



## Good decision making

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This guide sets out key information about good decision making by state sector agencies.

Poor decision making and ineffective administrative processes can lead to complaints and challenges to decisions. Ultimately, poor decision making can increase overall downstream costs for agencies.

A focus on good decision making can help to prevent some complaints being made at all. It is also likely to result in fewer of the complaints that are made being upheld and requiring remedial action.

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## The role of a decision maker

The role of a decision maker is to make a good decision taking into account all relevant information.

Legislation usually provides the lawful authority for officials to take action and make decisions. If the legislation requires the official to act in a particular way, then they must do so. However, the legislation may give the official a choice in the matter, and in these cases an exercise of discretion will be required.

The exercise of discretion requires the exercise of good judgment

## Who has the power to make a decision?

The legislation will set out who has the power to make a decision, and whether that power may be delegated. Before taking action or making a decision, the decision maker should check they have the power to do so (or that the power has been delegated to them), and the limits on the power they can exercise.

### Delegating powers

Those who delegate powers to others should consider:

- which acts and decisions should be delegated and which should not; and
- the most suitable person to receive the delegation.

The power of delegation itself should not be delegated

When delegations are made, it is also important to ensure that:

- accountability and transparency in decision making is not compromised;
- efficiency and quality in decision making is maintained; and
- the delegation is recorded in writing.

## Policies and guidelines for decision making

Agencies should develop policies and guidelines for decision makers. Unlike legislation, policies and guidelines do not have the force of law and they should be able to be departed from where appropriate.

Not every situation needs a policy or guideline, and they may not cover all circumstances. However, they are an important means of providing guidance to decision makers in the exercise of their discretion, and they can be useful to ensure similar decisions are made consistently and fairly. Consideration should be given to developing a policy or guideline if better service delivery and decision making is likely to be achieved as a result.

Policies and guidelines help to ensure decisions are made consistently and fairly

Policies and guidelines should:

- be straightforward and contain a clear purpose statement;
- be flexible to cover a range of circumstances;
- set out how they relate to the relevant legislation;
- set out the relevant considerations to be taken into account by the decision maker;
- be communicated to relevant staff; and
- be made available to members of the public.

## Making a good decision

When making a decision, officials must act reasonably and fairly within their powers. Decision makers should have regard to any specific legislative or procedural requirements, as well as satisfy general administrative law requirements. In general, decision makers should:

- act independently, in good faith and for a proper purpose;
- comply with relevant legislation;
- follow any relevant policies and guidelines, unless there is reason to make an exception;
- take into account all relevant matters;
- ignore matters that are not relevant to the decision;

- apply the appropriate weight to the different factors relevant to the decision;
- give proper consideration to the merits of the case; and
- make the decision on reasonable grounds and based on supporting evidence.

### Each case should be considered on its merits

If the relevant legislation states that certain matters must be taken into account in the decision making process, then these matters must be considered.

If the legislation allows for other matters to also be taken into account (including by use of the word 'includes' when setting out relevant factors), or does not state the matters to be taken into account, then it is important to consider the underlying purpose of the decision making power and what factors might be relevant to achieve that purpose.

Guidance can also be obtained from:

- agency policies and guidelines;
- previous decisions;
- court or tribunal decisions; and
- the overall objectives of the legislation under which the decision is made.

## A fair process

A fair process should be followed in making a decision which impacts on someone. This will help to ensure that a fair and correct decision is made.

To ensure a fair process, the decision maker should:

- give the person an opportunity to provide all relevant information;
- where appropriate, give the person a fair chance to comment before the decision is made;
- take measures to address any actual or perceived conflict of interest;
- act independently and have an open mind; and
- act without undue delay.

A person affected by a decision should be given an opportunity to provide all relevant information before a decision is made. Where a person is making an application for something,

this can be achieved by providing advice as to the information they need to submit with their application.

However, a person should also be told, at an appropriate point, of the case against them, and given a chance to comment, where:

- adverse information has been obtained which will be taken into account and which the person has not previously been made aware of; or
- consideration is being given to cancelling an existing licence or benefit.

Providing the person an opportunity to comment in these cases can assist the decision maker to check they have the correct facts. It can also identify any major issues that may be of concern to the person, and which they may seek to challenge later on if they are not addressed at an early stage.

### Case study (288076): Commenting on adverse information

A complaint was made to the Chief Ombudsman about the way in which the Department of Labour managed a notification of a workplace accident.

The complainant notified the Department of a workplace accident in which she had been injured. The Department received written comments and investigation reports from the employer, and then decided to take no further action in respect of the accident.

The information provided by the employer conflicted with that provided by the complainant, and the employer made adverse comments about the complainant and the nature of her injuries. The complainant was invited to contact the Department within 14 days if she had any concerns with the decision to take no further action. However, the Department did not consult with the complainant about the adverse information provided by the employer.

Following her investigation, the Chief Ombudsman formed the opinion that the Department had acted unreasonably. The complainant was not given an adequate opportunity to make representations prior to the final decision to take no further action. The complainant was not invited to comment on the adverse information provided by the employer. She was also not provided with adequate reasons as to why the Department would not be taking her complaint further. Had the complainant been provided with an appropriately detailed explanation, she would have been in a much better position to query the basis for the decision, and/or to provide additional information that may have clarified certain issues.

The Department accepted that it should have given full reasons for the decision and an apology was offered by way of remedy. The Department also advised that the Chief Ombudsman's findings in this case would be taken into account in an ongoing review of its processes.

## Keeping people informed

It is important to keep people informed during the decision making process. In particular, how the process works and if there are likely to be any delays.

Those affected should also be informed of the outcome of the decision and the reasons for the decision.

## Recording and giving reasons

Recording and giving reasons for decisions is a matter of good administrative practice and serves to promote accountability.

For a person who is affected by a decision, knowing the reasons for that decision can make it easier to assess whether the decision was in fact fair and reasonable, and to understand and accept the decision even if it is perceived to have an adverse effect. Alternatively, knowing the reasons for a decision may help a person to decide whether or not it should be challenged.

For agencies, recording and giving reasons helps to ensure that decision makers avoid arbitrary procedures and make well-founded decisions, thus enhancing the quality of the decision making process.

### Giving reasons for decisions can assist:

- understanding by those affected of why the decision was made
- public confidence in the decision
- consistency and quality in decision making
- fairness and transparency

These matters were highlighted by the Court of Appeal in *Singh v Chief Executive, Department of Labour*,<sup>1</sup> where the rationale for giving reasons was discussed:

*“1. The discipline on the decision maker itself: it is commonplace that preliminary views can be changed when the process of thinking through the reasons and writing them down is undertaken.*

*2. Assurance to those affected that their evidence and arguments have been assessed in accordance with the law...*

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<sup>1</sup> [1999] NZAR 258, at 262-263.

3. Assistance to those affected in deciding whether to challenge the decision, for instance by appeal, review or other complaint mechanism – since the statement of reasons may satisfy them that they have no real prospect of a successful challenge.
4. If a review is mounted, assistance to the parties, counsel and deciders engaged in the review.
5. The establishment, where appropriate, of a body of precedent or at least of guidance, governing or affecting the exercise of the particular power.
6. Assurance to the wider public of the legitimacy, openness and accessibility of the exercise of the power – an aspect of accountability.”

In most cases where a decision is made by a state sector agency in respect of a person in their personal capacity, that person has the right under section 23 of the Official Information Act 1982<sup>2</sup> to be given, on request, a written statement of:

- “(a) The findings on material issues of fact; and*
- (b) [with certain exceptions] a reference to the information on which the findings were based; and*
- (c) The reasons for the decision or recommendation.”*

For more information about requests made under section 23 see our guide [Requests for reasons for a decision or recommendation](#).

Recording reasons at the time can therefore help if a request is later made by the person concerned for a statement of reasons, or if the decision is challenged. In some cases, there may be a statutory provision specifically requiring reasons to be given when the decision is made.

Even where a person does not request a statement of reasons, it is still good administrative practice to provide reasons unless doing so would prejudice interests that are protected by law. It is particularly important to give reasons if:

- the decision adversely affects the person, or
- an established approach, policy or guideline is being departed from.

In the few cases where decision makers are specifically exempted by legislation from providing reasons to the person concerned, the reasons should still be recorded. Records need to be made for the purposes of accountability, to promote public trust and confidence in the integrity of the decision making process, and to enable verification of what was done. Recording reasons will help to ensure that all relevant factors have been taken into account and that the decision is soundly based.

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<sup>2</sup> Section 22 of the Local Government Official Information and Meetings Act 1987.

## What should a statement of reasons contain?

Reasons can be given orally, but it is consistent with good administrative practice to give reasons in writing. This also helps to ensure there is a written record of the decision if any concern or challenge is later raised.

Any response to a request that has been made by the person affected for a written statement of reasons for a decision must comply with the requirements of section 23 of the Official Information Act<sup>3</sup>. For more information about responding to requests made under section 23 see our guide [Requests for reasons for a decision or recommendation](#).

In all cases, the reasons for a decision should be given in straightforward language.

In *Singh v Chief Executive, Department of Labour*,<sup>4</sup> the Court of Appeal observed that where the law requires reasons to be given for a decision:

*“The authorities make it clear that it is not enough simply to state a conclusion in the words of the empowering statute; the reasons must be proper, adequate ones dealing with the point in contention”.*

**Giving reasons should enable the person affected to understand why the decision was made**

In giving reasons for a decision, the decision maker should deal with the substantial and key issues upon which the decision turns, and should include:

- the decision that has been made;
- the date of the decision (if the date the decision takes effect is different to the date of the decision, this should also be noted);
- who made the decision;
- a reference to any legislative authority under which the decision was made;
- a reference to any relevant legislative, policy or procedural requirements for the decision making process, and the relevant steps taken by the decision maker in that respect;
- a reference to the evidence considered and the key facts taken into account;
- an explanation of why the decision was made; and
- details of any rights of review or appeal from the decision, including time limits.

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<sup>3</sup> Above, n 2.

<sup>4</sup> Above, n 1.



## Good record keeping

Records tell us what, where and when something was done and why a decision was made. Records can assist if a decision is questioned or needs to be revisited. Records provide evidence of agency activities and promote accountability and transparency.

Keeping good records helps to ensure good decision making, and in particular:

- helps agencies to work more efficiently;
- enables agencies to meet their legal obligations under the Public Records Act 2005;
- protects the interests of the government and the agency concerned;
- demonstrates the cost and impact of the agency's business;
- enables the review of agency processes and decisions;
- retains the corporate memory of the agency;
- assists in research and development activities; and
- enables consistency and continuity in the agency's business.

Good record keeping involves:

- creating a written record of significant matters discussed in meetings or telephone conversations, such as providing advice and making decisions;
- documenting the reasons for decisions that are made;
- retaining copies of letters sent and other documents created in relation to a decision making process;
- saving records correctly in the agency's record keeping system, so they can be easily retrieved;
- storing records safely and securely; and
- following any relevant policies and procedures for managing records.

### Record keeping guidance

Archives New Zealand is able to provide state sector agencies with guidance on creating and maintaining records and archives. This includes tools and resources to help manage information, care for archives and comply with the Public Records Act.

See: <http://archives.govt.nz/>

### **Acknowledgement**

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