

### 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.

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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;</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; 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 a document which is referred to as a statement of reasons. 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:

- The statement 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 a statement of reasons is always desirable. In some cases a statement of 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 a statement of reasons at the time the decision is made is good administrative practice.

## What should a statement of reasons contain?

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

A statement of reasons should deal with the substantial and key issues upon which the decision turns.

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

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;
- Involved weighing up of a number of key facts,

the information set out in the reasons for the decision is likely to be significantly greater than for a decision that was simple and quick to make.

A statement of reasons should deal with the substantial and key issues upon which the decision turns. It is not necessary for a statement of reasons 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.

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