

# **Guidelines on Conducting Investigations**

**Ombudsman Western Australia**



## **Guidelines on Conducting Investigations:**

- Conducting administrative investigations
- Investigation of complaints
- Procedural fairness (natural justice)
- Giving reasons for decisions
- Good record keeping

A complete list of available Ombudsman Western Australia publications is available at the back of this booklet.

These guidelines have been developed to help Government agencies conduct administrative investigations. They are designed to contribute to fairness, integrity and good public administration.

The guidelines provide direction on key matters to be considered in the preparation and course of an investigation raising administrative or disciplinary issues only. They must be read in conjunction with any statutory provisions and guidelines applicable to the particular investigation being undertaken.

In addition to listing the key steps to be followed in an investigation, we have also included tips to help the investigator navigate some of the more complex challenges which arise in any investigation.

The investigation of complaints involving allegations of serious improper conduct, corruption, fraud or other criminal conduct must be referred to the appropriate authority.

## Step 1: Assess the complaint

Not every complaint requires investigation. The majority of concerns raised by complainants will be able to be resolved at an informal level or through other processes such as mediation. Many complaints involve communication problems or misunderstandings that can be resolved by discussion between the parties or with a supervisor.

Relevant factors to take into account in assessing the complaint include:

- whether an alternative and satisfactory means of redress is available;
- whether the complaint is trivial, frivolous or vexatious;
- the time that has elapsed since the events the subject of the complaint took place;
- how serious the complaint is and the significance it has for the complainant and the agency;
- whether it indicates the existence of a systemic problem; or
- whether it is one of a series of complaints, indicating a pattern of conduct or a widespread problem.

Some investigations are subject to particular legislative requirements. The assessment of the complaint and determination of the nature of the investigation must be undertaken within the relevant framework and having regard to the particular requirements. Examples include:

- the *Public Interest Disclosure Act 2003*, which sets out requirements for the investigation of “public interest disclosures” (see also the guidelines issued by the Office of the Public Sector Standards Commissioner)
- disciplinary investigations as a result of complaints about police officers, which are governed by the *Police Force Regulations 1979* and the Commissioner’s Orders and Procedures
- the *Public Sector Management Act 1994*, which sets out the procedures for dealing with suspected or alleged breaches of discipline by public sector employees.

## Step 2: Determine the nature of the investigation

This includes determining whether it is about:

- policies, procedures and practices, or
- conduct of individuals.

The nature of the investigation has a bearing on the powers necessary to conduct it, the resources needed, whether any authorisation may be required, and the nature of the possible outcome.

At this stage a decision should be made as to whether the complaint needs to be investigated internally or should be referred externally.

### Step 3: Determine powers of investigation

The effectiveness of an investigation is influenced by the available powers. Investigators must be aware of their power to require witnesses to talk, to obtain information from people about policies, procedures and practices, and to access relevant records.

If lack of sufficient powers is an issue, the investigator should consider referring the investigation to some other person or body with the necessary powers.

### Step 4: Develop the investigation framework

It is critical that one person be responsible for the conduct of the investigation, and thus for establishing the framework for the investigation. This framework should include:

- the appropriate authorisation to conduct the investigation;
- terms of reference which establish a focus and set limits on the investigation; and
- an investigation plan.

Ensuring that this planning stage is well done will have a major influence on the ultimate success of the investigation.

### Step 5: Gather evidence

The task of an investigator is to prove or disprove, if possible, any matter or matters of fact raised by a complaint. The investigator does this by gathering evidence. In an investigation, the main sources of evidence are:

- oral evidence (recollections);
- documentary evidence (records);
- expert evidence (technical advice); and
- site inspection.

Although only one witness may be required to prove any fact or set of facts, additional evidence in the form of corroboration is desirable.

If legal proceedings might arise at some future stage, evidence should be gathered in accordance with the rules of evidence. A basic awareness of these rules is useful to ensure that the evidence obtained is the best available and, where applicable, will be admissible in any subsequent legal proceedings that may arise.

### Step 6: Apply the appropriate standard of proof

In disciplinary and administrative investigations, allegations must be proved “on the balance of probabilities”. It must be more probable than not that the allegations are made out.

This standard of proof is that found in the often-cited case of *Briginshaw v Briginshaw* (1938) 60 CLR 336. The Briginshaw test (or Briginshaw standard as it is often called) possesses a measure of flexibility, so that the more serious the allegation the higher the degree of probability required.

### Step 7: Record and store information appropriately

Investigators must maintain a central investigation file, which is a complete record of the investigation, documenting every step, including all discussions, phone calls, interviews, decisions and conclusions made during the course of the investigation. This file must be stored securely to prevent unauthorised access, damage or alteration, and to maintain confidentiality.

## Step 8: Prepare the investigation report

This must be done at the conclusion of the investigation. The report will be for the records of the agency concerned, and may be subject to outside scrutiny. Ensure you have observed procedural fairness in preparing your final report.

## Step 9: Close the investigation

Complete and file all paperwork. It is best practice to conduct a review of the investigation, preferably done by someone more experienced than the investigator and independent from them. This enables the investigation to be assessed and may highlight some improvements in investigative mechanisms for future reference.

An investigation may lead to one of a range of possible outcomes, including:

- disciplinary action
- dismissal of a disciplinary charge
- referral of a matter to an external agency for further investigation or prosecution
- introduction of administrative policies, procedures or practices
- changes to administrative policies, procedures or practices
- redress for the complainant.

## Tips for a successful investigation

### The role of the investigator

There are two key tasks for the investigator:

- Ascertain all relevant facts pertaining to the complaint; and
- At the conclusion of the fact-finding exercise, report findings; the reasons for the findings, referring to the material on which they are based; and, if appropriate, make relevant recommendations.

### Recognise and avoid conflict of interest

All investigations must be conducted without bias, in an impartial and objective manner. No-one with an actual or perceived conflict of interest should be appointed or remain the investigator.

The more serious the complaint, the more important it is that the investigator be someone as independent of the events being investigated as possible.

Ensure you have addressed this issue at an early stage in the investigation process.

### Ensure confidentiality

Make sure you abide by any confidentiality requirements applying to the investigation. Likewise, impress upon all witnesses their obligation to keep details of the investigation confidential.

### Observe procedural fairness

Due process must be observed in every investigation. Procedural fairness requires you as investigator to:

- inform people against whose interests a decision may be made of the substance of any allegations against them or grounds for adverse comment in respect of them, and give them an opportunity to respond;
- provide all parties with a reasonable opportunity to put their case, whether in writing, at a hearing or otherwise;
- consider all submissions carefully;
- make reasonable inquiries or investigations before making a decision;
- take into account all relevant factors and no irrelevant factors;

- ensure that no person decides a case in which they have a direct interest;
- act fairly and without bias; and
- conduct the investigation without undue delay.

### Deciding whether to allow the person who is the subject of the complaint to inspect documents related to the investigation

As investigator, be aware of any statutory rights of access the person who is the subject of the complaint may have (e.g. under the FOI Act) as well as any statutory exemptions or obligations of confidentiality which may apply. Where no statutory guidance is available, you will need to make a careful assessment based on the following competing interests:

- the right of the person the subject of the complaint to know the case against them
- the wish of any third party to have their identity remain confidential
- the general interest in ensuring the integrity of the investigation.

### Dealing with the parties involved

#### The complainant

Manage the complainant's expectations to ensure they are based on a realistic understanding of what the complaint can achieve.

Ensure their confidentiality and explain the importance of confidentiality generally.

Provide them with support, information, and regular feedback.

Inform them of the outcome of the complaint or other action, and the reasons.

#### The person who is the subject of the complaint

Before approaching the person who is the subject of the complaint, satisfy yourself that the allegations have some substance. If they have no substance and the person is unaware, then little is gained from raising the matter with them.

Where there is a case to answer, ensure you provide the person with procedural fairness.

#### Other witnesses

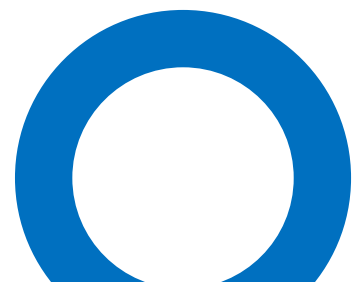
Be sensitive to the needs of other witnesses, for instance in supporting them through any trauma they may experience as a result of being involved in the investigation process.

Impress on them the requirements of confidentiality.

Only tell them as much about the investigation as is strictly necessary for the purpose of obtaining the required information.

#### Acknowledgement

Ombudsman Western Australia wishes to thank the [NSW Ombudsman](#) for allowing us to draw upon their excellent publication "*Investigating complaints - A manual for investigators*" in the development of these Guidelines, and for their ongoing advice and assistance.



What is an investigation?	What are the essential steps in an investigation?	TIPS	Procedural and evidentiary requirements
<p>A fact-finding process – a search for, gathering and examination of information in order to establish facts.</p> <p>It is one step in a decision making process which starts with an issue and ends with a decision.</p> <p>Its purpose is to establish and document relevant facts, reach appropriate conclusions based on the available evidence, and determine a suitable response.</p> <p>The nature and scope of an investigation will depend on the circumstances of each case and any relevant statutory requirements that may apply.</p> <p>More detailed information on investigation of complaints is available in the Ombudsman WA Guidelines <i>Conducting administrative investigations</i>.</p> <p>Acknowledgement: We thank the Office of the NSW Ombudsman for allowing us to use their excellent publication “Public Sector Agencies Fact Sheets A-Z” in the development of this Information Sheet, and for their continuing advice and assistance.</p>	<p><b>STEP 1 ASSESS THE COMPLAINT</b></p> <p>Determine what action is required, which may include options other than a formal investigation.</p>	<p>You will need to consider a range of factors, such as:</p> <ul style="list-style-type: none"> <li>whether the complaint involves a communication problem that can be resolved through explanation or discussion</li> <li>whether a more appropriate means of dealing with the issue is available</li> <li>whether the complaint can or must be referred or notified to a relevant government agency</li> <li>how much time has elapsed since the alleged events occurred</li> <li>the significance of the issue for the complainant and/or the organisation.</li> </ul>	<p><b>Impartiality</b></p> <p>Investigators must be impartial, adopting an inquisitorial approach, attempting to ascertain the truth and uncover all relevant facts.</p> <p><b>Procedural fairness</b></p> <p>This is very important in an investigation that could result in an outcome that affects the rights, interests or reputation of an individual.</p> <p><b>Confidentiality</b></p> <p>This can be very important in an investigation such as an evidence-focused investigation into the alleged conduct of an individual.</p> <p><b>Communication</b></p> <p>As a general rule, keep both the complainants and person or bodies the subject of an investigation informed about the progress of the investigation.</p> <p><b>Standard of proof</b></p> <p>In administrative investigations, allegations must be proved according to the balance of probabilities, that is, it must be more probable than not that the allegations are made out.</p> <p><b>Rules of evidence</b></p> <p>The rules of evidence will not apply to the majority of administrative or disciplinary investigations.</p> <p>Nevertheless it is useful for an investigator to understand the basic rules of evidence.</p>
	<p><b>STEP 2 SELECT THE APPROPRIATE INVESTIGATIVE APPROACH</b></p> <p>This can depend on factors such as statutory requirements which may apply; the nature of the issue; the likely outcome of the investigation.</p>	<p>Ask yourself whether the investigation is either evidence-focused or outcome-focused. Evidence-focused inquiries seek to pursue all lines of inquiry in a way that will meet all legal and procedural requirements. Outcome-focused inquiries are primarily directed at quickly identifying and remedying problems, and so seek to obtain sufficient information for a fair and informed judgement about the issues in question.</p>	
	<p><b>STEP 3 PLAN THE INVESTIGATION</b></p> <p>Define the subject matter and develop an investigation plan.</p>	<p>Identify what questions need to be answered, what information is required to answer those questions, and the best way to obtain that information.</p>	
	<p><b>STEP 4 ENSURE PROPER POWERS AND AUTHORITY</b></p> <p>Assess whether the investigation has the necessary powers to obtain evidence from relevant witnesses and to access relevant records</p> <p>Ensure the investigator has the authority to conduct the investigation.</p>	<p>Distinguish between the right to ask and the power to demand.</p>	
	<p><b>STEP 5 OBTAIN EVIDENCE</b></p> <p>Carry out the investigation by gathering sufficient reliable information to enable the issue to be properly addressed by proving or disproving matters relevant to the issue being investigated.</p>	<p>If the investigation is major or sensitive, ensure you have approved terms of reference and adequate resources.</p>	
	<p><b>STEP 6 REPORTING</b></p> <p>Prepare your document setting out the complaint, how the investigation was conducted, relevant facts, conclusions, findings and recommendations.</p>	<p>Where possible separate the investigation and decision making functions.</p>	

## What is procedural fairness?

*Procedural fairness* is concerned with the procedures used by a decision maker, rather than the actual outcome reached. It requires a fair and proper procedure be used when making a decision. The Ombudsman considers it highly likely that a decision maker who follows a fair procedure will reach a fair and correct decision.

## Is there a difference between natural justice and procedural fairness?

The term procedural fairness is thought to be preferable when talking about administrative decision making because the term natural justice is associated with procedures used by courts of law. However, the terms have similar meaning and are commonly used interchangeably. For consistency, the term procedural fairness is used in this fact sheet.

## Does procedural fairness apply to every government decision?

No. The rules of procedural fairness do not need to be followed in all government decision making. They mainly apply to decisions that negatively affect an existing interest of a person or corporation. For instance, procedural fairness would apply to a decision to cancel a licence or benefit; to discipline an employee; to impose a penalty; or to publish a report that may damage a person's reputation.

Procedural fairness also applies where a person has a legitimate expectation (for example, continuing to receive a benefit such as a travel concession). Procedural fairness protects legitimate expectations as well as legal rights. It is less likely to apply to routine administration and policy-making, or to decisions that initially give a benefit (for example, issuing a licence in the first instance).

In some rare circumstances, the requirement to provide procedural fairness is specifically excluded by Acts of Parliament (for example, section 115 of the *Sentence Administration Act 2003*).

The rules of procedural fairness require:

- A hearing appropriate to the circumstances;
- Lack of bias;
- Evidence to support a decision; and
- Inquiry into matters in dispute.

## What is “the hearing rule”?

A critical part of procedural fairness is ‘the hearing rule’. Fairness demands that a person be told the case to be met and given the chance to reply before a government agency makes a decision that negatively affects a right, an existing interest or a legitimate expectation which they hold. Put simply, hearing the other side of the story is critical to good decision making.

In line with procedural fairness, the person concerned has a right:

- To an opportunity to reply in a way that is appropriate for the circumstances;
- For their reply to be received and considered before the decision is made;
- To receive all relevant information before preparing their reply. The case to be met must include a description of the possible decision, the criteria for making that decision and information on which any such decision would be based. It is most important that any negative information the agency has about the person is disclosed to that person. A summary of the information is sufficient; original documents and the identity of confidential sources do not have to be provided;



- To a reasonable chance to consider their position and reply. However, what is reasonable can vary according to the complexity of the issue, whether an urgent decision is essential or any other relevant matter; and
- To genuine consideration of any submission. The decision maker needs to be fully aware of everything written or said by the person, and give proper and genuine consideration to that person's case.

### **How does procedural fairness apply to an individual who may be negatively affected by a government decision?**

If you are going to be negatively affected by a government decision, you are entitled to expect that the decision maker will follow the rules of procedural fairness before reaching a conclusion. In particular, you are entitled to:

- Be told the case to be met (for example, that an agency is considering withdrawing an existing entitlement or benefit such as a rebate or an allowance), including reasons for this proposal and any negative or prejudicial information relating to you that is to be used in the decision making process.

The case to be met could be a letter or a draft report, or it could be a summary of the issues being considered by the decision maker. It is not necessary for you to receive copies of all original documents or the identity of confidential sources be revealed.

- A real chance to reply to the case to be met, whether that be in writing or orally. The type of hearing should be proportional to the nature of the decision. For instance, if the consequences of the proposed decision are highly significant, a formal hearing process may be warranted. In contrast, if the matter is relatively straightforward, a simple exchange of letters may be all that is needed. Generally, in any oral (or face-to-face) hearing, it is reasonable to bring a friend or lawyer as an observer, so you may wish to consider this.

In your reply, you may, amongst other things, wish to:

- Deny the allegations;
- Provide evidence you believe disproves the allegations;
- Explain the allegations or present an innocent explanation; and
- Provide details of any special circumstances you believe should be taken into account.

You must have the chance to give your response before the decision is made, but after all important information has been gathered. This is so you can be given all the information you are entitled to and be aware of the issues being considered by the decision maker.

The decision maker should have an open mind (be free from bias) when reading or listening to what you have to say.

### **How does procedural fairness apply to an investigator?**

If you are investigating a matter or preparing a report for a decision maker, it is good practice to consider the requirements of procedural fairness at every stage of your investigation.

Procedural fairness is an essential part of a professional investigation and benefits both parties. As an investigator, acting according to procedural fairness can help you by providing:

- An important means of checking facts and identifying major issues;
- Comments made by the subject of the complaint that can expose weaknesses in the investigation; and
- Advance warning of areas where the investigation report may be challenged.

Depending on the circumstances, procedural fairness requires you to:

- Inform those involved in the complaint of the main points of any allegations or grounds for negative comment against them. How and when this is done is up to you, depending on the circumstances;
- Provide people with a reasonable opportunity to put their case, whether in writing, at a hearing or otherwise. It is important to weigh all relevant circumstances for each individual case before deciding how the person should be allowed to respond to the allegations or negative comment;

- In most cases it is enough to give the person opportunity to put their case in writing. In others, however, procedural fairness requires the person to make oral representations. Your ultimate decision will often need to balance a range of considerations, including the consequences of the decision;
- Hear all parties to a matter and consider submissions;
- Make reasonable inquiries or investigations before making a decision. A decision that will negatively affect a person should not be based merely on suspicion, gossip or rumour. There must be facts or information to support all negative findings. The best way of testing the reliability or credibility of information is to disclose it to a person in advance of a decision, as required by the hearing rule;
- Only take into account relevant factors;
- Act fairly and without bias. If, in the course of a hearing, a person raises a new issue that questions or casts doubt on an issue that is central to a proper decision, it should not be ignored. Proper examination of all credible, relevant and disputed issues is important;
- Conduct the investigation without unnecessary delay; and
- Ensure that a full record of the investigation has been made.

Of course, wherever there is a requirement to apply particular procedures in addition to those that ensure procedural fairness, the terms of that statutory obligation must also be followed.

The Ombudsman recommends that whenever it is proposed to make adverse comment about a person, procedural fairness should be provided to that person before the report is presented to the final decision maker. This should be done as a matter of best practice.

There is no requirement that all the information in your possession needs to be disclosed to the person. In rare cases, such as a serious risk to personal safety or to substantial amounts of public funds, procedural fairness requirements may need to be circumvented due to overriding public interest. If you believe this exists, make sure you seek expert advice and document it.

### How does procedural fairness apply to the decision maker?

Except in rare circumstances where procedural fairness is excluded by statute, if you are making a decision which will affect the rights, interests or legitimate expectations of a person, you must comply with the rules of procedural fairness. In other words, you must ensure:

- You allow the individual a fair hearing (or verify that the individual has been granted a fair hearing) that is neither too early nor too late in the decision making process; and
- You are unbiased. This includes ensuring that from an onlooker's perspective there is no reasonable perception of bias. For example, personal, financial or family relationships, evidence of a closed mind or participation in another role in the decision making process (such as accuser or judge) can all give rise to a reasonable perception of bias. If this is the case, it is best to remove yourself from the process and ensure an independent person assumes the role of decision maker.

If you are relying on a briefing paper that summarises both sides of the case and makes a proposal, it is often a good idea to disclose a draft of the briefing paper to the person, even though a hearing has earlier been held.

#### Acknowledgements

Ombudsman Western Australia wishes to thank the [NSW Ombudsman](#) for use of their publication *Investigating complaints - A manual for investigators* in the development of these guidelines, and their continuing advice and assistance. Thanks also to [Clayton Utz](#) for use of their publication *Good decision making for government*.



#### Ombudsman Western Australia

PO Box Z5386 St Georges Terrace Perth WA 6831

Phone 08 9220 7555 • Freecall (free from landlines) 1800 117 000 • Fax 08 9220 7500 • Interpreter 131 450

National Relay Service Quote 08 9220 7555 • TTY 133 677 • Voice-only (speak and listen) 1300 555 727 • SMS Relay Text 0423 677 767

Email [mail@ombudsman.wa.gov.au](mailto:mail@ombudsman.wa.gov.au) • Website [www.ombudsman.wa.gov.au](http://www.ombudsman.wa.gov.au)

### Benefits of giving reasons for decisions

Giving reasons for administrative decisions provides the following benefits:

- More public confidence in the decision;
- More consistency in decision making; and
- Fairness and transparency in decision making.

### Why should reasons for decisions be given?

When a decision is made, there is at least one alternative decision that could have been made. Giving reasons should enable the people affected by the decision to understand why a particular decision was made.

**Giving reasons should enable the people affected by the decision to understand why a particular decision was made.**

Giving reasons is important:

- To inform a person why a decision was made and to explain the decision;
- To meet any requirements under the legislation under which the decision was made;
- To help the person affected by the decision make a choice about exercising their right of review or appeal; and
- To comply with public authority customer service charters.

Giving reasons also demonstrates transparency, accountability and quality of decision making as follows:

<b>Transparency</b>	<p>A person affected by a decision is better able to see:</p> <ul style="list-style-type: none"><li>• The facts and reasoning that were the basis for the decision;</li><li>• That the decision was not made arbitrarily or based on speculation, suspicion or on irrelevant information;</li><li>• To what extent any arguments put forward have been understood, accepted or formed a basis for the decision;</li><li>• Whether they have been dealt with fairly; and</li><li>• The issues they will need to address if they decide to request a review of the decision or to lodge an appeal on the decision.</li></ul>
<b>Accountability</b>	<ul style="list-style-type: none"><li>• When required to give reasons, there is a greater incentive for decision makers to base their decisions on acknowledged facts;</li><li>• Supervisors and managers are better able to see if legal requirements, agency/government policies and standard practices have been complied with; and</li><li>• People or bodies with an external review role are in a better position to assess the decision, for example, whether it was reached lawfully, based on relevant considerations and based on the merits of the case.</li></ul>
<b>Quality</b>	<ul style="list-style-type: none"><li>• When required to give reasons, there is a greater incentive for decision makers to rigorously and carefully identify and assess relevant issues and to justify recommendations and decisions; and</li><li>• Other decision makers are able to apply decisions to future cases by using the reasons as guidance for the assessment or determination of similar issues.</li></ul>

## Should reasons be given in all cases?

There is no general duty at common law, or general rule of procedural fairness, that requires decision makers to give reasons for their decisions, although such a duty may arise in special or exceptional circumstances<sup>1</sup>. Special circumstances might include decisions relating to unfair dismissal or where giving reasons would assist someone when exercising a right of appeal. The courts hold the view that, generally, the question about whether reasons should be given is better determined by legislation.

Sometimes the requirement to give reasons is derived from the legislation which provides for the right of review of the decision, which may not be the same legislation which provided for the actual decision to be made.

## Circumstances when reasons are particularly important

There are circumstances when giving reasons is particularly important. These include when:

- The decision is not in accordance with a relevant established policy or guideline;
- The decision is likely to detrimentally affect the rights or interests of an individual or organisations to any material extent; and/or
- To explain the conditions imposed on an approval, consent, permit, or licence.

Where a decision maker makes a decision which is not in accordance with a relevant established policy or guideline, the reasons for the decision and the reasons for not following the policy should be recorded, either in the minutes of the meeting where the decision was made, in a report on the proposal in which the decision was recommended, or in a file note or memorandum attached to the relevant file.

## How and when should reasons be communicated?

The legislation under which the decision is being made may provide details about the form in which the reasons are required to be provided. For example, a prescribed form may exist in Regulations that must be used to communicate the decision. Generally, reasons are communicated in writing. This might form part of a document in which the decision is communicated rather than forming a separate statement.

Reasons should be drafted with the potential audience in mind:

- Reasons for decisions should be written in a style that can be easily understood by the person receiving it so that they understand the reasons for the decision and why the decision was made;
- Sentences should be short and plain English should be used;
- The language should be clear and unambiguous; and
- Technical terms and abbreviations should be avoided if they are not likely to be understood by the person receiving the statement of reasons.

**Reasons should be drafted with the audience in mind.**

Providing written reasons is always desirable. In some cases, reasons may not be required under legislation when the decision is made. For example, for some decisions that are reviewed by administrative appeal tribunals, the decision maker is not required to provide the reasons for a decision until requested by the tribunal after an appeal or request for a review of the decision is received. However, in such cases, providing written reasons at the time the decision is made is good administrative practice.

## What should written reasons contain?

The information contained in the written reasons may to some extent be proportional to the type of decision made and what requirements might be imposed by the legislation.

**Written reasons should deal with the substantial and key issues upon which the decision was made.**

---

<sup>1</sup> *Public Service Board of NSW v Osmond* (1986) 9 ALN N85

For a decision that was simple and quick to make, the reasons may be relatively brief but the information set out in the reasons for the decision is likely to be significantly greater where the decision making process has:

- Been lengthy and complex;
- Involved seeking the views of people likely to be affected by the decision, as well as seeking expert advice; and
- Involved weighing up of a number of key facts.

The reasons provided should deal with the substantial and key issues upon which the decision turns. It is not necessary to address each and every issue raised by the applicant or party to the proceedings<sup>2</sup>.

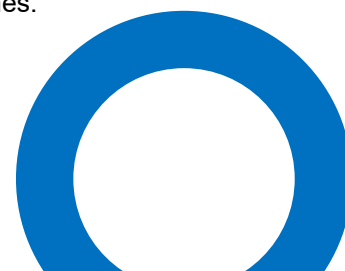
Consideration should be given to including the following types of information in the document containing the reasons for the decision made.

Information to be included in the document containing a statement of reasons	
<b>The decision</b>	The decision should be accurately described.
<b>Date of decision</b>	The date of the decision should be included. This is particularly important if there is a time limit for appeals on the decision to be made. If the date that the decision takes effect is different to the date of the decision, this should be included.
<b>The decision maker</b>	The name of the decision maker should be identified. This may be a person, committee or an organisation.
<b>Relevant legislation</b>	If the decision was made under legislation, this should be referred to. If the legislation specifies that certain actions be taken before a decision is made, for example, consultation with people that may be affected by the decision, reference to this may be required.
<b>Key steps taken in making the decision</b>	For more complex decisions, a list of the key steps taken in the decision making process should be included together with the documents and information considered, including any legislation or policies. Details of any essential procedural steps taken or pre-conditions that may have been necessary should also be included. This may be very brief for less complex decisions.
<b>Details of the evidence considered</b>	The evidence considered and the key facts that arise from the evidence should be included, along with the conclusions drawn from the facts. Key facts are those on which the decision turns. Details of whether the evidence in relation to key facts was accepted or rejected should be recorded. The person affected by the decision should be able to see how the facts link to the decision made.
<b>Details of rights of appeal or review</b>	Information should be included about rights of appeal or review including which body is responsible for handling appeals or reviews and any timeframes which apply.

## Acknowledgement

Ombudsman Western Australia wishes to thank the NSW Ombudsman for allowing us to draw upon their publication *Public Sector Agencies Fact Sheet No. 18. Reasons for Decisions* in the development of these Guidelines.

<sup>2</sup> *Mentink v Albeitz* (1999) QSC 9; *Total Marine Services Pty Ltd v Kiley* (1985) 51 ALD 635 at 640; *KO and KP v Commissioner of Police, NSW Police (GD)* (2005) NSW ADTAP 56.



## Why are records important?

Records tell us what, where and when something was done and why a decision was made. They also tell us who was involved and under what authority. They provide evidence of government and individual activity and promote accountability and transparency.

## What are the benefits of good record keeping?

Records:

- help you work more efficiently
- enable you to meet legal obligations applicable to your work
- protect the interests of the government and of your agency
- protect your rights as an employee and citizen
- demonstrate the cost and impact of your business
- enable review of processes and decisions
- retain the corporate memory of your agency and its narrative history
- help research and development activities
- enable consistency and continuity in your business.

## Who is responsible?

Making and keeping your agency's records depends on the cooperation of everyone in your agency. Whilst your agency's chief executive and its corporate records section (if appropriate to your agency) are responsible for meeting the requirements of the *State Records Act 2000*, effective record keeping ultimately depends on you.

Creating and looking after records is central to your responsibilities as a public official. As an individual government employee, it is possible to be charged with an offence under the *State Records Act 2000* if you fail to keep a record in accordance with your agency's Record Keeping Plan.

## What do we have to do?

### Create records routinely as part of your work

Records may naturally arise in the course of your work, such as sending an email. In other cases, where the activity does not automatically result in the creation of a record, you need to create one. Examples of this include meetings, telephone conversations, informal discussions and the receipt of funds. It is important that the record accurately reflects the transaction or activity that has taken place.

### File records into official records systems

Your agency has official systems for managing its records, whether they are created and received in paper or electronically. Failure to capture records into official records systems makes them difficult or impossible to locate when needed. They may even end up lost or destroyed.

Do not be tempted to hoard records in your own private store, separate from your agency's official records system. This also applies to emails: those you send or receive in the course of your employment are official records. If an email needs to be kept to document a transaction or decision, then it should be captured into your agency's official records system.

### Handle records with care

For paper records to survive and be available for as long as they are needed, they must be properly cared for. Avoid storing records near known hazards and try not to damage them.

Records are a corporate asset of your agency and do not belong to you. Do not remove them from official records systems for extended periods of time or take them out of your agency. It is important they remain available to other staff.

### Do not destroy records without authority

Your agency's records, whether paper or electronic, generally cannot be destroyed without proper authority from your agency's records staff. Some kinds of records have only temporary value and can be destroyed when no longer needed. Make sure you know which records are required long term and which are not. This information is part of your agency's Retention and Disposal Schedule, and records staff can provide information about this.

Failing to maintain records for the length of time they are needed puts you and your agency at risk of being unable to account for what has happened or been decided. This can result in problems for your agency's clients, monetary losses from penalties or litigation, embarrassment for your agency or the Government, or, in extreme cases, disciplinary action for you or your colleagues.

### Protect sensitive records from unauthorised access

Records can contain personal and confidential information which must not be disclosed to unauthorised persons. Ensure that records storage areas are secure, protect passwords and do not leave sensitive records lying around.

### Know your agency's policies and procedures for managing records

Every WA public sector body is required to establish policies and procedures for the management of their records in all forms. It is every public official's responsibility to create and keep records according to their agency's Record Keeping Plan. You can help support good record keeping in your agency by being familiar with these policies and procedures and applying them so you can better create and manage records in your daily work.

### What happens to records once the business need ceases?

Most of your agency's records, whether paper or electronic, can be destroyed with proper authority from your records staff. However, some records have permanent value to the State and to the people of Western Australia as evidence of your agency's activities and the role of government in our society.

These records will become State archives to be retained permanently and transferred to the State Records Office once they are 25 years old. Subject to certain restrictions, they will be made available to the public on request and to future generations of researchers who might use these records many years from now.

Make sure you know which records you deal with have continuing value. Good record keeping includes taking proper care of records which have archival value and will be retained permanently.

### Record keeping tips

#### Meetings

Delegate someone to make a record of the meeting, either minutes or a simple summary of decisions. Ensure decisions and dissent are clearly recorded. Circulate the minutes of the meeting to other participants and sign or confirm the accuracy of the record.

#### Conversations

Make a record of significant business you conduct via the telephone or face-to-face, such as:

- providing advice, instructions or recommendations
- giving permissions and consent
- making decisions, commitments or agreements.

Transcribe voicemail messages or capture the message directly into your agency's official records system.

### **Decisions and recommendations**

Document reasons for decisions or recommendations that you make.

### **Correspondence**

File or attach emails, letters, faxes and internal memos (sent or received) that relate to your work onto files within your agency's official records system.

### **Further information**

[Australian Standard AS15489 Records Management](#)

[State Records Act 2000](#)

[State Records Commission Principles and Standards 2002](#)

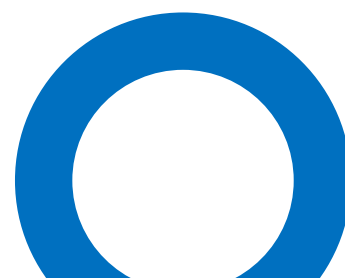
[State Records Office of Western Australia](#)

[Recordkeeping Responsibilities and You](#)

Your agency's Record Keeping Plan and Retention and Disposal Schedule

### **Acknowledgements**

We acknowledge material from the [NSW State Records Office](#) and [NSW Ombudsman](#), and advice from the [State Records Office of WA](#).





# Ombudsman WA Publications

The following guidelines, information sheets and forms are available in the Publications section of our website at [www.ombudsman.wa.gov.au](http://www.ombudsman.wa.gov.au). If you require any assistance with our publications, please contact the Publications Manager on (08) 9220 7555.

<b>About the Ombudsman</b>	
<ul style="list-style-type: none"> <li>• Ombudsman WA Brochure</li> <li>• How We Assess Complaints</li> <li>• Ombudsman WA Summary A4 Poster</li> <li>• Ombudsman WA Summary Brochure</li> <li>• It's OK to complain – Poster for Young People (two versions)</li> <li>• It's OK to complain – Postcard for Young People (two versions)</li> <li>• It's OK to complain – Flow Chart for Young People (two versions)</li> <li>• It's OK to complain – Information Sheet for Young People</li> </ul>	
<b>Making a complaint</b>	
<ul style="list-style-type: none"> <li>• Making a complaint to the Ombudsman Translated Information Sheets in Arabic, Burmese Chinese Simplified, Chinese Traditional, Cocos-Malay, Dari, Indonesian, Italian, Japanese, Karen, Korean, Somali, Spanish and Vietnamese</li> <li>• Making a complaint to the Ombudsman - Summary Information Sheet</li> <li>• Making a Complaint to a State Government Agency</li> <li>• Complaints from overseas students (Also available in Chinese Simplified, Chinese Traditional, Hindi, Indonesian and Malay)</li> </ul>	
<b>How complaints are handled</b>	
<ul style="list-style-type: none"> <li>• Ombudsman's complaint resolution process - Information for Complainants</li> <li>• How We Assess Complaints</li> <li>• Assessment of Complaints Checklist</li> <li>• Being Interviewed by the office of the Ombudsman</li> <li>• Requesting a review of a decision about a complaint to the Ombudsman</li> </ul>	
<b>Guidelines and Information for Public Authorities</b>	
<ul style="list-style-type: none"> <li>• Ombudsman's complaint resolution process - Information for public authorities</li> <li>• Information for Boards and Tribunals</li> <li>• Good Record Keeping</li> </ul> <p><b>Decision Making:</b></p> <ul style="list-style-type: none"> <li>• Exercise of discretion in administrative decision making</li> <li>• Dealing with Unreasonable Complainant Conduct</li> <li>• Remedies and Redress</li> </ul> <p><b>Complaint Handling:</b></p> <ul style="list-style-type: none"> <li>• Effective handling of complaints made to your organisation - An Overview</li> <li>• Complaint Handling Systems Checklist</li> <li>• Making your complaint handling system accessible</li> <li>• Guidance for Complaint Handling Officers</li> <li>• The principles of effective complaints handling</li> <li>• Dealing with unreasonable complainant conduct</li> </ul> <p><b>Conducting Investigations:</b></p> <ul style="list-style-type: none"> <li>• Conducting administrative investigations</li> <li>• Investigation of Complaints</li> <li>• Procedural Fairness (Natural Justice)</li> <li>• Giving reasons for decisions</li> </ul> <p><b>Management of Personal Information:</b></p> <ul style="list-style-type: none"> <li>• Management of Personal Information</li> <li>• Management of Personal Information Checklist</li> <li>• Good Practice Principles for the Management of Personal Information</li> </ul>	
<b>Forms</b>	
<ul style="list-style-type: none"> <li>• Ombudsman WA Complaint Form</li> <li>• Ombudsman WA Reasons for Representation Form</li> </ul>	<ul style="list-style-type: none"> <li>• Complaint Form for overseas students</li> </ul>

## Ombudsman Western Australia

Level 2, Albert Facey House, 469 Wellington Street Perth WA 6000 • PO Box Z5386 St Georges Terrace Perth WA 6831  
 Tel 08 9220 7555 • Freecall (free from landlines) 1800 117 000 • Fax 08 9220 7500  
 Email [mail@ombudsman.wa.gov.au](mailto:mail@ombudsman.wa.gov.au) • Website [www.ombudsman.wa.gov.au](http://www.ombudsman.wa.gov.au)

