have complied with all applicable statutory or administrative procedures.

We provide [free advice](#) to help your organisation improve their administrative practices, decision-making and complaint handling.

6. Gather all relevant information

Gathering all the relevant information allows the decision-maker to determine the facts. Information is relevant if it is reasonably related to a relevant matter.

Legislation may give a decision-maker express powers to gather information for specific purposes. However, even if legislation does not give express powers, the decision-maker may request information.

Decision-makers should make reasonable and practical inquiries to collect the best and most current information available. This may include verbal accounts, documents, site inspections and expert opinion.

Check you have gathered and recorded all relevant information.

7. Provide procedural fairness

Procedural fairness is about providing a person who might be adversely affected by a decision a 'fair hearing' before the decision is made.

Generally, a fair hearing involves disclosure, a reasonable opportunity to respond and impartiality.

The affected person should be notified of the key issues and given enough information to participate meaningfully in the decision-making process. Reasonable steps should be taken to notify the affected person.

The affected person should be given a reasonable opportunity and time to respond. The decision-maker should genuinely consider the affected person's submission in making their decision.

The decision-maker should be seen to be impartial and open to persuasion on the information and arguments presented.

Check that you have provided a fair hearing to anyone who may be affected by the decision.

8. Determine the facts

Decisions should be based on facts. So it is important that sound factual findings related to the relevant matters are made.

The decision-maker should determine the facts by considering information that is relevant, reliable and sufficient.

All relevant information should be considered and should not be dismissed without good reason.

Not all information is equal in value or reliability. The decision-maker should analyse the information gathered and weigh it up reasonably.

Unless legislation requires otherwise, the balance of probabilities applies to administrative decision-making. The more serious the issue and outcome, the stronger the evidence required to meet this standard.

Each factual finding should be clearly recorded including the information considered and the reason for the finding.

Check that your factual findings are based on sufficient, relevant and reliable information. Your findings should be clearly identified and explained.

9. Evaluate the facts to make the decision

Evaluating the facts is the final step in reaching a decision.

One important consideration in evaluating the facts is whether the decision to be made is non-discretionary or discretionary.

A non-discretionary decision is one where the legislation sets out what must be considered and how it is to be decided. The decision-maker does not have any flexibility.

Decision-makers need to identify the legislative provisions that relate to their decision. Legislation should be interpreted in a way that achieves the purpose and objectives of the relevant Act. Court and tribunal decisions, legal advice and agency policy can provide guidance about the meaning and application of legislation.

The decision-maker should apply the law to the facts to make the decision.

In contrast, a discretionary decision allows the decision-maker some flexibility. The legislation does not impose a duty on the decision-maker to exercise their power in a particular way. It is usually indicated by the use of the word 'may'.

No one matter or combination of matters is necessarily determinative in making a discretionary decision. When making a discretionary decision, the decision-maker must ensure that all relevant matters through the factual findings are considered and given appropriate weighting.

The decision-maker may also consider agency policy and relevant previous decisions in reaching the decision. However, irrelevant matters must be excluded from consideration and agency policy and practice must not be inflexibly applied. The decision and reasons should be recorded.

Check you have properly evaluated the facts in reaching your decision.

10. Give meaningful and accurate reasons for your decision

It is important that people affected by organisation a decisions are informed of the decision, the reasons for that decision and any right of review or appeal.

Reasons are defined in the *Acts Interpretation Act 1954* and the *Judicial Review Act 1991*. Reasons are the logical explanation for a decision and should refer to the factual findings and the information on which the findings are based. Failing to expressly refer to a factual finding may indicate a relevant matter was not considered.

Providing reasons for a decision also helps avoid misunderstandings, promote acceptance of adverse outcomes and reduce the likelihood of ill-informed complaints, reviews and appeals.

Even where a decision-maker is not required to give reasons, it is good administrative practice to do so. Also, an affected person may be able to request a statement of reasons under the *Judicial Review Act 1991*.

Decision-makers should also offer advice about any right of appeal, including the time allowed to apply for the appeal and how to apply.

If there is no statutory review or appeal process, the affected person should be advised about the organisation's complaint management system.

Training courses

We deliver the following training:

- [Complaints management](#) helps officers who deal with complaints, including officers who internally review complaints.
- [Good decisions](#) is a program designed to help officers make better decisions. The training is suitable for all public sector decision-makers, including supervisors and managers.
- [Managing unreasonable complainant conduct](#) is a half-day course designed to help officers manage unreasonable conduct they may encounter when delivering services to the public..
- [Practical ethics for state government](#) is a half-day course designed to help officers assess and respond to ethical dilemmas and understand core government values.