



Casebook 2022

Helping agencies to
improve decision-making

April 2022



QUEENSLAND
OMBUDSMAN

Authority

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

Public

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Stages of decision-making

This casebook identifies at which stage/s of the decision-making process problems occurred. Our free [‘Good decisions’ training resource](#) (available on our website) contains detailed explanations of these stages.

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Ombudsman's introduction

Our Office strives to be an agent of positive change for fair and accountable decision-making in Queensland.

We support agencies to make good decisions through training, information, advice and investigations.

Our annual casebook of investigation outcomes, now in its second year, aims to be a tool for shared learning that helps build greater knowledge about issues for improving decision-making.

It is only one component of the suite of good decisions tools that we have been growing over the past year including:

- [video](#) – a short animated overview of good decision-making for use in staff inductions and training
- [checklist](#) – a prompt for officers to print and keep at their workstation
- [newsletter](#) – *Perspectives*, a quarterly subscription newsletter
- [resource](#) – a valuable reference with detailed explanations of the stages of decision-making
- [training](#) – interactive, practical training available online.

The casebook contains only a small 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.

Insights are included to highlight learnings from each case study. It is important to observe that cases requiring rectification represent only a small portion of the cases that we investigate, as 85% of our investigations found that agency actions were lawful, reasonable or correct.

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 our staff for their hard work and professionalism in preparing this report.

I am pleased to present our *Casebook 2022: Helping agencies to improve decision-making*.

Anthony Reilly
Queensland Ombudsman



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.

Confidentiality

Maintaining appropriate confidentiality is an essential part of the Office's work.

Section 92 of the *Ombudsman Act 2001* sets specific confidentiality requirements about the conduct of investigations, meaning that the Ombudsman will not comment publicly about a complaint unless required or appropriately authorised under the Act. Under s 54, 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 Ombudsman.

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.

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.

Improving communication

Effective communication of decisions and reasons



Lack of communication caused distress and inconvenience

John was an older person admitted to hospital with reduced capacity. His son Len asked the hospital for information about his father's medical condition. The hospital said it could not communicate with him as there was no Enduring Power of Attorney and Len wasn't listed as next of kin for John. On previous admissions, the hospital had communicated with Len about his father without that documentation.



Len complained to the hospital about its refusal to communicate with him about his father. The hospital investigated the complaint, but did not inform him of the outcome. He complained to this Office that the hospital would not communicate with him.

In making his complaint to this Office, Len wanted to ensure that communication with the hospital regarding his father would be available during any future hospital admissions.

The result

This Office looked at whether the hospital's decision not to communicate with Len about his father was reasonable, and if the hospital had appropriately responded to his complaint.

The hospital acknowledged that it missed informing Len of the outcome of its investigation, and apologised for the inconvenience and distress caused to him. It listed Len as an admission contact in the hospital records so he could be contacted during his father's future hospital admissions.

Ombudsman insight

Agencies need to be aware that a person who raises concerns will have a reasonable expectation that they will receive a response. Failure to do so may exacerbate an already distressful situation and may cause that person to believe they have been treated unfairly.

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Clear reasons for decisions help people to understand

Felix applied to Legal Aid Queensland (LAQ) for help with representation in legal proceedings. Although he originally received an initial grant of aid for proceedings in the Magistrates Court, it was later terminated. Felix received three decisions: an original decision, internal review decision and external review decision through an external review officer, who was a lawyer appointed by the LAQ Board.

The original decision informed Felix he had not met the conditions of his grant of aid, which led to its termination. Felix's matter had progressed and he provided further information to LAQ, essentially seeking a grant of legal aid for the next stage of the proceedings. The two review decisions considered the merits of Felix's application for a grant of aid for that next stage of proceedings. The review decisions did not address the decision to terminate the initial grant of legal aid.



Confused by the different decisions and reasons provided by LAQ, Felix complained to this Office.

The result

This Office considered LAQ's decisions and its guidelines and found there were different reasons given for refusing aid. LAQ acknowledged that Felix could have been confused by the correspondence in the matter as additional information was provided and impacted on decisions as they were made.

Our investigation found that LAQ's reasons could be improved to assist Felix's understanding of the decision. LAQ committed to raising our concerns, including the communication of decisions in upcoming training for review officers, as well as writing to Felix again to give him a better explanation for the review decisions.

Ombudsman insight

Agencies need to provide advice that specifically addresses the queries raised in a person's complaint.

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Council agreed to change procedures after incorrect details added to headstone

Linda started organising funeral details for her terminally ill sister, Janine, while her sister was still alive. She dealt directly with the regional council that managed the local cemetery. When submitting the paperwork, she provided an unsigned headstone form without the date of death, expecting council to use details as they became available. The form did not include a field to add a date of birth. When Janine died, the death certificate was provided to the council.

When Linda saw the plaque she was upset. It did not include birth and death dates; and it listed an incorrect age for Janine. Linda expected the council would cross-check all information it had on hand, or notify her of any problems with the headstone form that she submitted. She complained to the council, requesting that the council contribute money to replace the headstone plaque with correct details.

The council informed Linda that all procedures had been followed correctly, and that a new plaque would be at her own expense. Dissatisfied with the council's decision, Linda complained to this Office.

The result

This Office's investigation found that the council considers the headstone form to be complete when it is handed to council, and there was no cross-checking of the information held by council. It is clear that the council did have the death certificate, which included Janine's birth and death dates. These details were properly included in the coffin plaque but not on the headstone.

The investigation concluded that it was reasonable of council to decline to contribute to a replacement headstone plaque. However, the complaint provided an opportunity for council to review its funeral procedures. Council changed the headstone process to allow further details to be provided on the form, and added a proof check step before ordering. These changes should improve council's service delivery to people involved in a stressful process.

The council also accepted this Office's suggestion to review its Complaints Management Policy and benchmark it against councils of a similar size.



Ombudsman insight

While complaints management is essentially about dealing with and, if possible, resolving individual complaints, it is also about identifying potential systemic improvements to decision-making, practices and service delivery.

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Clear communication of reasons and transparency in decision-making and recordkeeping

Following Morris's surgery, there were complications that meant he required further surgery which was not available in the regional town where he lived.

Morris contacted a number of surgeons in Brisbane but found no one was willing to operate. He found an interstate specialist who was willing to provide the surgery. This resulted in a number of trips interstate for treatment and further surgery over eight months. Both his doctor and solicitor wrote to the Hospital and Health Service (HHS), part of Queensland Health, stating that he required Patient Travel Subsidy Scheme (PTSS) help for his interstate travel and accommodation costs.

Morris telephoned the PTSS office on a number of occasions during the months of treatment and was verbally advised that his application would be accepted.

When he applied in writing, the HHS refused his application for PTSS help. He appealed this decision and HHS refused his appeal. Morris complained to this Office.

The result

This Office's investigation found a number of issues with the HHS's decision and appeal responses.

The application refusal did not:

- clearly explain how the decision was reached, and included an irrelevant section of the PTSS Guideline as justification
- contain information about appeal rights
- include the name and position of the person who made the decision.

The application decision was initially recorded as approved in internal HHS documents. As Morris received a letter advising that his application was refused, it was clear the original decision was changed but there was no record of what happened to change that decision.

The HHS acknowledged that it had not managed all aspects of decision-making appropriately and agreed to reimburse Morris for his PTSS application. The HHS agreed to consider the highlighted areas for improvement.



Ombudsman insight

Good decision-making involves the provision of reasons to an applicant to allow them to understand why their application has not met the relevant criteria. It amounts to more than a statement of an outcome and should include all steps of reasoning, linking the facts of a decision and the material relied on, so an applicant can understand how the decision was reached. If an applicant is unable to understand a decision, they cannot then properly prepare an appeal for that decision.

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Clear communication and applying discretion particularly important during COVID-19



Onkar was an international student at a Queensland university. He was being monitored by the university because he hadn't achieved satisfactory academic progress in previous terms.

Onkar reported that the surge of COVID-19 in his home country caused him much stress and anxiety. Close family members were severely ill and he became increasingly worried about them. Onkar was involved in an accident and tore a ligament in his writing hand.

He submitted a medical certificate on 'exam day' for one of the course units, as he was unable to exert pressure on his hand, which hampered his ability to undertake the exam. His applications to defer the exam and two assignments were approved.

He completed the deferred course work, but did not pass all of the units he was enrolled in.

His unsatisfactory work in that term meant he progressed to Stage 3 of the university's monitoring academic progress policy. The university notified Onkar of its intent to cancel his enrolment.

Onkar needed to supply documents to support his appeal within a month. In that time, he was only able to supply a medical certificate for a short time relating to his hand injury and he did not provide any information on how he would improve his chances at being successful with his studies in the future as required under the policy.

His appeal was denied. He complained to this Office.

The result

Onkar provided further information to this Office that was not available to the university at the time of making its decision. These documents related to his family's situation and an 'action plan' on how he intended to successfully complete his course.

In the investigation, this Office noted a discrepancy between the delegated decision-maker in the university's policy and the staff member who signed the outcome notice that was sent to Onkar. The outcome notification did not refer to any relevant provisions of the policy, in particular it did not contain any information to indicate that the assessment and decision concerning Onkar's appeal application was made by the academic panel, as required under the policy.

In light of the new documents, the university agreed to review its decision on the cancellation of Onkar's enrolment. It also agreed to review the relevant sections of its policy and outcome advice to students to ensure both documents are consistent about the decision-making process for Stage 3.

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Improving policy, procedure or service

Detailed recordkeeping, clear policies and well communicated discretionary decisions



Using mediation to help solve problems

Jerry's residential property shared a border with a commercial facility. There was a long history of disagreements between the operators of the facility and Jerry and the previous owners of his residential property. The disagreements related to interpretation of historic rezoning and building approvals.

Jerry complained to the council about the use of a building on the shared boundary, and potential replacement of the boundary fence. Council responded with its understanding of his concerns, outlining steps to take regarding sharing costs between Jerry and the facility for replacing the fence. Jerry was dissatisfied with this response as he felt that council had not satisfactorily addressed all of his concerns. He then complained to this Office.

The result

This Office outlined a range of factors which council could consider as a basis for facilitating further discussions.

Council agreed to convene a meeting of the parties (that is, council, Jerry and facility management), as well as an independent mediator to try and resolve the concerns.

The points for discussion included the use of the land and building, proximity of activity to the boundary, noise reduction options and cost considerations.

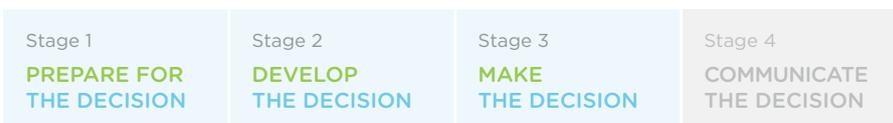
Resolution of the matter was possible outside of finalisation of the investigation by this Office as council:

- agreed to conduct the meeting
- had a list of discussion topics relevant to all parties, including as posed by this Office
- organised to have it facilitated by an independent professional mediator with planning and legal experience.

Ombudsman insight

Used appropriately, mediation and other alternative dispute resolution processes can be cost effective ways for agencies to resolve complaints.

The mediator facilitated a written agreement between all the parties.



Providing an internal review observes natural justice for complainant

Emily was under 18 years old and had previously been identified as a child in need of protection by the Department of Child Safety, Youth and Women. There were barriers and a range of complexities to Emily living with either her father and mother who were separated, however she wished to reside with her mother. The department had no current intervention with the family and the family was receiving a number of community-based supports. Emily sought help to reunite with her estranged mother. Emily said that the department had previously advised her that it would provide support to her family to help this happen. When Emily made the request, the department provided her with a list of services to enable her to live independently.

Emily was dissatisfied with the department's response and complained to this Office. This Office referred her back to the department for an internal review as she had not yet used that right.

The department assessed her request was out of scope of the department's Complaints Management Policy and Procedure for a complaint process to occur as there was no ongoing or active intervention for her and her family. Emily complained again to this Office, specifically that the department did not conduct the internal review.

The result

The Office's investigation made further enquiries with the department. These enquiries established that the department had not exhausted all avenues of their complaint management system and the Office referred the matter back to the department for investigation.

The department undertook an internal review and found that the department's decision not to progress Emily's complaint on the basis that it was outside of the scope of the department's policy was incorrect.

In response to this Office's *Management of child safety complaints - second report*, the department established an internal review process that complies with the Australian/New Zealand Standard. The department took the opportunity provided by Emily's complaint to remind its staff about internal reviews, and specifically about why an internal review in this case was appropriate and it should have been undertaken.

The department's original decision was replaced with a decision that Emily's concerns were within scope of the policy. A complaints management process was then conducted to address Emily's request for help her reside with her mother. Emily was satisfied with the outcome of her complaint



Ombudsman's insight

Complaints are useful sources of information for agencies about how to improve their services. Learnings from complaints can be used to communicate areas for improvement to staff.

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Council agreed to review dog attack procedures after inadequate investigation

Kevin took his ageing beagle, Sparky, for a walk on a lead. Another dog, Rex, 'raced out' of an open gate and attacked them as they walked past the house where Rex lived. Kevin tried to protect Sparky and received puncture wounds that required hospital treatment. Sparky received minor injuries.

Kevin complained to the council. An Animal Management Inspector (AMI) was assigned to assess the matter. The AMI's report declared that Rex's owner would be fined, but there would be no prosecution as:

- Sparky had minor injuries
- Kevin was injured as a result of protecting his dog and not from Rex biting him
- Rex escaped the property as a third party had left the gate open
- it was the first time that Rex had escaped since being declared a dangerous dog seven years prior.



Ombudsman insight

A decision-maker should gather all relevant information to enable them to make an informed decision. Gathering relevant information should focus on the factual matters to be proved and considered.

Kevin was dissatisfied with the report, and requested a review. Council's review upheld the original decision. Kevin then complained to this Office.

The result

This Office's investigation identified inadequacies with council's internal processes in dealing with the dog attack. These included:

- lack of sufficient, quality evidence collected in council's investigation
- no evaluation of Rex's history as a declared dangerous dog
- compliance-related issues concerning Rex's enclosure
- council's lack of consideration of the relevant provisions of the *Animal Management Act (Cats and Dogs) 2008*
- council's policy and procedure in dealing with dog attacks.

Council agreed to conduct a new investigation and make a fresh decision about the dog attack. Council also agreed to update its dog attack procedures, including reviewing a checklist for inspection of enclosures of declared dangerous dogs.

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Improvements to Queensland Corrective Services hearing processes



Each year, the Queensland Ombudsman conducts a correctional centre visits program as part of the administrative improvement function under the *Ombudsman Act 2001*. It is important that closed environments are scrutinised to ensure that satisfactory compliance with key operational systems is demonstrated.

In response to the changed environment created by COVID-19, visits to correctional centres as part of the program are being conducted virtually, using videoconferencing technology to meet with QCS officers and prisoners.

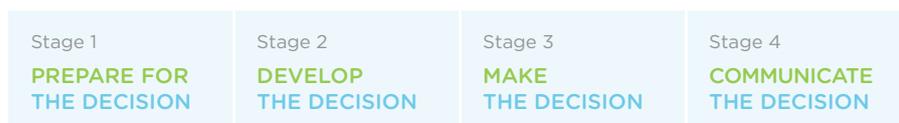
We use information gained from prisoner complaints and previous visits to the correctional centres to form focus areas for the visits. An example of this is Queensland Corrective Services' (QCS) breach of discipline processes.

Over the past year, we viewed recordings of 34 breach of discipline hearings and 16 breach of discipline review hearings across the six correctional centres we visited.

We found that while the hearings were largely compliant, there was room for improvement, particularly in the quality of communication. Identified issues included:

- In hearings, the breach of discipline process is explained and the alleged breach is read to the prisoner, along with the evidence being relied upon. In some instances, this information was read quite quickly and this may have affected the prisoner's ability to understand the material. In some instances, the officer conducting the breach of discipline hearing did not read the evidence to the prisoner during the hearing.
- Hearings and review hearings are conducted in rooms that sometimes have disruptive levels of noise from external sources. For those in the room at the time, this can be distracting. When reviewing the hearings, it can be difficult to hear the person speaking on the recording.
- In breach of discipline review hearings, the review officer did not always provide a clear explanation of the process.

Observations from the correctional centre visits program are reported to the Commissioner of QCS. Visit reports include suggestions for improvement, which are not formal recommendations under the Ombudsman Act. This Office monitors the issues through future visits and whether complaints are received about the identified issues.



Procedural fairness missing in university's original decision

Over many months, there were several email and phone interactions between Mandy, a university student, and Frank, her lecturer. They related to Mandy's claims of bullying from her lecturer, and Frank's claims of abuse from Mandy.



Mandy was issued with a formal written caution by the university and advised that similar conduct in the future would be referred to a student misconduct body. After a further incident between Mandy and Frank, the university formally commenced the misconduct process against Mandy. She was given the opportunity to respond to the allegations at a student misconduct hearing.



During a post hearing discussion, the panel decided a further meeting should be organised for panel members to seek more information from Frank and a student representative. Mandy was not present at the second meeting, and was not given information about evidence provided at the meeting nor any opportunity to respond to it.

The outcome of the process was that the hearing panel recommended that Mandy be immediately expelled from the university. Mandy lodged an appeal against the findings of the hearing panel. Her appeal was declined.

Mandy then complained to this Office. The outcome she sought was for the university to reverse her expulsion and apologise.

The result

This Office considered whether the university properly reviewed and regarded the evidence that Mandy submitted to the appeals committee, and whether in reaching its decision to expel Mandy, the university followed proper administrative process and afforded her procedural fairness.

After discussion with this Office, the university agreed to re-hear the case. Mandy would be given the opportunity to participate in the misconduct hearing, be given relevant evidence for review before the hearing date, and be given the opportunity to make submissions about her case and about any penalty recommended. She would be able to consult with the Student Ombudsman for assistance with the hearing process.

The university also considered a number of systemic improvements that could be made to its hearing process to make hearings fairer.

Ombudsman insight

Procedural fairness requires that a person be given a fair hearing before a decision adversely affecting the person's rights and interests is made. More specifically, it requires that a decision-maker give the person:

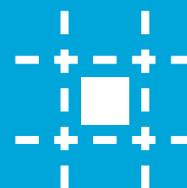
- reasonable notice that an adverse decision may be made
- notice of the specific, critical issue or issues on which the decision is likely to turn
- information about any adverse, relevant or credible evidence that has been obtained from other persons
- a fair opportunity to directly address those critical issues.

Procedural fairness then requires the decision-maker to genuinely consider the person's submissions with an open mind and without prejudgement or any form of bias.

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Proper application of legal requirements

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



Department includes human rights in decision-making

Ben, a high school student, expressed an opinion about a presentation in class. The teacher judged the language and terms used by Ben as inappropriate. A detention was imposed in accordance with the school's student code of conduct.

Ben's mother Margaret complained to the school about the detention. She was dissatisfied with the school's initial response and requested an internal review.

Margaret remained dissatisfied after the internal review and complained to this Office.



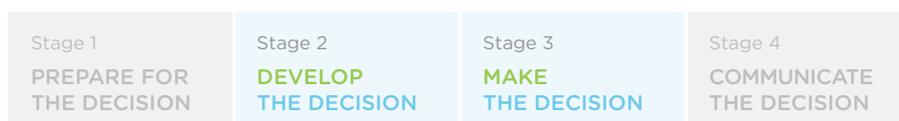
The result

This Office's investigation found that, under the school's student code of conduct, teachers may impose a detention for inappropriate language. In Margaret's complaint to this Office, she referred to Ben having exercised his right to free speech and questioned why the department had not responded to her when she queried that in her initial complaint. During enquiries by this Office with the department, it was clear that s 21 of the *Human Rights Act 2019* (HR Act), freedom of expression, was not considered as a distinct part of the internal review and was, therefore, not specifically referenced in the decision letter.

The department agreed to include human rights considerations in complaints and internal reviews, in accordance with its obligations under s 58(1)(b) of the HR Act, regardless of whether a complainant specifically raises a breach of the HR Act in their complaint.

Ombudsman insight

The introduction of the HR Act means decision-makers are required to identify and consider all relevant human rights when applying discretion, and this requirement should be appropriately reflected in agencies' policies and procedures relevant to the decision-making.



Agency officers must understand how to apply policies

This Office received a large number of complaints that a temporary exhibit in a public exhibition space was offensive.

The outcome sought in these complaints was that the agency responsible for the public exhibition space should remove the exhibit.

The agency categorised these complaints as feedback under its complaints policy and procedure, rather than as complaints. All complainants received the same response. Many complainants were dissatisfied with the agency's response and lodged complaints with this Office.



The result

It is the usual practice of this Office that a complainant first exhaust an agency's complaints management system (CMS) before we will investigate the complaint. This includes using any internal review option available.

As the public exhibition space had not dealt with the concerns raised as complaints under its policy and procedure, this Office referred these matters back to the agency to manage individually as complaints under its policy and procedure. This included conducting an internal review.

This Office's investigation found that officers at the agency responsible for the public exhibition space were uncertain of the policy and procedure and what should be categorised as a complaint or feedback, even though it was described in the policy and procedure. Issues were also identified regarding who were the decision-makers in each phase of the complaints management system.

This highlights that issues can arise when an agency's complaints management process is not understood or is not followed correctly.

Ombudsman insight

It is not sufficient to only develop a policy and procedure – agencies must also train officers about the policy and procedure so that their officers understand it and apply it correctly.

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Council reviewed processes relating to waterway contamination



Lynne is a neighbour of a property under development for a change of use as a small manufacturing business. She complained to the regional council about its management of the developer's compliance with the development approval (DA). Lynne was concerned that the developer had changed the contours of the site, which she believed had affected stormwater flow and sediment flowing into a nearby watercourse, as well as causing other issues.

Ombudsman insight

Policies provide valuable guidance for officers on the agency's decision-making process to ensure consistency and fairness.

Lynne was dissatisfied with the council's response to her complaint, and then complained to this Office.

The result

This Office's investigation looked at whether the council reasonably considered complaints of non-compliance with the DA, and investigated complaints of environmental harm.

The investigation found that the council had considered Lynne's complaints about stormwater releases from the development site. However, the council had focused on maintenance and improvement of the sediment control measures, but not sufficiently on contamination of the local waterway. Council's action where stormwater contamination issues were identified on development sites was incomplete. Council could have used the *Environmental Protection Act 1994* (EP Act) to investigate Lynne's claims about the waterway. This Office consulted some other councils, and forwarded examples to this council of documented practices used in dealing with stormwater complaints and incidents.

The council agreed to review its internal policies and processes in response to this Office's request. This should enable the council to respond effectively in the future to these types of complaints, and guide officers in discharging council's jurisdiction under the EP Act where harm to the environment such as local waterways is identified.

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Council to improve decision-making process when appointing contractors

A council decided to engage a business to help it to deal with a local pest problem. The business was engaged on the basis that it was on the list of pre-qualified suppliers for another council. Under the Local Government Regulation, council believed it could enter into such a contract without going to tender.

Elaine, a local resident who had developed her own pest reduction methods, believed that council was required to seek tenders for the work under the Regulation and its own procurement policy. While the council had previously tested Elaine's methods and found them ineffective, she was concerned council had mismanaged ratepayer funds by engaging the business under a contract that was more costly than her method.

Elaine complained to council about the legality of its decision to engage the business, and that it had not explained why her method was rejected.

The council considered that its procurement policy and the Regulation did not restrict council to issuing tenders or advertising for the work. Instead, council claimed it could use other means, such as a register of pre-qualified suppliers or a list of approved contractors, to engage a party.

Elaine approached this Office dissatisfied that council had not adequately responded to her concerns.

The result

This Office investigated the matter and considered, firstly, whether council's engagement of the business complied with the Regulation, and secondly, whether council's written responses to Elaine's complaint were adequate.

Investigators found that council had not complied with the Regulation in deciding to engage the business and did not assess the proposal in terms of the sound contracting principles in the *Local Government Act 2009*. Council had not advised Elaine of her right to an external review to this Office.

This Office concluded that council had not given Elaine a clear, accurate response to her complaint, particularly the question of council's assessment of the trial of her system. Council agreed to rectify this and provided Elaine with a comprehensive explanation about its trial of her system and why it was not the preferred approach. Council also indicated it had reviewed its procurement processes, policies and procedures to ensure they are clear and consistent with the Regulation.



Ombudsman insight

Procurement can be a challenging area for agencies. Recordkeeping and transparency of reasons are essential to defend and explain commercial decisions. All procurement processes should be able to be audited, and all unsuccessful tenders need to be advised of their rights of review.

Stage 1 PREPARE FOR THE DECISION	Stage 2 DEVELOP THE DECISION	Stage 3 MAKE THE DECISION	Stage 4 COMMUNICATE THE DECISION
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Obtaining expert advice from relevant entities can strengthen processes and avoid complaints

Maryanne worked for a public sector agency and applied for a Voluntary Medical Retirement (VMR) package after she sustained a permanent disability from a workplace incident. She believed the package would include a tax-free portion of the final termination payment, as the disability she sustained meant she was permanently unfit for any work in the future. She became concerned when she did not receive this tax-free portion, which she said equated to \$13,000, and lodged a complaint with her employer.



Maryanne corresponded with her employer and the relevant payroll entity during the consideration of her complaint. The payroll entity's final decision advised Maryanne that she did not qualify for the tax-free portion because her retirement had been processed as a VMR rather than an invalid or ill-health retirement package. She contacted this Office because she disagreed with the payroll entity's decision and felt it was inconsistent with advice from the Australian Taxation Office (ATO).

Ombudsman insight

Expert external advice from a competent source should be obtained where necessary. Taking this step is a part of good decision-making. Decisions can often be complex, involve several agencies and be capable of different interpretations.

The result

Given the significant financial impact the payroll entity's decision had on Maryanne, and the questions raised by her complaint, this Office decided to investigate the matter. Investigators reviewed a range of information including public sector legislation, taxation legislation and public sector directives. The investigation concluded that the payroll entity had failed to apply the relevant directives and taxation legislation to Maryanne's situation, and had not properly considered whether she qualified for the tax-free portion.

The payroll entity agreed to review Maryanne's termination package, obtain clarifying information from the ATO and other relevant agencies, and determine whether Maryanne qualified for the tax-free portion under the taxation legislation. On the basis of information received from the ATO, the payroll entity wrote to Maryanne and advised her that she may qualify for the tax-free portion. The payroll entity suggested that she lodge an objection with the ATO about the tax treatment of her VMR. In addition, the payroll entity reviewed its process for handling VMRs and included information about the need to liaise with other agencies, such as the ATO.

Stage 1 PREPARE FOR THE DECISION	Stage 2 DEVELOP THE DECISION	Stage 3 MAKE THE DECISION	Stage 4 COMMUNICATE THE DECISION
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Council reviewed fee structure to ensure fairness

Felicity was aware council had the power to seize an animal under an Animal Management local law and impound it. She also understood an owner could reclaim the impounded animal after paying a cost-recovery fee. However, Felicity disputed the council's use of a sliding scale for the fees to reclaim an impounded animal. The fee was increased if the animal had been impounded more than once. The fees for the first, second and third impoundment of an animal were \$95, \$150 and \$170.

Felicity was concerned that council's use of a sliding scale structure was unlawful. She complained to this Office after receiving responses from council that she considered to be inadequate. She advised this Office that the overarching legislation required that the cost-recovery fee must not be greater than the cost of council's actions to seize and impound the animal. In Felicity's opinion, the initial impoundment of an animal would be more costly. She maintained that any future impoundment of the same animal would be less time consuming and therefore not as costly.



After investigating the complaint and giving particular consideration to the lawfulness of council's use of a sliding scale fee structure, this Office wrote to council and held discussions with its staff about the rationale for the fee structure and the need to identify the costs of the impoundment program and use them as the basis for establishing fees.

Ombudsman insight

Agencies need to ensure fees and charges are appropriate for the activity they are related to, and can be justified when challenged.

This Office suggested council obtain advice about cost-recovery principles and any proposed use of a sliding scale. Depending on the advice provided, it was also suggested that council calculate and adopt an appropriate fee scale for the following year.

The result

Council decided to introduce a flat rate fee of \$120 per impoundment. Council also told this Office its officers would review fees over the next 6 to 12 months. In addition, council agreed to provide Felicity with this information.

This Office was satisfied with the steps council had taken to ensure the proper application of its legislation which, in turn, would give animal owners a more transparent fee structure.



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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 agencies about ways of rectifying problems with its actions, 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

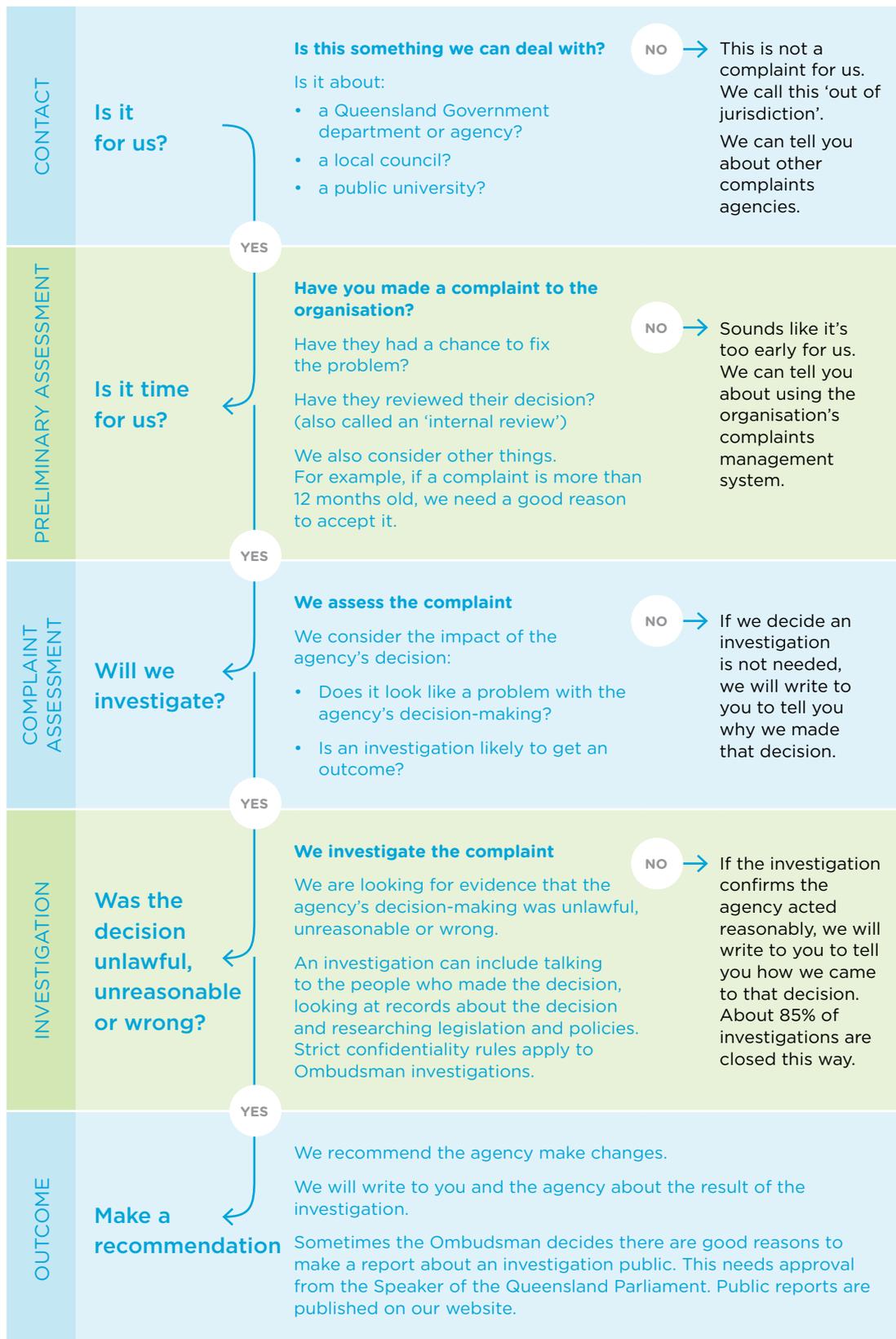
In expressing an opinion under the Ombudsman Act that an agency's administrative actions or decisions are 'unreasonable', the Ombudsman is applying the meaning of the word in the context of the Ombudsman Act. In this context, 'unreasonable' bears its popular or dictionary meaning, not the far narrower '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