



Casebook 2023

Helping agencies to
improve decision-making

April 2023



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

This document is released to the public space.
It is approved for public distribution and readership.

© The State of Queensland (Queensland Ombudsman) 2023

The Queensland Ombudsman supports and encourages the dissemination of its information. The copyright in this publication is licensed under a Creative Commons Attribution-NonCommercial-NoDerivatives (CC BY-NC-ND) 4.0 International licence.



To view this licence visit:

<https://creativecommons.org/licenses/by-nc-nd/4.0/>

Under this licence you are free, without having to seek permission from the Queensland Ombudsman, to use this publication in accordance with the licence terms. For permissions beyond the scope of this licence contact this Office.

Content from this report should be attributed to the Queensland Ombudsman, *Casebook 2023: Helping agencies to improve decision-making*, April 2023.

ISSN 2652-9858 (Online)

Queensland Ombudsman
Level 18, 53 Albert Street
Brisbane QLD 4000
GPO Box 3314
Brisbane QLD 4001

Phone: (07) 3005 7000

Email: ombudsman@ombudsman.qld.gov.au

Web: www.ombudsman.qld.gov.au

Contents

Page	Each case has been classified according to the primary action or response that we identified was required. Some cases have more than one category that applies.	
2	Ombudsman's introduction	
3	Helping agencies to improve decision-making	
4	Confidentiality	
5	Improving communication Effective communication of decisions and reasons	
11	Improving policy, procedure or service Detailed recordkeeping, clear policies and well communicated discretionary decisions	
18	Proper application of legal requirements Applying sound decision-making principles, including robust internal review practices	
24	Index	
25	Appendix A: Jurisdiction and procedural fairness	
26	Appendix B: The Ombudsman process	

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.

Stage 1 PREPARE FOR THE DECISION	Stage 2 DEVELOP THE DECISION	Stage 3 MAKE THE DECISION	Stage 4 COMMUNICATE THE DECISION
--	--	---	--

Ombudsman's introduction

I am pleased to present the third edition of our casebook series.

Each of our casebooks highlights a sample of the range of outcomes that we achieve for Queenslanders each year. We hope that publishing the casebook not only informs the community about our work but is also a tool for shared learning that helps build greater knowledge in government agencies.

Pleasingly, since 2021, the casebooks have been viewed/downloaded 2,532 times. This coincides with feedback from agencies that they have found the casebook to be a useful source of information for improving their decision-making and administrative processes.

Many of the problems in the cases in this year's casebook, such as communication and policy and procedures, reflect the ongoing causes identified in our 2022 report, [Learning from experience: Insights from 20 years of Queensland Ombudsman investigation reports](#).

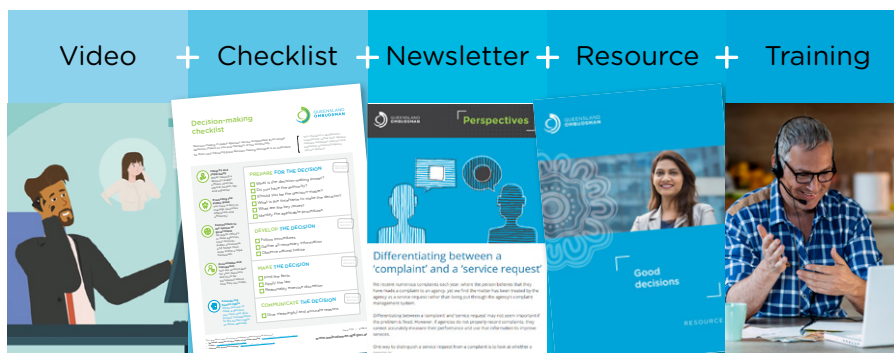
If you would like to learn more about good practice in decision-making, administrative processes and complaints handling, I encourage you to consider the suite of 'Good decisions' resources, such as:

- [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.

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 and undertaking the published investigations.

Anthony Reilly

Queensland Ombudsman and
Inspector of Detention Services



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



Written reasons for a decision are crucial to understanding a decision

Salvatore contacted council after several incidents involving his neighbour's dog, Rusty. Salvatore advised council that Rusty had killed his chickens, bitten him on the elbow and bitten his own dog.

Council took several steps to address the matter, including imposing a fine on Rusty's owner and recommending that a fence at the property be repaired. Salvatore believed there were valid grounds for council to declare Rusty a dangerous dog, so he lodged a complaint with council.

A customer service officer from council telephoned Salvatore to discuss the complaint and advise that a review would be conducted. Salvatore received the outcome of the review by telephone. He complained to this Office indicating that he disagreed with council's decision and did not understand why Rusty had not been declared a dangerous dog.

The result

This Office investigated Salvatore's complaint and considered council's decision-making, including its mode of communication.

Salvatore had not received written decisions from council with explanations as to why Rusty had not been declared dangerous. This Office identified that council had also failed to advise Salvatore of his review rights. These factors made it difficult for Salvatore to understand council's decisions.

This Office's investigator informed council of the importance of providing written decisions with clear reasons and advice about review rights. Council agreed with the recommendation to provide Salvatore with a written decision. The ensuing decision set out the events, the complaint, the information council considered and the steps council took in deciding that there was insufficient evidence to support a dangerous dog declaration.



Ombudsman insight

Agencies should inform people in writing about the reasons for decisions, available rights of review and time limits that apply to those rights. Providing reasons for decisions allows a complainant to consider if they have grounds to seek a review.

Stage 1 PREPARE FOR THE DECISION	Stage 2 DEVELOP THE DECISION	Stage 3 MAKE THE DECISION	Stage 4 COMMUNICATE THE DECISION
--	------------------------------------	---------------------------------	--

Complaint results in review of communication to students about provision of evidence

Ivan was studying part-time at university. Just after the census date, his new husband Mark received a health diagnosis that resulted in him stopping work to receive treatment. The census date marks the point in a study period that a student becomes financially responsible for the fees for a unit. Due to the stress of Mark's diagnosis, and taking on the full financial responsibility of the household, Ivan applied to withdraw without academic penalty and have his course fee reversed.

His application was rejected on the basis that he hadn't proven Mark was his husband, and hadn't proven how Mark's diagnosis prevented him from finishing his course.



Ivan appealed the decision, providing information to support his claims, and asking for guidance on what else he could share to prove his case.

He received no information in response to his request for support, then his appeal was rejected on the basis that he had failed to prove how the circumstances prevented him from finishing the course. The university informed him that he had the option to appeal with the Administrative Appeals Tribunal (AAT). Ivan decided not to appeal via AAT as the required fee would place further pressure on household finances.

Ombudsman insight

Application forms should be easy to understand and clearly state what supporting evidence is required. It should not be left to an applicant to guess what might be required.

He contacted the Student Ombudsman and they directed him to contact the Queensland Ombudsman.

Ivan wanted the university to detail what documentation it required, reconsider its decision to deny his application and acknowledge that better support could have been offered.

The result

This office contacted the university, and the university sought for the complaint to be referred back. The university then reversed the decision, approving the request for fee remission and the removal of academic penalty.

The university confirmed that it would review the decision-making processes, communication to students about provision of evidence and outcomes of fee reversal decisions.

Stage 1 PREPARE FOR THE DECISION	Stage 2 DEVELOP THE DECISION	Stage 3 MAKE THE DECISION	Stage 4 COMMUNICATE THE DECISION
--	------------------------------------	---------------------------------	--

Providing a written record of decisions and external review information should be standard practice

John lived in a regional area and was receiving treatment for cancer. He was of the opinion that the specialist health service he required could not be provided by the local Hospital and Health Service (HHS), and provided a letter from his private oncologist in support of this position.

He applied to the HHS, part of Queensland Health, requesting Patient Travel Subsidy Scheme (PTSS) assistance for travel and accommodation expenses to visit his private oncologist in another health service area.



The HHS refused John's application for PTSS on the basis that the service he required was available locally. He appealed this decision and the HHS refused his appeal. John complained to this Office.

Ombudsman insight

Confirming verbal advice in writing is best practice, and helps to avoid misunderstandings.

The result

The object of the PTSS is to provide financial assistance to those patients who are required to travel more than 50 km from their closest public hospital because the specialist health services they need are not available locally.

The Office investigated whether the HHS's decision to refuse John's application for assistance under the PTSS was reasonable and adequately communicated to him.

The HHS decision-maker consulted service experts in determining that the service John required was available at the local HHS. In the context of the Office's administrative decision-making role, the investigator was satisfied that the service John required was available locally and the decision to refuse PTSS assistance was reasonable.

The HHS communicated the appeal decision to John by phone, allowing him the opportunity to ask questions and discuss concerns. While phone communication is good administrative practice, it is important to also communicate decisions in writing, along with information about how the decision was reached. Doing so ensures applicants have a record of the decision, and it can also help them fully understand the reasons for a decision.

John was not informed of his right to request an external review of the decision through this Office because the HHS decision-maker believed John understood the reasons for the decision. They stated that a referral to this Office was not required. Information about how to request an external right of review should be provided as a matter of course, it is up to that person to decide whether or not they may want to pursue that avenue.

When reviewing this case study, QH acknowledged that clearer identification of the roles and responsibilities of the decision-makers should be included in correspondence, providing a clearer pathway of options available to the consumer.

Stage 1 PREPARE FOR THE DECISION	Stage 2 DEVELOP THE DECISION	Stage 3 MAKE THE DECISION	Stage 4 COMMUNICATE THE DECISION
--	------------------------------------	---------------------------------	--

Lack of detail in communication impacted understanding

Anika applied for a financial hardship grant from a governing authority.

The application was denied on the basis that the evidence she provided was insufficient, but the authority's response lacked detail.

Anika was dissatisfied with the decision regarding the grant, and sought an internal review. The decision on review was to confirm the decision to deny the grant, but the authority's response still lacked detail.

Anika complained to this Office.



The result

This Office raised with the authority whether Anika had been advised why the evidence she provided had not been accepted, and given the opportunity to respond, before a final decision was made. This Office questioned whether the process used was fair.

At this Office's request, the authority agreed to:

- write to Anika and provide her with further and better reasons for its decision in relation to her application
- provide her an opportunity to make a submission responding to the reasons provided
- review its decision on her application, taking into account any submission she made
- issue a further response to her which either confirms or amends the decision and addresses the matters set out in your submission.

Ombudsman insight

For procedural fairness, agencies should give customers an opportunity to put their side of the story and to comment on relevant issues and information before a final decision is reached. Decision-makers are required to fairly consider what is put to them, and not pre-judge the issues.

Stage 1 PREPARE FOR THE DECISION	Stage 2 DEVELOP THE DECISION	Stage 3 MAKE THE DECISION	Stage 4 COMMUNICATE THE DECISION
--	------------------------------------	---------------------------------	--

Insufficient communication regarding reasons for decision and access to a review on quarantine fee waiver

In March 2020, a public health direction commenced requiring anyone arriving in Queensland from overseas to quarantine in government nominated accommodation due to the rise in COVID-19 cases.

Cleo travelled overseas to assist her father after he suffered a medical incident. She then experienced a medical emergency herself which delayed her return to Australia.

A deadline was set for people to return to avoid incurring hotel quarantine fees. Cleo arrived in Brisbane shortly after the deadline and quarantined. She requested a full quarantine fee waiver, providing medical evidence to support her request.

Quarantine fees and payments information on the Queensland Health (QH) webpage states that a person is eligible for a fee waiver on a number of grounds: financial hardship, vulnerability, travel dates and other extenuating circumstances.

QH advised Cleo that only a partial fee waiver was approved, but did not provide sufficient reasons for her to understand why the full fee waiver was refused. The response led Cleo to believe that her particular circumstances were not considered. QH's letter stated that a review of the decision could only be done on the basis of new information being provided by Cleo.

As Cleo did not understand the reasoning for the decision, and did not have additional information other than what she had already provided, she made a complaint to this Office.

The result

In response to this Office, QH acknowledged that the letter sent to Cleo could have better explained the reasons for the decision to grant her only a partial fee waiver. Doing so would have also given her a better understanding of the basis upon which she could request a review of the decision.

QH stated that it would provide Cleo with better reasoning for its decision not to grant her a full fee waiver, and that the opportunity to request a review was still open if she wished to pursue the matter further.

When reviewing this case study, QH advised that it subsequently changed local procedures and processes relating to outcome letters.



Ombudsman insight

Stating only the conclusion reached or outcome decided does not meaningfully communicate reasons for a decision. Even if reasons for a decision are not requested or required by law, giving clear written reasons is considered good administrative practice.

Stage 1 PREPARE FOR THE DECISION	Stage 2 DEVELOP THE DECISION	Stage 3 MAKE THE DECISION	Stage 4 COMMUNICATE THE DECISION
--	------------------------------------	---------------------------------	--

General communication response resulted in dissatisfied applicant

Due to non-payment of a fine, Matthew's outstanding debt was transferred to the State Penalties Enforcement Registry (SPER).

SPER informed Matthew of a Work and Development Order (WDO), which allows customers to discharge their debt via non-financial means. Matthew believed he had accepted an offer from SPER to undertake a WDO, but he stated to this Office that SPER was preventing him from accessing the WDO. Due to his current physical impairments, the only WDO activity he could participate in was medical treatment, but there were no hardship partners in his local area offering that activity (hardship partners are approved community organisations or financial or health practitioners that provide services for people in hardship to resolve their SPER debt).

When the original debt was transferred to SPER, administration fees were added, which Matthew sought to have removed.

Matthew complained to SPER and received general information about WDOs. He sought an internal review of the matter and received information repeating SPER's response to his initial complaint.

The result

This Office investigated whether SPER's responses to Matthew's complaint were reasonable and appropriate. Matthew confirmed to this Office that he:

- did not ask SPER whether the activity in which he wished to participate was offered by hardship partners in other areas
- was not able to provide evidence of how SPER was preventing him from accessing a WDO
- had no evidence, other than noting his physical impairments, as to why he was unable to participate in any of the other WDO activities offered by hardship partners.



Ombudsman insight

Effective communication of decisions and reasons will assist in preventing or reducing complaints.

In providing general information about WDOs, this Office found that SPER's responses to Matthew were fair, but did not adequately address his individual circumstances, or give useful information about how he could access a WDO scheme to reduce his SPER debt.

Regarding the administration fees added to the original debt, this Office explained that legislation empowers SPER to impose such fees, so it was reasonable for SPER to add these fees.

SPER acknowledged that its responses to Matthew could have included more specific information, tailored to his individual circumstances, and agreed to provide further response to Matthew with better and more detailed information about how he could undertake a WDO.

Stage 1 PREPARE FOR THE DECISION	Stage 2 DEVELOP THE DECISION	Stage 3 MAKE THE DECISION	Stage 4 COMMUNICATE THE DECISION
--	------------------------------------	---------------------------------	--

Improving policy, procedure or service

Detailed recordkeeping, clear policies and well communicated discretionary decisions



Written procedures help guide the assessment of complaints

Ava-Mae made scented soaps as a hobby in her spare time, and sold them at local markets. Ava-Mae's neighbour made several odour nuisance complaints to council about the scent from the soap-making.

Council investigated the matter and inspected Ava-Mae's property twice. This prompted Ava-Mae to lodge a complaint with council. She claimed that her neighbour's complaints were vexatious and baseless.

In her complaint to this Office, Ava-Mae questioned the basis for council's ongoing investigation, given that the two inspections found no environmental nuisance occurring. She was concerned that her neighbour was using council resources to harass her. Ava-Mae also queried the adequacy of council's internal review decision and sought a copy of the second inspection report.



The result

This Office investigated Ava-Mae's complaint and considered council's decision-making, including its records about the neighbour's complaints and its inspections.

This Office found that council did not adequately assess the neighbour's complaints about the odour. The records did not clearly demonstrate that council was reasonably satisfied the odour constituted an environmental nuisance. This raised questions about the basis on which council inspected Ava-Mae's property. The information council acted on amounted to an unverified report of an intermittent and faint scent. This Office concluded that this description would not reasonably meet the characteristics of an environmental nuisance as defined in the relevant legislation.

As a result of this Office's investigation, council developed a procedural document to guide the assessment of complaints about odour nuisances. This document included information about assessing complaints, determining the threshold for investigation (in accordance with legislation) and considering factors such as whether a complaint is frivolous or vexatious. This Office also provided feedback to council about recordkeeping, including the need to prepare inspection reports.

Ombudsman insight

Well-developed policies are essential to good decision-making.

Stage 1 PREPARE FOR THE DECISION	Stage 2 DEVELOP THE DECISION	Stage 3 MAKE THE DECISION	Stage 4 COMMUNICATE THE DECISION
--	------------------------------------	---------------------------------	--

Natural justice for complainant



Heidi was a long-term foster carer for Kirra. Due to an unexpected incident, Heidi took Kirra to an unscheduled GP appointment for treatment, where the GP prescribed a change to Kirra's medication. Heidi sought urgent guardianship approval for the medication change from the Department of Children, Youth Justice and Multicultural Affairs (the department). The medication approval was received after a delay of three weeks. Heidi complained to the department about a lack of support and the delay in medication approval.

A few months after this incident, Heidi contacted the department again about a GP proposed change to Kirra's medication. On this occasion, the approval delay was two months. Heidi complained to the department again about this second approval delay.

Heidi was dissatisfied as repeated extended delays impacted Kirra's health. Due to Kirra's long-term placement with her, Heidi sought some assurance that there would not be further delays around medication approval requests.

Heidi complained to this Office about the department's lack of support and repeated approval delays.

The result

This Office investigated whether the department's responses to Heidi's complaint were reasonable.

The department acknowledged that it had not dealt with Heidi's second complaint through the department's complaints management system (CMS). The department also acknowledged that Heidi's feedback indicated she was seeking an internal merits review of her original complaint, but the department had previously only offered internal complaint-handling process reviews.

In response to this Office's *Management of child safety complaints – second report*, the then Department of Child Safety, Youth and Women had commenced the establishment of an internal review process that complies with the Australian/New Zealand Standard. This process was not yet implemented at the time the department was dealing with Heidi's complaint.

The department identified that Heidi's feedback to its decision clearly related to the outcomes of her complaints as opposed to the process-handling of them.

The Office referred Heidi's complaint back to the department to:

- conduct an internal merits review of the original complaint
- correctly deal with the second complaint under its CMS.

Stage 1 PREPARE FOR THE DECISION	Stage 2 DEVELOP THE DECISION	Stage 3 MAKE THE DECISION	Stage 4 COMMUNICATE THE DECISION
--	--	---	--

Even if no timeframe is specified in legislation, timely reviews are required

As a prisoner in a Queensland Corrective Services (QCS) facility, Kai was requested to provide a urine sample for drug testing. He failed to provide a sample as requested, and was found guilty in a breach hearing.

Kai requested a review following the original breach hearing. When five months passed after the original breach hearing, he wrote a letter of complaint to the Chief Superintendent about the delay in the review being heard. He was informed that there was no legislated timeframe for a breach review to occur and that the manager of his accommodation area would be informed of his concerns.

Kai complained to this Office about the delay in a breach review being conducted.

The result

This Office looked at whether the delay in providing a breach review was reasonable.

While there is no timeframe specified in the legislation within which a review must be undertaken, the *Corrective Services Act 2006* does require a review to be carried out as soon as practicable after it is requested.

Shortly after being contacted by this Office, the QCS facility held the breach review and the original decision of guilty was upheld.



Ombudsman insight

Making timely decisions is a key element of good decision-making. If governing legislation does not set a specific timeframe for an action, the *Acts Interpretation Act 1954* provides that agencies are still required to take action as soon as possible.

Stage 1	Stage 2	Stage 3	Stage 4
PREPARE FOR THE DECISION	DEVELOP THE DECISION	MAKE THE DECISION	COMMUNICATE THE DECISION

Transparent criteria help people to better understand discretionary decisions

Darcy was required to leave his rented home when the house was part of a compulsory acquisition by the Queensland Government. He applied to the Department of Communities, Housing and Digital Economy (the department) for social housing assistance.

The department found Darcy ineligible for social housing assistance based on the fact that Darcy was the part owner of a house in a remote location.



Darcy complained to this Office as he had nowhere to live and needed to stay near the urban area for medical treatment. In special circumstances the Office investigates a complaint before someone has received an internal review from the agency they are complaining about.

The result

The Office initiated an informal investigation, looking at whether the department had acted reasonably, according to the applicable policies and procedures, in reviewing Darcy's personal circumstances before determining that Darcy was ineligible for social housing assistance on the grounds of property ownership.

The investigator raised Darcy's personal circumstances with the department:

- his ongoing health issues
- his need to remain in an urban area for medical treatment
- the poor condition of the remote house
- the complications with his family dynamics, as there was disagreement amongst his siblings on whether to sell the house which had been with his family for decades.

During the investigation, this Office asked for the criteria and definitions used in the department's decision-making process which deemed that Darcy was ineligible to receive social housing assistance. The definitions were not readily available from the department, and it agreed to add those details to its website, as a systemic improvement.

The department agreed to review its decision, and Darcy was requested to provide additional documents regarding his health to support the further consideration of his social housing application. The department outlined to this Office that correspondence to Darcy would set out the definitions and how the test was applied to his particular circumstances and offer alternative housing assistance options and supports.

Ombudsman insight

Decision-makers need to consider the individual facts of each case. Policies may be departed from if the application of the policy would, in the circumstances of a particular case, produce a result that is unreasonable.

Stage 1

**PREPARE FOR
THE DECISION**

Stage 2

**DEVELOP
THE DECISION**

Stage 3

**MAKE
THE DECISION**

Stage 4

**COMMUNICATE
THE DECISION**

Identifying complaints promptly and following the complaints management process

Sarita lived near a suburban council-operated swimming pool that was to be developed as a water park. She raised concerns with the council about a number of issues including the assessment of possible noise nuisance.

Council advised Sarita the water park was being constructed within the swimming pool complex, meaning that noise would be confined to the established hours of the pool. On that basis, council determined it did not need to conduct a noise impact study.

Sarita complained to this Office about council's response on the noise issue and its overall handling of her complaint.

This Office investigated the matter and obtained information from council. This information showed that while no formal noise assessment was required under law, council had considered the issue of noise. Unfortunately, it had not provided Sarita with this information when responding to her.

In regard to council's handling of Sarita's complaint, this Office found that council had not handled the complaint in line with its complaints management process. Sarita's complaint had been treated as a customer service matter. Council had not advised Sarita at any point that she could lodge an administrative action complaint. It also failed to explain that she had review rights available.



Ombudsman insight

In a busy agency, complaints are sometimes not categorised as complaints but rather as operational service requests. This might be due to a desire to handle contacts quickly and informally. It is important that an agency's complaint management system is not regarded as an avenue of last resort after all attempts to resolve a complaint have been exhausted.

The result

This Office concluded that council should have provided more detailed reasons in its response to the noise issue, including referring to steps already taken such as imposing conditions about noise limits and undertaking noise tests. This would have given Sarita a more comprehensive response to her concerns and allowed her to understand what council had considered during the development approval stage. Council agreed to provide Sarita with better reasons.

Council also considered this Office's observations and comments about the way it handled Sarita's complaint and agreed that there had been some shortcomings. It undertook to provide training to relevant officers to ensure that complaints were being identified and handled correctly in accordance with the established process.

Stage 1 PREPARE FOR THE DECISION	Stage 2 DEVELOP THE DECISION	Stage 3 MAKE THE DECISION	Stage 4 COMMUNICATE THE DECISION
--	------------------------------------	---------------------------------	--

Exemption to cross the border highlights improvements to the application process

In 2021, in response to COVID-19, the Queensland Government closed its borders to all visitors, except for rare exemptions, and returning Queenslanders were required to quarantine for 14 days in hotel accommodation.

Bea and her son Oscar lived in another state. Oscar required specialist medical treatment that Bea found was only available in Queensland. Bea applied to Queensland Health for an exemption to enter Queensland by air and an exemption from hotel quarantine. She supplied supporting documents, including vaccination certificates and doctors' letters. The Queensland Health delegate approved them entering Queensland by air, but they were not approved for home quarantine. The decision Bea received advised her to seek a review with this Office.

Due to the urgency in accessing medical treatment, Bea complained to this Office. Bea struggled to understand the Queensland Health decision, given the urgent nature of the information she submitted, and advised she had not received reasons for the decision.



Ombudsman insight

One of the functions of the Ombudsman is to provide agencies with advice about how to improve administrative processes. We liaised with Queensland Health about the exemption application process generally, including the provision of reasons for decisions. The aim of our discussions with Queensland Health was to identify any administrative improvements that could be made for other exemption applications at that time.

The result

This Office investigated whether Queensland Health appropriately dealt with Bea's border exemption application.

The investigator considered that Queensland Health may not have given adequate consideration to the personal and medical circumstances that Bea presented in her exemption application.

At the time of Bea's exemption application, Queensland Health was dealing with a large volume of exemption applications. Nonetheless, as stipulated in the AS/NZS 10002:2014 Australian/New Zealand Standard about complaints handling, it is best practice to provide a person with reasons for a decision.

In response to this Office's enquiries, a more senior Queensland Health delegate raised Oscar's special circumstances with a clinical expert. After this input, Bea and Oscar were approved to enter Queensland and quarantine in a self-contained home close to the treatment facility. Once quarantine was complete, Oscar then transferred to the facility to receive treatment.

When reviewing this case study, QH advised that it had allocated additional resourcing, including specialist clinical assessment teams, to improve processing times and enable appropriate consideration of complex border exemption requests.

Stage 1 PREPARE FOR THE DECISION	Stage 2 DEVELOP THE DECISION	Stage 3 MAKE THE DECISION	Stage 4 COMMUNICATE THE DECISION
--	--	---	--

Systemic issues identified in approach to missing property



Roger was a prisoner in a Queensland Corrective Services (QCS) centre, and was transferred to another centre. When he arrived at the new centre, Roger identified that some of his property went missing during the move. He wrote a letter of complaint ('blue letter') to the Chief Superintendent about the affected items.

The Acting Chief Superintendent made a decision on Roger's complaint. He was offered compensation for three items at 50% of the items' value, while one item was determined to have no monetary value and no compensation was offered.

Roger was dissatisfied with the response and complained to this Office.

The result

The Office investigated whether the centre reasonably responded to Roger's complaint about his missing property.

The Custodial Operations Practice Direction – Property (COPD) governs how QCS manages a prisoner's property. The COPD states a prisoner can apply for compensation for lost or damaged property while stored by the Chief Executive; or during transportation between corrective services centres.

The COPD also stipulates that where compensation is to be paid to a prisoner, the level of compensation depends on the item's condition. While the Chief Superintendent may use discretion to determine the appropriate level of compensation, this amount must not be lower than the level stipulated in the COPD.

Roger's property list, provided to this Office by the centre, showed that the items it offered 50% compensation for were in a new/unused condition. The CPOD states that property in this condition should be compensated at 90% of the item's value.

The investigator enquired about the low compensation offered for three items and why Roger was not compensated for one item which the centre determined had no monetary value.

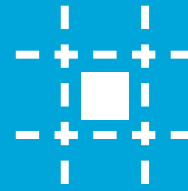
The centre reviewed its decision and provided an updated response to Roger with new reimbursement amounts. Roger was offered 90% of the value for three items, instead of the original 50%. It also decided to reimburse Roger for the item that was originally determined to have no monetary value.

As a result of this Office's investigation into the matter, several practice issues were identified and feedback was provided to the General Manager of the centre.

Stage 1 PREPARE FOR THE DECISION	Stage 2 DEVELOP THE DECISION	Stage 3 MAKE THE DECISION	Stage 4 COMMUNICATE THE DECISION
--	--	---	--

Proper application of legal requirements

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



Assessing noise levels requires the proper application of legislation



Lorraine contacted her local council about a noisy air-conditioner at a neighbouring property. She took her own noise level readings and kept a diary. Council attended the property on several occasions. Based on officers' observations, council sought voluntary compliance from the property owner and tenants to reduce the noise of the air-conditioner and/or its hours of operation.

While Lorraine noticed some temporary reduction, overall the noise nuisance continued. Lorraine complained to council about the noise nuisance and the investigation. After receiving a final response from council, she made a complaint to this Office.

The result

Council's decision stated that qualified officers had assessed the noise nuisance and determined that the neighbour had taken mitigating steps. Council concluded that Lorraine's claim about a failure to investigate was not substantiated.

This Office's investigation revealed that council had not taken its own noise level readings when investigating Lorraine's complaint. Its officers had considered the noise nuisance against general criteria in the legislation. However, they had not considered more specific legislative provisions that stipulated decibel limits for what is an acceptable level of noise for an air-conditioner at different times during a 24-hour period. Without having taken noise level readings, council could not properly assess the noise nuisance against the legislated limits.

This Office found that council failed to accurately apply the legislation. In addition, our investigators identified that council's noise policy did not give council officers reasonable guidance about assessing noise complaints or applying the legislation.

After discussing the matter with our investigators, council agreed to review the policy and include an appropriate level of guidance for assessing such complaints. It also agreed to assess any future noise complaints from Lorraine.

Stage 1 PREPARE FOR THE DECISION	Stage 2 DEVELOP THE DECISION	Stage 3 MAKE THE DECISION	Stage 4 COMMUNICATE THE DECISION
--	--	---	--

Giving consideration to all relevant factors and affected parties makes for best practice decision-making

Dylan's neighbour received approval from a private certifier and council to construct a shed on his residential property. Dylan described the shed as a large, commercial-sized structure. It was situated alongside his property boundary.

Dylan made a complaint to council about the matter, advising that he was never consulted about the proposed shed. He explained that the shed did not fit with the character of the neighbourhood from an aesthetic point of view. Based on advice he received from a real estate agent that the shed would devalue his own property by approximately \$10,000, he sought compensation from council.

Council refused Dylan's request for compensation on the basis that council's actions were not inappropriate and there was no requirement for him to have been consulted.



The result

After receiving Dylan's complaint, this Office reviewed the documents that formed part of council's decision-making. Council had concluded that the shed did not directly meet all applicable requirements. However, after assessing those unmet requirements, council considered them to be consistent with the overall outcomes to be achieved. This was sufficient for council, and then the private certifier, to grant approval for the shed.

This Office's investigation revealed that council focused on the siting of the shed and gave less consideration to the likely impact on Dylan or other affected neighbours. Investigators considered that the sheer bulk of the shed had a detrimental impact on the amenity of the streetscape. Council accepted this Office's feedback to:

- adopt new processes for assessing amenity and aesthetics in regards to proposed developments
- organise training for staff about assessing applications for amenity and aesthetics
- give adjacent and affected property owners the opportunity to provide feedback about proposed developments, even though not a mandatory requirement.

Ombudsman insight

Even though an administrative action is technically lawful, the Ombudsman is still able to form a view that, in particular circumstances, a practice should be improved.

Stage 1 PREPARE FOR THE DECISION	Stage 2 DEVELOP THE DECISION	Stage 3 MAKE THE DECISION	Stage 4 COMMUNICATE THE DECISION
--	------------------------------------	---------------------------------	--

Obligation to comply with statutory requirements



Pablo failed to pay the rates on his property for one rating period, but had previously paid his rates on time. He advised this Office the rates notice in question was sent to his former address, so he did not receive it.

As a result of Pablo failing to pay his rates on time, the overdue rates accrued interest. Council engaged a debt collection agency to recover the overdue rates and proceeded with the matter through court, filing a Statement of Claim for the overdue rates and the legal costs incurred through the engagement of the debt collection agency.

The Statement of Claim was served by posting it to Pablo's address. He later claimed he did not receive it. He did not file a notice of intention to defend the claim and did not attend the court proceedings. A Magistrate decided the matter in Pablo's absence and ordered him to pay council's legal costs in recovering the debt.

Pablo lodged a complaint with council about the legal fees, requesting a waiver on the basis of his past record of regular payments and the fact he did not receive notice of the council's Statement of Claim or the court's order.

The result

This Office found that council had not acted unreasonably in seeking to recover legal costs from Pablo, given that the court had ultimately made such an order.

However, during investigation, this Office found that council had applied the legal fees to the rate account prior to the court order, in effect treating the legal fees as overdue rates, contrary to a statutory provision. This Office reminded council of its obligation to comply with the statutory provision, which it acknowledged. Council also agreed to adjust its internal procedures to ensure it complied with this statutory provision in future similar cases.

Stage 1 PREPARE FOR THE DECISION	Stage 2 DEVELOP THE DECISION	Stage 3 MAKE THE DECISION	Stage 4 COMMUNICATE THE DECISION
--	------------------------------------	---------------------------------	--

Keeping records of each incident is important to demonstrate compliance with legislative requirements

Walter's neighbour has a dog, which was previously declared to be menacing by the local council. The effect of the declaration was that the dog had to be housed in an enclosure. The neighbour built an enclosure, but Walter was concerned about the workmanship of the enclosure and whether or not it was childproof.

He lodged a number of complaints with council, and while council conducted inspections and provided advice about compliance with the relevant laws, Walter remained concerned. He contacted this Office dissatisfied with the adequacy of council's responses to his complaints.

After assessing Walter's complaint information, this Office decided to informally investigate the matter to determine whether or not council had a reasonable belief that the enclosure met the relevant legislative and regulatory requirements.

The investigation involved reviewing council's records and responses to Walter, and meeting with council representatives.



The result

This Office's investigation prompted council to conduct another inspection of the enclosure. Council was satisfied that the enclosure was structurally sound and complied with legislative requirements. During the inspection, council used a checklist and completed a risk assessment to document the results of its inspection. This Office reminded council of the importance of completing these documents for each inspection.

During the inspection, council also determined that the enclosure was sufficiently childproof. However, both council and this Office agreed that the legislation surrounding what is 'childproof' could be clearer. This Office noted that council was taking part in a review of certain aspects of the legislation and would refer to this complaint as an example of an area that would benefit from greater clarity.

Ombudsman insight

Legislation, like policies and procedures, will benefit from regular review.

Stage 1 PREPARE FOR THE DECISION	Stage 2 DEVELOP THE DECISION	Stage 3 MAKE THE DECISION	Stage 4 COMMUNICATE THE DECISION
--	---	--	--

Including recourse to an internal review is an integral part of complaints management

Ruth's husband Glen helped her manage communication with Workcover after a workplace incident.

He complained to Workcover on her behalf, alleging:

- mismanagement of his wife's Workcover claim by the case advisor
- incorrect benefit calculations resulting in overpayment that was required to be repaid, creating financial difficulties
- non-payment of benefits on the due dates and payment being split into two components paid on different days without explanation.

Glen was dissatisfied with a lack of response from the case advisor to several emails about these issues. His complaint was managed by Anne, the case advisor's manager.

The case advisor acknowledged to Anne that her lack of response to numerous emails from Glen was not an acceptable standard of communication and apologised to Glen via Anne.

In her email to Glen, Anne also addressed the language he had used in his emails to the case advisor. Anne stated that the case advisor had the right not to answer correspondence that included personal insults.

Glen remained dissatisfied with Anne's response and complained to this Office. He stated that Anne had conducted an inadequate investigation of his complaints, and was dissatisfied that any further complaints needed to be made directly to Anne, who he viewed as unreliable and biased towards her staff.

The result

This Office contacted Workcover and negotiated that an internal review of Glen's complaint would be conducted by an officer who was independent of the original decision.

WorkCover stated it would review its complaints policy to include information about an internal review process. This will explain, among other things, that an internal review is a merits review of the complaints process and outcome, and not a re-investigation of a complaint.



Ombudsman insight

Complaints are an essential part of the accountability process. The benefits of complaints management include increased customer satisfaction, improved agency reputation, reduced costs and improved decision-making. An internal review can also act as a circuit breaker when interactions have broken down. Having a fresh officer, who has not previously dealt with the matter, conduct an internal review will often benefit both the agency and the complainant.

Stage 1 PREPARE FOR THE DECISION	Stage 2 DEVELOP THE DECISION	Stage 3 MAKE THE DECISION	Stage 4 COMMUNICATE THE DECISION
--	--	---	--

Providing students with specific, rather than generic, advice



Delphine was studying in a health-related field at university. To complete her degree, a period of placement was required in a professional workplace.

In early 2022, Delphine was verbally advised by the placement coordinators that she did not require a COVID-19 booster dose to be compliant for placement. Shortly after, the university advised that all students undertaking placement activities in a healthcare setting must have received a booster dose after receiving the second dose of vaccine to be considered compliant with requirements for up-to-date COVID-19 vaccination status.

Delphine lodged a complaint with the university after being advised by the placement coordinators that she could not seek an exemption with a medical certificate indicating she had experienced adverse health issues after receiving her second dose of vaccine.

The university advised Delphine that its decisions regarding placements were aligned with a public health direction as per the *Public Health Act 2005*, and as such advised it was obliged to follow vaccine mandates. Therefore, the university advised Delphine that she was required to have a booster dose to be eligible to undertake placement.

Delphine then complained to this Office.

The result

This Office considered whether the university's decision to require Delphine to have a further COVID-19 booster dose to meet the full vaccination requirements to undertake placement was reasonable.

The investigator reviewed the Queensland Government's requirements for workers in a healthcare setting and considered there to be a distinction between being 'fully vaccinated' and having an 'up-to-date vaccination status'. The investigator considered Delphine's circumstances and determined there was currently no requirement for her to have a COVID-19 booster to undertake placement to provide healthcare services in the kind of facility Delphine was to attend for her placement.

The university formally advised Delphine of this decision and apologised for the oversight in sending her incorrect communication about requiring a booster dose.

In relation to broader communication with students, the university advised of the ongoing challenges to provide timely information to students within a rapidly changing framework, and advised it was taking action to ensure relevant students are provided with specific, rather than generic, communication.

Stage 1 PREPARE FOR THE DECISION	Stage 2 DEVELOP THE DECISION	Stage 3 MAKE THE DECISION	Stage 4 COMMUNICATE THE DECISION
--	--	---	--

Index

Identified agencies

Page

12	Department of Children, Youth Justice and Multicultural Affairs	Natural justice for complainant
14	Department of Communities, Housing and Digital Economy	Transparent criteria help people to better understand discretionary decisions
13	Queensland Corrective Services	Even if no timeframe is specified in legislation, timely reviews are required
17	Queensland Corrective Services	Systemic issues identified in approach to missing property
9	Queensland Health	Insufficient communication regarding reasons for decision and access to a review on quarantine fee waiver
7	Queensland Health	Providing a written record of decisions and external review information should be standard practice
16	Queensland Health	Exemption to cross the border highlights improvements to the application process
10	State Penalties Enforcement Registry	General communication response resulted in dissatisfied applicant
22	Workcover	Including recourse to an internal review is an integral part of complaints management

State agencies (including statutory authorities)

- 8 Lack of detail in communication impacted understanding

Local councils

- 5 Written reasons for a decision are crucial to understanding a decision
- 11 Written procedures help guide the assessment of complaints
- 15 Identifying complaints promptly and following the complaints management process
- 18 Assessing noise levels requires the proper application of legislation
- 19 Giving consideration to all relevant factors and affected parties makes for best practice decision-making
- 20 Obligation to comply with statutory requirements
- 21 Keeping records of each incident is important to demonstrate compliance with legislative requirements

Public universities

- 6 Complaint results in review of communication to students about provision of evidence
- 23 Providing students with specific, rather than generic, advice

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

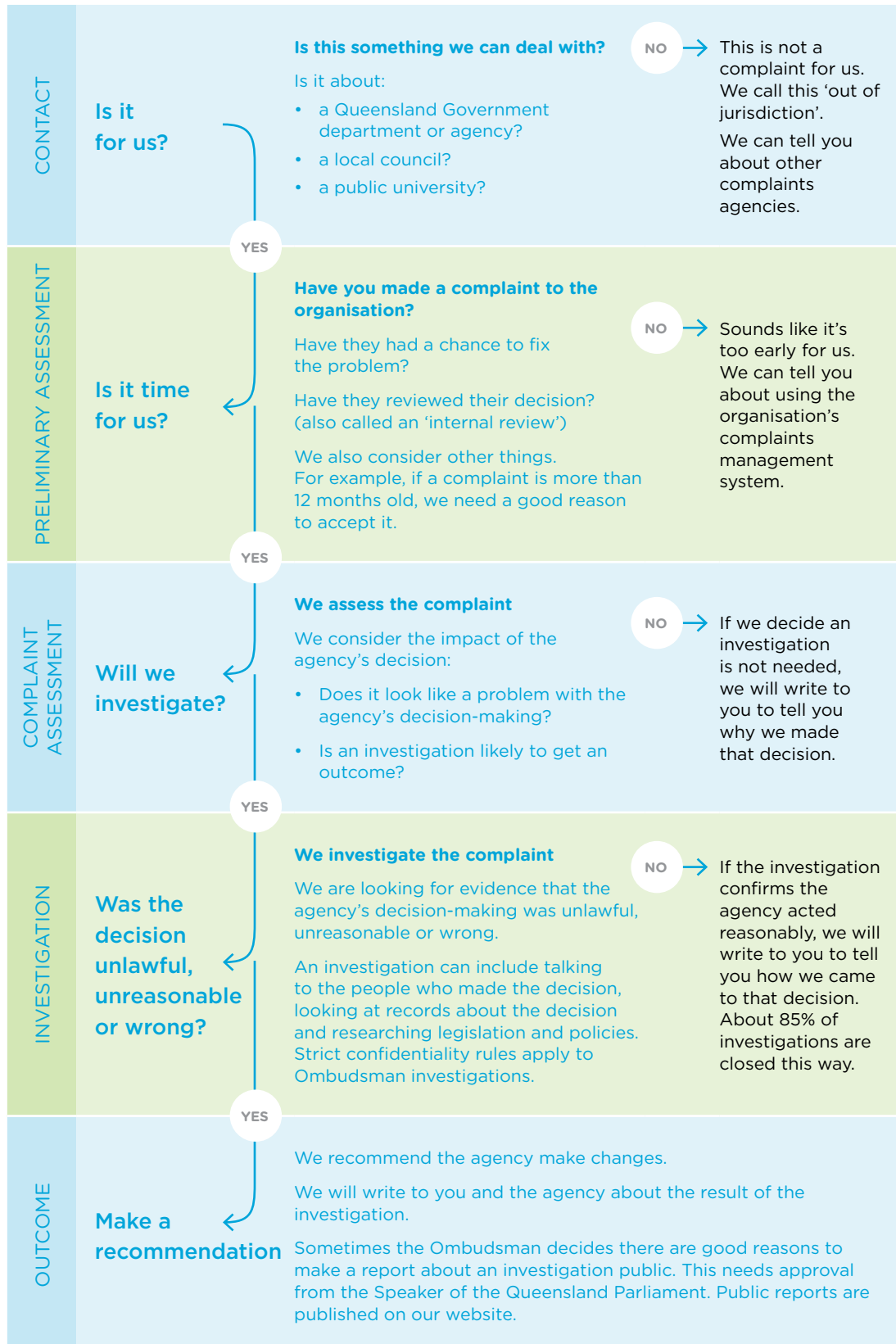
In expressing an opinion under the Ombudsman Act that an agency’s administrative actions or decisions are ‘unreasonable’, the Ombudsman is applying the meaning of the word in the context of the Ombudsman Act. In this context, ‘unreasonable’ bears its popular or dictionary meaning, not the far narrower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