

Prepare for a decision - Casebook 2020 examples



Case
studies

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Making good decisions, Case studies

There are four stages in good decision-making:

1. Prepare for the decision
2. Develop the decision
3. Make the decision
4. Communicate the decision

Following are examples from *Casebook 2020* of problems with preparing for the decision.

Improving policy procedure or service

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.

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.

Proper application of legal requirements – International students

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.

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