

Casebook 2024

Helping agencies to
improve decision-making

March 2024



QUEENSLAND
OMBUDSMAN

50 YEARS
1974-2024



Leaving Our Mark
(left and elements used throughout)

Nathaniel Chapman

Goenpul and Yuggera Man, also from the Wambia Tribe in Northern Territory and Waka Waka country in Eidsvold, Queensland (2023)

We acknowledge the Traditional Owners of the land throughout Queensland and their continuing connection to land, culture and community. We pay our respects to Elders past, present and emerging.

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.

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Content from this report should be attributed to the Queensland Ombudsman, *Casebook 2024: Helping agencies to improve decision-making*, March 2024.

ISSN 2652-9858

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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.

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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Ombudsman's introduction

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

In 2024, we mark the 50th anniversary of the Office of the Queensland Ombudsman. The Office's role and powers have evolved since it began in 1974 as the Parliamentary Commissioner for Administrative Investigations. We help the people of Queensland by sorting out problems, and to share the learnings from that work to improve public services. Each complaint matters.

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

Since 2021, our casebooks have been downloaded 3,815 times. This annual publication continues to receive feedback from agencies that it is a useful source of information for improving their administrative processes when training public sector officers on making good decisions.

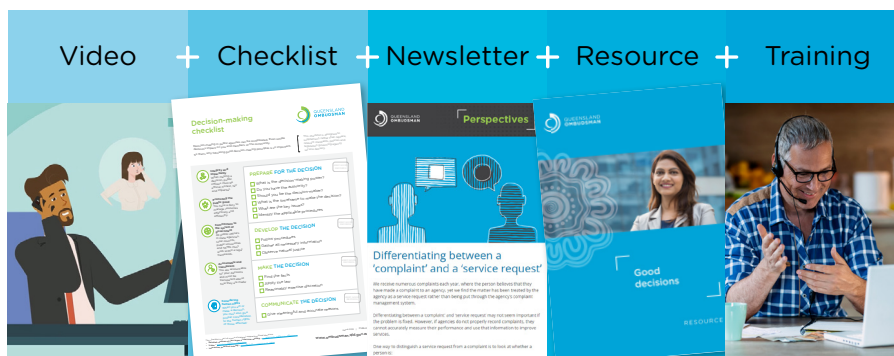
If you would like to learn more about good practice in decision-making, administrative processes and complaints handling, I encourage you to consider the suite of 'Good decisions' resources:

- [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 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.

Local councils



Council clarifies parking requirements at local market

Chaminda attended a fresh produce market, which is held at the local school every Sunday. He parked his car on a road that is used as a bus zone on school days but is used by market attendees for parking on the weekend.

The signage on the road explains that it is a bus zone from Monday to Friday, but there is no signage that explains road rules on Saturdays and Sundays.

Chaminda received a fine for parking in the bus zone. Chaminda expressed that he was confused about parking regulations in the area as the signage was not clear.

After unsuccessfully appealing the parking fine, Chaminda made a complaint to this Office.

Ombudsman insight

Proactively informing the community about regulations enables compliance and reduces problems arising.

The result

This Office investigated Chaminda's complaint and considered council's decision-making process, including its reasoning for issuing the parking fine.

While the Office found it reasonable for council to issue the fine, the investigation recommended that council liaise with the school and market organisers to educate people attending the market about parking requirements. Council agreed to undertake the recommended actions.

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 improves procedural fairness in managing dog registration

Claire and Emma purchased a dog called Bingo. Bingo was registered annually with council under Claire's name at their shared property. When Claire and Emma divorced five years later, it was decided that Emma would keep the property and Bingo. Claire then moved to another property in a neighbouring town.

Emma did not renew Bingo's registration for three years and Bingo was impounded. Emma paid Bingo's release fee and registration and collected him from the pound.

Emma failed to renew Bingo's registration the following year and Claire was issued a registration renewal notice at her new address. Council then issued Claire an infringement notice for the non-payment of Bingo's registration. Shortly after, Claire relocated to another state.

Claire disputed the infringement notice as she had not lived with Bingo for four years and considered Emma to be his owner. Claire requested that council withdraw the infringement notice based on this information, but they refused. Claire then complained to this Office.

The result

This Office investigated Claire's complaint and considered council's decision-making process, including its reasoning for issuing the infringement notice.

Ombudsman insight

Agency policies and procedures should be reviewed regularly to ensure they align with legislation.

The investigation identified that it was unreasonable of council to:

- issue the infringement notice to Claire when Bingo had not been in her possession for several years
- consider Claire to be Bingo's owner when Emma had collected Bingo from the pound and paid his registration and release fee
- refuse to withdraw the infringement notice on the basis that it considered it reasonable for Claire to challenge the notice in the Magistrate Court despite her living in another state.

The investigation also identified the council's dog registration procedures did not reflect the *Animal Management (Cats and Dogs) Act 2008* (AMCD Act) requirements.

This Office recommended that council:

- withdraw Claire's infringement notice
- update its dog registration and registration renewal practices and procedures to align with the AMCD Act requirements
- issue a 'Notice to Register' prior to issuing a registration infringement notice.

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 reviews processes to support enforcement of Animal Management Act

Luis lived on a suburban street near the centre of town. Luis purchased several roosters for his property, which did not comply with council's rules under the *Animal Management (Cats and Dogs) Act 2008* (AMCD Act). The AMCD Act prohibits roosters from being kept on lots in a town area.

The roosters were causing nuisance and council served Luis a compliance notice to remove the roosters from his property. The notice outlined that the roosters would be seized if he did not comply.

After no action was taken by Luis to remove the roosters from his property, council seized and destroyed them.

Luis exhausted the council's complaints process but was still unsatisfied with council's actions. Luis then complained to this Office.

Ombudsman insight

Notices of decisions should include information about rights of review.

The result

This Office investigated Luis' complaint and considered council's administrative processes and procedures.

The investigation found that council's seizure of the roosters was reasonable as there was no basis for Luis to keep them under the AMCD Act. However, the investigation did find ambiguity in the council's compliance notices, including the absence of a statement of the right to an external appeal.

Council agreed to review its template notices to ensure they clearly explain:

- what action is being taken
- why the action is being taken
- what external right to appeal is available to the recipient of a notice.

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 to improve communication of boundary management requirements

Otto lives on a large property in a rural area. He owns livestock, which graze on his land.

Otto regularly maintains the boundary line vegetation on his property, but COVID-19 and heavy rainfalls meant he fell behind on this maintenance. The boundary line vegetation became overgrown.

Council sent Otto a compliance notice to clear the overgrown vegetation. The notice required Otto to clear a 10-metre boundary management line along all boundaries of his property.

Otto was concerned that clearing a 10-metre boundary line would reduce vegetation for grazing and would create soil erosion issues.

Otto appealed council's compliance notice, but a council officer wrote to Otto upholding council's decision. Otto then complained to this Office.

Ombudsman insight

Failure to communicate a requirement to the community may result in complaints when it is enforced.

The result

This Office investigated Otto's complaint and considered council's decision-making process.

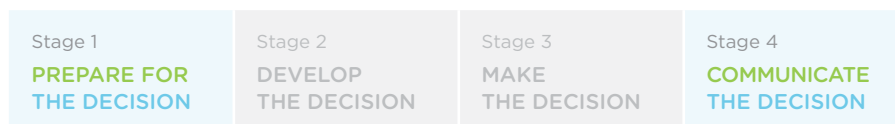
The investigation found that while council had published a factsheet for overgrown and unsightly land, neither the fact sheet nor the local law stated a need for a 10-metre boundary line. The requirement for landowners to clear a 10-metre wide boundary management line was based on an unpublished internal working document.

The investigation also found that council did not conduct an internal review before referring Otto to this Office, as required by council's Administrative Action Complaints (AAC) procedure.

Based on this Office's recommendations, council agreed to:

- review its information notices issued under the Local Law
- undertake an internal review of its decision in line with council's AAC.

To improve landowners' understanding, the Office also suggested that council communicate this requirement to the community via its website and relevant publications.



Complainant identified that council missed agreed action

Michelle made a complaint to this Office about her council two years ago. The resolution of that matter included agreed changes to the council's complaints management policy to specify what steps needed to be taken when council receives an allegation of corrupt conduct. She noted that the council had recently released a new complaints policy, which was not substantially different from the previous version.

Michelle complained to this Office that the council had failed to implement the agreed changes.

The result

The investigation of Michelle's previous complaint had been finalised on the basis that council agreed to act to address specific changes to its complaints management policy.

In response to this Office's enquiries, council acknowledged that the agreed actions from the previous complaint had not been completed, but further work would be undertaken.

After input from this Office over a few months, council adopted updated complaint management documents that achieved the agreed actions from the investigation of Michelle's previous complaint.

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Council to improve development decisions and actions

Gerald was concerned about the actions of his local council in developing a site on land adjacent to his house that includes a tourist park and associated sewerage treatment plant (STP). He raised a complaint with the council outlining several issues with its decisions, including whether:

- the whole development was reasonably approved
- council reasonably considered the purpose and historical uses of the site, stormwater drainage and proximity of houses to the STP
- council reasonably engaged with the community before commencing development.

Gerald was aware of the development through community consultation, but the final construction differed significantly from original proposals, particularly the STP location.

Ombudsman insight

Thorough community engagement is crucial to infrastructure projects.

After Gerald's concerns were dismissed by the council, he approached this Office for advice.

The result

This Office investigated Gerald's concerns and found that although council had authority to undertake development, there were several administrative issues of concern, including:

- There were inconsistencies between the development approval and what was constructed.
- Council had a mistaken belief that it did not need approval from the Department of Resources for the STP to be constructed on the site.
- Some site investigations were conducted after construction rather than during the planning and design stage.
- Council's community engagement was insufficient and did not fully comply with its policy and guidelines.
- Council's Administrative Action Complaints (AAC) response required improvements to provide better reasoning for decisions.

As a consequence, council:

- agreed to change the development approval to reflect what was constructed
- acknowledged and apologised for insufficient community engagement, and identified improved actions for future infrastructure works
- improved its AAC process.

The Office also suggested that site investigations occur during the planning and design stage for all future infrastructure projects.

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Complex cases do not void responsibilities

Christie bought a property that backs onto a residential development on Forte Avenue. On moving in, Christie found a retaining wall with attached fences between her property and the Forte Avenue development. Christie was concerned with the quality of the construction and raised her concerns with council. Christie questioned whether appropriate council approvals had been issued.

Her initial query was dismissed by council as a civil matter. Council suggested that if Christie had concerns that the retaining wall was no longer sufficient, she could approach the owners of the multiple adjoining properties and if necessary could engage in a mediation service to seek a solution.

Christie then escalated her complaint to the council's Administrative Action Complaints (AAC) process. The AAC investigation found that the retaining wall had an approval that was issued 20 years ago. The AAC considered that council's initial advice that the issue was a civil matter was appropriate. However, Christie noted that the council had not located any drawings or engineer certificates for the construction. Instead, council had assumed approval based on a reference in the file of their existence and a note of 'as constructed'.

Christie remained unhappy with the AAC findings. Christie complained to this Office outlining that she felt council's response failed to address safety and quality concerns of the retaining wall and fence construction, and council did not provide adequate information of the original documentation and approvals.

The result

This Office investigated whether council had properly taken account of any property risk arising from the structural integrity of the retaining wall and fence at Forte Avenue.

The investigation found that council was correct in advising that infrastructure is a shared responsibility that requires everyone affected to work together to resolve the issue. However, council had an obligation to adequately investigate Christie's complaint and take any appropriate action in response to identified non-compliant development work.

During the investigation, council stated to the investigators that they also had concerns about the stability and the potential unlawfulness of parts of the retaining wall.

As a result of this Office's investigation, council agreed to further investigate the compliance concerns raised by Christie, which may include potential action for the owners of the retaining wall to fix any detected breaches of the building requirements. Council agreed that its future actions in bringing the retaining walls into compliance should be based on risk and be fair, reasonable and equitable to all parties involved.

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University responses found reasonable and appropriate

Ethan was unhappy with his university assignment results and feedback. He complained to his course convenor about the language used, as well as a perceived lack of guidance for improvement in the comments. The course convenor found no issues with the initial marking, but addressed Ethan's concerns by providing more feedback. Ethan interpreted this action as an indication that the initial feedback was insufficient.

Ethan then submitted a formal complaint to the university. Ethan's formal complaint was addressed by the university, which again found no issues with the marking of the assignment. However, the correspondence raised further confusion for Ethan around who had marked his assignment. Ethan then submitted a complaint to the student ombudsman outlining concerns about the moderation process and the ambiguity around the identity of the person who was responsible for his marks.

The student ombudsman found that all policies were adhered to and that the name of the marker was not required to be disclosed. Nonetheless, the student ombudsman recommended that Ethan receive further information confirming his tutor was not the marker of his assignment, and some high distinction exemplars of the assignment, to assist in satisfying his concerns. Ethan remained unsatisfied and was further concerned that the student ombudsman reviewer was not independent as she was employed by the university. Ethan questioned the review process, and wanted his complaint investigated by a person independent of the university.

Ethan's continued confusion in the review process and lack of satisfaction with the way his questions were addressed prompted him to raise his concerns with the Office.

Ombudsman insight

Having clear and detailed recordkeeping for a decision, outlining the issues, steps of the investigation, information considered and how the information was considered, allows the decision-maker to easily defend their decision if it is ever questioned or appealed.

You can access our suite of 'Good decisions' resources: bit.ly/GoodDecisionsResource

The result

Investigations from the Office found that the university:

- considered and addressed all of Ethan's concerns adequately and its response to his complaint was reasonable and appropriate
- offered ample remedies to Ethan to address his concerns
- provided feedback that complied with its policies and procedures and did not require an independent reviewer
- adequately explained the inconsistent information that was provided to Ethan about the identity of his assignment marker
- was already undertaking improvements to include more positive feedback in future marking.

Systemic improvements for students seeking an appeal

Rebecca disputed the final mark of her thesis based on conflicting feedback from the two examiners. She requested a review of her grade from her university under its final subject result appeal procedure. Rebecca felt that the university's response did not consider all issues raised, and failed to afford her procedural fairness as outlined in its student appeals policy, that a decision must be based on relevant information and evidence provided.

Rebecca found the appeal process limited and confusing. She was initially told by one staff member to request a review under the assessment procedure, then another staff member informed her that as the final grade had been released, she had to use the final subject result appeal procedure.

The university refused Rebecca's request for a re-mark after a review of the process. A further appeal by Rebecca was dismissed due to not meeting the grounds of appeal. Rebecca contacted the Office outlining concerns about advice she was given regarding the procedure for requesting a review of her thesis mark.

The result

The Office investigated whether the university's decision not to award a re-mark of Rebecca's thesis grade was reasonable.

The investigation noted concerns with the university's handling of the matter, including:

- the policies and procedures being difficult to navigate, and university staff providing conflicting information
- the university's attempt to combine considerations from different procedures, making it challenging to defend the reasons and ascertain review rights
- the review process disadvantaging students who had received their final grades by only allowing limited grounds to appeal under its final subject result appeal procedure
- Rebecca demonstrating legitimate grounds for appeal due to the university inadequately addressing all points raised in relevant evidence.

In the time between Rebecca lodging a complaint with the Office and our investigation being finalised, the university had updated its policies and procedures. In its response to this Office's investigation, the university provided Rebecca with an opportunity to have her matter heard by the appeals committee.

Ombudsman insight

Complaints are a useful way for an agency to identify where improvements are required.

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University's intent didn't align with procedure wording

Riya was an international student studying for a health care degree at university.

When Riya failed a work placement in 2022, the university advised that she was placed on a student development program (level B). Riya was told that she had to successfully complete another clinical module to continue her course. Riya did not pass this module. The university advised that she had met the criteria for exclusion for 12 months under the university's student development program (level C) procedure and was therefore being excluded for 12 months.

The exclusion would have significant implications for Riya's visa and would permanently affect her visa history.

Riya appealed the decision. The university dismissed her appeal and advised the decision was made in line with the student development program procedure. Riya then made a complaint to this Office.

The result

This Office investigated whether the university's decision to exclude Riya for 12 months was reasonable.

According to the university's procedure, if a student met one or more of the stated criteria, they would progress to level C. Riya had not met any of the criteria – her grade point average was not 3.00 or less, she had not failed the same course three or more times and she had not failed a work placement two or more times.

The procedure also stated that in exceptional circumstances, the relevant Head of School may initiate a status change to level C for a student who has been identified as meeting one or more of the criteria. However, as Riya had not met any of the criteria, the university's decision to exclude Riya was not supported by its procedure.

When this Office reviewed the university's procedure, it appeared that the intention was to provide for exceptional circumstances to initiate a level C status for a student when one or more of the three criteria had not been met. However, the language used was not consistent with the purpose.

After this Office raised these concerns to the university, it agreed to review its decision on Riya's exclusion and update its student development program procedure to reflect the way it intends to apply the procedure.

Ombudsman insight

If a decision is not supported by an agency's policies or procedures, the decision may be called into question. It is important policies and procedures are reviewed to ensure they are achieving their intended purpose.



State departments

Absence of transparency and procedural fairness in managing complainant conduct

Belinda made a complaint to the Office of Industrial Relations (OIR) about a workplace matter that occurred a year ago. She was not satisfied with its resolution of her complaint. OIR had provided Belinda with its final response regarding her complaint, and considered Belinda continued to communicate frequently and persistently with its office about the workplace matter.

The OIR sent Belinda a letter in July, stating:

1. the OIR would not investigate her matter further as her complaint was unreasonable
2. Belinda was restricted from making complaints to the OIR due to previous unreasonable conduct.

The result

This Office's investigation found that improvements could be made to the OIR's process and communication.

The OIR provided comprehensive information to this Office regarding the internal process it used in deciding that Belinda's complaint was unreasonable. However, the letter provided to Belinda in July did not include the same level of detail. Beyond identifying her conduct was considered frequent and persistent, it did not adequately identify the aspects of her conduct that were considered unreasonable. The referenced complaints policy also lacked detail on how the OIR identified and managed unreasonable conduct. Therefore, the OIR did not communicate sufficient reasons for the decision not to further assess her complaint.

This Office considered that Belinda was not:

- adequately informed how the OIR identifies and manages unreasonable conduct
- provided with sufficient opportunity to address her conduct prior to the decision being made.

The decision to restrict Belinda from further communication with OIR was unreasonable as she was not afforded procedural fairness in the decision-making process.

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Financial impact of decisions

Gina is the owner of a small business in rural Queensland. WorkCover Queensland accepted a claim for an employee of her business.

Gina received weekly remittance advices from WorkCover confirming payment of wages as compensation for the employee. She did not receive any information from WorkCover about how to process the wages. As the remittance advices stated 'net amount', she assumed these payments were issued as a net amount. She passed on the stated amount and topped up the employee's wages to their contracted rate. On numerous occasions, she queried with case managers why she was out of pocket, but her questions were either overlooked or ignored.

From the outset of Gina's interactions with WorkCover, she was dissatisfied with its handling of her case and poor communication from case managers. WorkCover's advice to Gina resulted in more than \$14,000 overpayment to the employee over a period of one year.

When she complained to a senior manager, WorkCover admitted its errors; however, she was advised that WorkCover could do no more for her because it had correctly calculated the amount of weekly compensation payable to the employee as required by the legislation. The senior manager's advice to Gina was for her to contact the Australian Taxation Office (ATO) requesting that they recover the overpayment directly from the employee.

She requested an internal review of her complaint. She sought the payment from WorkCover as they had acknowledged fault. WorkCover declined her request. Gina then complained to this Office.

Ombudsman insight

Inaccurate agency communication and terminology can have significant impacts on individuals and businesses. Where impacts have been felt due to poor communication, an agency needs to act to find a resolution.

The result

This Office looked at whether WorkCover's decision that it was unable to reimburse Gina's overpayments (made as a result of WorkCover's advice) was reasonable, and whether its management of Gina's complaint was compliant with its complaints management policy.

In response to this Office's queries, WorkCover:

- acknowledged Gina was not informed of the 85% payment by WorkCover of the employee's wage, which resulted in the continuous overpayment
- liaised with Gina's accountant to seek to recoup the overpayment of tax to the ATO
- paid her accounting costs regarding the follow up work required to liaise with the ATO
- acknowledged the communication and process in handling her complaint was not best practice and apologised to Gina.

Also, the remittance advice to employers stated 'net amount', and WorkCover acknowledged this reference was misleading. This Office suggested WorkCover change this to 'gross amount' to avoid confusion for other employers.

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Inadequate response led to complaint escalation

Marnie was a patient in a hospital. During her treatment, a hospital staff member contacted her ex-partner against Marnie's wishes and disclosed sensitive personal information. Marnie complained to the hospital, which reviewed the matter and found no concerns with the conduct of the staff member. Marnie was dissatisfied with the hospital's response because she felt she was given insufficient information about how the hospital reached this conclusion. She then complained to the Office of the Health Ombudsman (OHO) about the hospital's failure to adequately respond to her regarding the staff member's breach of her privacy.

OHO decided to take no further action on the complaint on the basis that the hospital had already reviewed the complaint, finding no concerns, and OHO would be unable to achieve anything further. OHO's response stated that Marnie 'can reply to their email for further information', but when she did so, she did not receive a response.

Marnie was dissatisfied with OHO's decision as she considered that it solely relied on the hospital's response to her complaint without verifying whether the response was adequate or in accordance with relevant guidelines. Marnie then complained to this Office.

Ombudsman insight

Complaint escalation can be reduced if agencies provide clear reasons when a complaint is initially made.

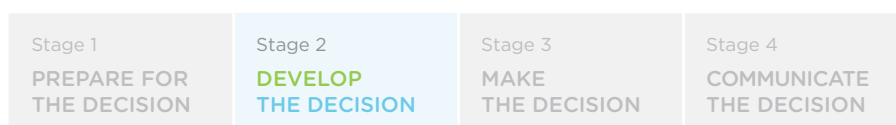
The result

This Office investigated whether OHO's decision to take no further action on Marnie's complaint was reasonable.

The investigator found that Marnie was correct in her view that OHO simply relied on the hospital's response and said there was nothing further it could achieve. OHO's decision notice to Marnie did not sufficiently explain the reasons for that decision.

Given the seriousness of the allegations, and the lack of detail in the hospital's response about how it determined there were no concerns with the staff member's conduct, the investigator considered that it would have been appropriate for OHO to make further enquiries with the hospital to be satisfied that appropriate action had been taken.

In response to this Office's queries, a senior OHO officer reviewed the decision to take no further action and identified areas of concern where an issue was not addressed. The senior OHO officer registered a new complaint case, sought and received detailed information from the Hospital Health and Service, and fully considered the issues Marnie raised, including her concerns that the hospital's response to her complaint was inadequate. The OHO is currently developing refreshed training and development tools to assist staff in managing these types of matters, with specific focus on triage decision-making.



Human rights need to be prioritised in decision-making

Over a few years, Ronnie was placed on safety orders (segregated from other prisoners) in response to his involvement in multiple incidents with other prisoners at a correctional centre. While on a recent safety order, he complained to Queensland Corrective Services (QCS) that he had not received his entitled two hours a day exercise time. When his complaint was dismissed by QCS, Ronnie complained to this Office.

The result

Investigations by this Office in 2019 and 2021 found QCS had regularly missed providing Ronnie with his entitled two hours a day exercise time while he was on a safety order. This Office had previously raised concerns about systemic issues relating to the management of prisoners on safety orders at multiple correctional centres, having received 16 complaints about safety orders in the 2020–21 financial year. This Office's investigations also raised concerns on potential human rights issues due to the need for segregated prisoners to be strip searched to be moved to a detention centre for their exercise.

Ombudsman insight

Under the Human Rights Act 2019, all agencies must identify and assess any human rights relevant to a decision or action. Agencies must consider if the proposed decision is compatible with human rights. If the decision limits a person's human rights, it must be reasonable and justified to do so.

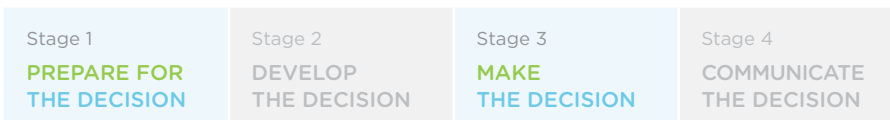
During investigations, the Office found:

- QCS had been aware of safety order issues for some time and that QCS Office of the Chief Inspector (OCI) had completed a thematic review of segregation in 2018
- OCI had a draft report detailing problems with the use of safety orders as a prisoner behaviour and management tool
- QCS was aware that infrastructure limitations at multiple centres was resulting in difficulty ensuring all segregated prisoners receive two hours exercise unless they are taken to a detention unit, requiring strip search.

The investigation found positive steps that QCS is taking to uphold the human rights of segregated prisoners, including:

- human rights training across corrective services facilities
- conducting a review into the systems and decision-making processes for orders confining prisoners to segregation
- completing a risk assessment on the practice of removal of clothing searches when conducted in connection with exercise time
- future infrastructure projects to increase segregation options.

This Office remains concerned about whether segregated prisoners are provided with two hours exercise a day in a humane manner, as is their right. Therefore, this Office has requested progress updates from QCS on the matter and will continue to monitor these issues through complaints received and the future work of the Inspector of Detention Services.



Decision-makers should consider the individual circumstances of a case

Geoff had a medical condition that required him to travel from rural Queensland to Brisbane for specialist treatment for many years. Initially, this treatment was unavailable locally, therefore travel was subsidised under the Patient Travel Subsidy Scheme (PTSS). Unknown to Geoff, the treatment had become available at the local hospital. The first notification of this availability was in correspondence from his local Hospital Health Service (HHS), part of Queensland Health, denying subsidised travel to his Brisbane specialist.

Geoff appealed the decision due to its abrupt nature, which did not allow any compromise or adequate time to arrange treatment from the local specialist. After his appeal was rejected, Geoff complained to this Office.

Ombudsman insight

Agencies should ensure an individual's circumstances are adequately considered and that this is reflected in their reasoning.

The result

The Office investigated whether the HHS's decision to refuse Geoff's subsidised travel was justified in its immediate termination. The Office found there were exceptions to the decision, not outlined to Geoff, that allowed for a 'grace trip' due to historical evidence of PTSS approval for travel to Brisbane. The HHS subsequently offered a grace trip for the latest appointment Geoff had attended in Brisbane while Geoff initiated the referral process with his local specialist.

The Office made recommendations to the HHS to ensure decision-makers are:

- adequately considering the individual circumstances
- familiar with discretionary considerations
- recording reasons for decisions taken
- providing applicants with adequate and relevant reasons for decisions.

Another improvement identified was for the HHS to revise wording in decision letter templates to accurately reflect the requirements of the PTSS Guidelines.

The HHS acknowledged that greater communication with the patient, including documenting a clearer pathway of options, will support patients in navigating the PTSS process.

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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COVID quarantine fee waiver program

In June 2020, the Queensland Government decided the cost of hotel quarantine should be borne by those who were directed to quarantine. People who underwent hotel quarantine were able to apply to have their fees waived in certain circumstances.

Queensland Health was responsible for administering the fee waiver program.

The Office received many complaints about the program. The following three cases highlight some of the issues addressed in resolving these complaints.

Queensland Health response

Queensland Health acknowledged there are valuable lessons to be learned from the fee waiver program. Cases raised by this Office meaningfully informed improvements to local procedures and processes relating to administrative decision-making, quality of reasons for decision correspondence, transparency of eligibility criteria, and overall customer experience.

Improvements made in administrative decision-making

Justin was required to quarantine in a hotel for a month in 2021. The hotel was unable to cater for Justin and his wife's dietary requirements. As a consequence, Justin cancelled the hotel meal service and sourced appropriate alternative food for the duration of their stay. Justin received verbal advice from hotel and Queensland Health (QH) staff that they would not be charged for the cancelled meals.

The quarantine invoice issued to Justin included charges for the cancelled meals, so Justin wrote to QH requesting a partial waiver of the hotel quarantine fees for meals. He supported his request with documents from the hotel confirming that no meals were supplied to Justin and his wife during their stay.

QH did not approve the application on the basis that his dissatisfaction with the food did not qualify for a fee waiver. Justin was unhappy with this result as he had already paid for externally sourced food during quarantine and did not want to pay for the meals, since he and his wife did not receive them. Justin complained to this Office about the administrative decision-making process.

The result

The Office discussed with QH Justin's request for a partial waiver of hotel quarantine fees due to the hotel being unable to provide meals that met dietary requirements. As a result, QH agreed to reconsider Justin's circumstances. Justin later advised this Office that QH granted him a partial waiver for the meal component of his hotel quarantine fees.

QH acknowledged lessons learned from this matter and made improvements in administrative decision-making regarding fee waivers.



Lack of procedural fairness afforded during application process

Ling returned from overseas in October 2021 and quarantined in a hotel as directed. She struggled in quarantine and did not eat any of the hotel food and Ling ended up buying her own meals. She borrowed money from her sister to buy a return ticket to Australia and was under a great deal of pressure financially.

Under the quarantine fee waiver scheme, there were four eligibility categories: financial hardship, vulnerability, travel booked before 17 June 2020 and other extenuating circumstances.

Ling received an invoice for hotel quarantine for \$3220. She applied for a fee waiver because she had less than \$10,000 in savings and therefore believed that she met the eligibility criteria under the financial hardship category for a fee waiver.

Queensland Health (QH) declined her application for a fee waiver stating:

- applicant must show savings of less than \$10,000
- applicant must be Australian citizen or permanent resident
- applicant has not responded to multiple requests for evidence of Australian citizenship or permanent residency, bank statements and Centrelink documentation.

Ling could not understand why QH had rejected her application and appealed the decision. In considering her appeal, QH requested bank statements for a period of three months showing transactions for all accounts, including linked accounts held under her name. Ling told QH that she had sent all the documents she had and that she had only one bank account when she applied for the fee waiver.

On review, QH made a decision not to approve Ling's quarantine fee waiver application on the basis that she did not provide sufficient evidence, specifically bank statements for a different account. Ling disagreed with the decision as the account QH was seeking bank statements for was not opened until 2022, after she completed quarantine.

The result

In her complaint to this Office about QH's decision to decline her fee waiver, Ling provided evidence that showed the bank account in question was not opened until January 2022. Following receipt of this evidence, this Office contacted QH requesting it consider the new evidence. As a result, QH confirmed it would provide Ling with another opportunity to have her circumstances considered. QH noted that Ling had two bank accounts and that applicants must provide bank statements for the same three-month period for all accounts held in their name, including any linked accounts.

As a result of this Office's action, QH approved Ling's fee waiver application.

Ombudsman insight

Procedural fairness includes providing an opportunity to comment on relevant issues and information before a final decision is reached. Making assumptions can lead to an incorrect or unreasonable decision.

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PREPARE FOR
THE DECISION

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THE DECISION

Stage 3
MAKE
THE DECISION

Stage 4
COMMUNICATE
THE DECISION

Insufficient reasons for decision considered confusing and unreasonable

Rosa travelled to Italy as her elderly mother required care in April 2020. In May 2020, Rosa suffered a life-threatening medical incident and required emergency surgery in Italy. The Queensland Government then announced it would begin charging international arrivals for hotel quarantine unless they had a confirmed arrival date before 17 June 2020. However, Rosa had been declared medically unfit to fly until the end of July 2020.

Despite several attempts to secure flights to return home, due to airline cancellations, Rosa was not able to return to Brisbane until September 2020. Rosa said had it not been for her emergency surgery, she would have returned well before she was required to pay for hotel quarantine.

While in hotel quarantine, Rosa needed a special diet for her medical condition, which the hotel provider could not supply.

Rosa completed a fee waiver application to have her exceptional circumstances considered.

Queensland Health (QH) partially waived Rosa's quarantine fees due to the issues she experienced with the food, but decided not to waive the remainder of her invoice. QH's decision did not provide sufficient reasons for Rosa to understand why the remainder of her invoice was not waived. QH advised it would only review the decision if Rosa provided new information, but QH did not explain what further information it required.

Rosa felt that QH had not considered her circumstances and made a complaint to this Office.

The result

In response to this Office's request to reconsider the decision not to approve a full fee waiver, QH reopened Rosa's application for further consideration of her individual circumstances. QH advised Rosa that it had decided to fully waive the quarantine fees.

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Statutory authorities



Improvements to grant application processes identified

Kilian used his property for a range of primary production activities. After his property was affected by flood, he applied for funding under the Extraordinary Disaster Assistance Recovery Grants scheme, which is administered by the Queensland Rural and Industry Development Authority (QRIDA). This grant assists directly impacted primary producers and small businesses with the costs of clean-up and reinstatement.

Kilian's grant application was denied. He was confident that he was eligible and stated his application was rejected on invalid reasoning and incorrect application of QRIDA's eligibility guidelines. He sought an internal review, and was again denied grant approval. He then complained to this Office, seeking an independent review of his application.

The result

This Office investigated whether QRIDA's decision to deny Kilian a grant under the scheme was procedurally fair and if its communication contained justifiable reasons for the decision.

This Office queried how QRIDA:

- considered Kilian's specific situation
- assessed certain criteria
- applied specific terminology in its guidelines
- communicated with Kilian its likely view and whether it gave him an opportunity to provide additional information to demonstrate he had met the criteria
- explained to Kilian the reasons for its decision.

As a result of the Office's investigations, QRIDA agreed to provide detailed and specific reasons for its decision to date, and an opportunity for Kilian to make a submission responding to the reasons, which it would then consider. Following this process, QRIDA decided that Kilian was eligible to receive the grant.

QRIDA also agreed to:

- undertake a similar process for several other applicants
- make improvements to its processes in considering grant applications and in its communication with applicants.

Ombudsman insight

The Queensland Ombudsman *Checklist for programs with eligibility criteria* provides useful guidance to agencies with responsibility for administering grants.

You can access our quick guides and checklists: bit.ly/QOguides

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Process deficiencies when dealing with defective building works

Layla represented the body corporate of a six-unit complex. Two years after the property was constructed, the body corporate made a defective building work complaint to the Queensland Building and Construction Commission (QBCC) about a gutter releasing water into a common area of the complex during heavy rain.

QBCC indicated it would attempt rectification in response to the complaint. The original builder did not agree to undertake the rectification works and the matter became a claim under the Home Warranty Insurance Scheme.

The body corporate engaged a hydraulic engineer to provide a report with a solution to the gutter problem. QBCC developed a scope of works (SOW) including the hydraulic engineer's advice. QBCC engaged a consultant business to manage the rectification process, which engaged a builder to undertake the works. The chosen builder's contract referenced the SOW as the description of the works, with no excluded items. It also added a special condition describing additional drainage work. Layla signed the contract on the basis that both the SOW and the additional drainage work would be completed.

The builder did not carry out all the works in the SOW. There was no advice given to the body corporate that the SOW would not be completed, nor that the additional drainage work specified in the special condition would be constructed instead of the approach described in the SOW.

Two years after the initial complaint, Layla made another defective building work complaint to the QBCC about the rectification building works. This complaint was rejected by the QBCC. Layla then complained to this Office.

The result

This Office investigated whether QBCC's management of the rectification building works process was reasonable.

QBCC advised that the SOW 'intent' was 'generally achieved', as a post completion building inspection confirmed that stormwater drainage was installed and functioning as intended. QBCC stated that the alternative approach described under the special conditions was justified based on the impracticalities of the proposed SOW works.

The Office investigators formed the view that the QBCC's intention was clearly to implement the alternative approach, not the approach listed in the SOW. The lack of clarity about this change, and the lack of a formal variation of the SOW, contributed to the protracted complaint outcome and confusion about what work was to be completed.

QBCC confirmed some aspects of its approval process and communication about the works change were not performed well. QBCC agreed to take further action to address these issues.

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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Due process missed in error

Cedric applied for a grant of legal aid to fund his appeal.

When Legal Aid Queensland (LAQ) refused his application, Cedric asked for an external review. Cedric was distressed when the external review decision letter did not refer to the evidence he had included in his application supporting his position. Cedric was concerned that the evidence was therefore not considered.

LAQ did not provide Cedric with an opportunity to speak directly with the external reviewer prior to the decision being made. The external review decision letter mistakenly stated such an opportunity had been provided.

Cedric wrote to the Office questioning LAQ's refusal of his application.

Ombudsman insight

For procedural fairness, it is important customers are given sufficient opportunity to provide their side of the story prior to a decision being made.

The result

An investigation by this Office resulted in LAQ acknowledging that the step of inviting Cedric to speak with the external review decision-maker prior to the external review was missed in error. This meant Cedric was not given due process.

Consequently, LAQ arranged two meetings with an external review officer to allow Cedric to provide additional material and submissions and have his application reconsidered.

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Appendix A: Jurisdiction and procedural fairness

Ombudsman jurisdiction

The Queensland Ombudsman and Inspector of Detention Services (Ombudsman)* is an officer of the Queensland Parliament empowered to deal with complaints about the administrative actions of Queensland Government departments, public authorities and local governments.

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.

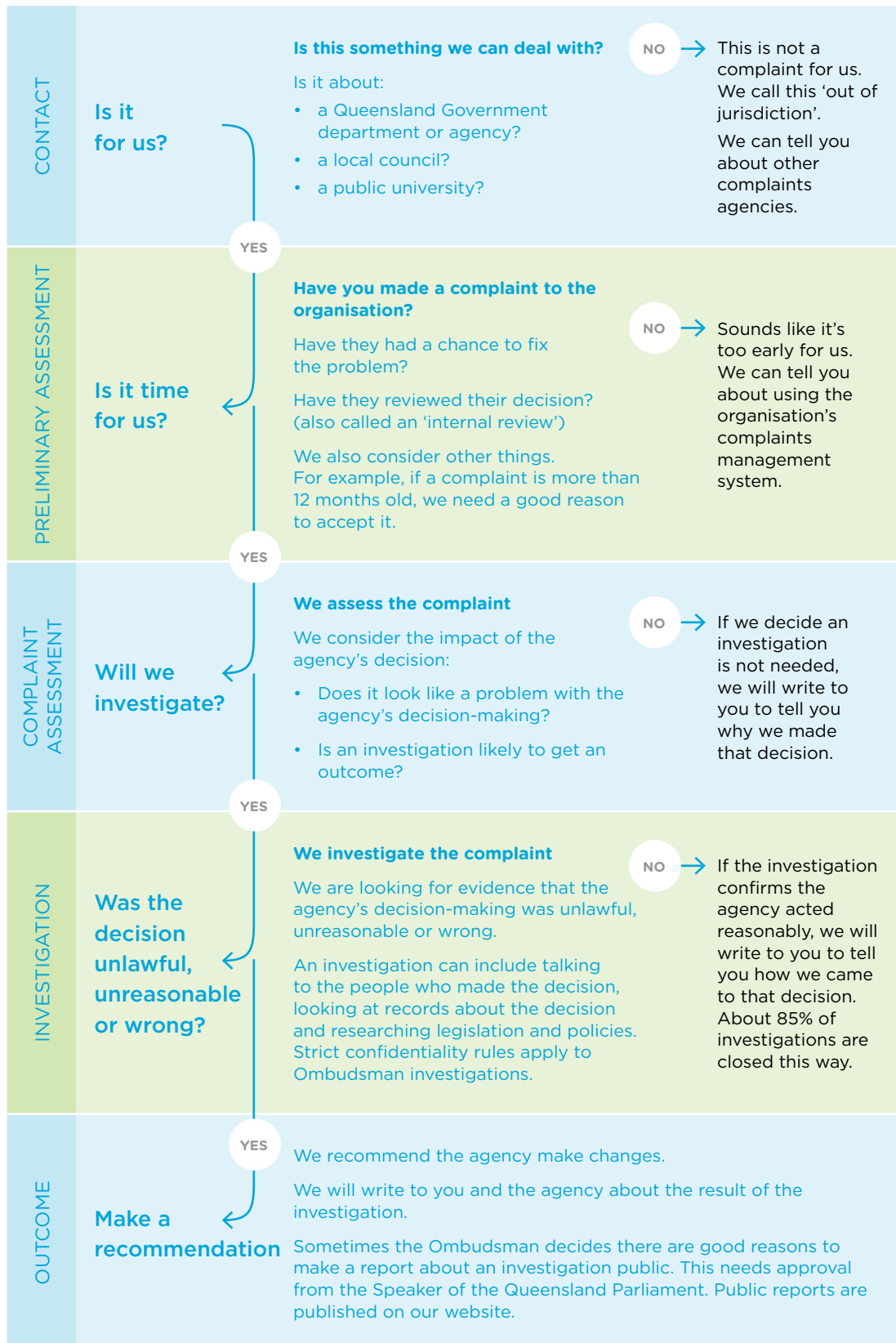
Procedural fairness

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.

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

Appendix B: The Ombudsman process





QUEENSLAND
OMBUDSMAN