

The Role of the Ombudsman in Good Decision Making

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Western Australian Ombudsman

Decision Making: Principles and Good Practice

Parmelia Hilton, 11 March 2015

Ombudsman Western Australia

Serving Parliament – Serving Western Australians

Overview

- The role of the Ombudsman
- The Ombudsman and good decision making
- Integrity in decision making: Principles and good practice
- Ombudsman investigations

The role of the Ombudsman – History

- Western Australia led the country in introducing the office of the Ombudsman in 1972. This was followed by the establishment of an Ombudsman in each State/Territory and at the Commonwealth level.
- Outside of Australia, the office has a longer history again – the office of the Ombudsman is over 200 years old, originating in Sweden in 1809.

The role of the Ombudsman – The Ombudsman

- The Western Australian Parliamentary Commissioner for Administrative Investigations (but universally referred to as the Ombudsman) is an impartial officer and independent of the government of the day.
- The Ombudsman has all the powers, rights and privileges of a Royal Commission and the Chairman thereof in undertaking investigations.

The role of the Ombudsman – Legislation

- The operations of the office of the Ombudsman are governed by the *Parliamentary Commissioner Act 1971* and a range of other legislation.

The role of the Ombudsman – Access to Justice

- Ombudsmen receive, investigate and resolve complaints from members of the public about government decision making.
- Ombudsmen play a significant role in access to justice in Australia in relation to government decision making.

The role of the Ombudsman – Access to Justice (cont.)

- The Productivity Commission, in its recent *Access to Justice Arrangements* Inquiry, found:
 - “In the context of the broader civil justice system, ombudsmen and other complaint bodies resolve a large volume of complaints at low cost.”¹

¹ Productivity Commission, *Access to Justice Arrangements*, Report No. 72, 5 September 2014 at 324.

The role of the Ombudsman – Functions

Principal functions

Investigating and resolving complaints

Receiving, investigating and resolving complaints about State Government agencies, local government and universities.

Reviewing certain deaths

Reviewing certain child deaths and family and domestic violence fatalities.

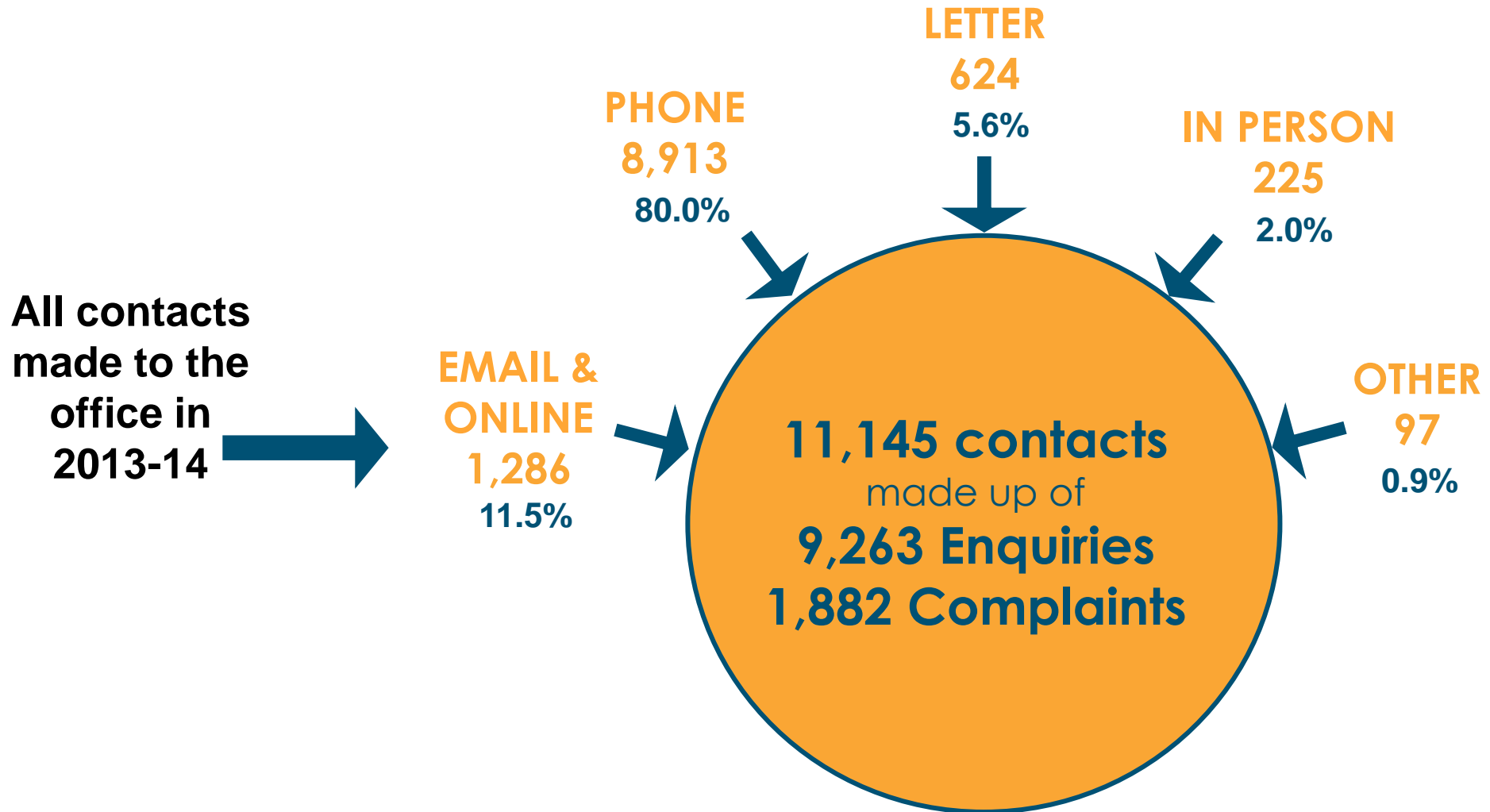
Undertaking own motion investigations and promoting improvements to public administration

Improving public administration for the benefit of all Western Australians through own motion investigations, and education and liaison programs with public authorities.

Other functions

Undertaking a range of additional functions, as set out in legislation, that fit within the broad category of integrity oversight.

The role of the Ombudsman – Complaint Resolution



The role of the Ombudsman – Complaint Resolution (cont.)

Dealt with 1,882
complaints in
2013-14

Breakdown of complaints
within jurisdiction

Public Sector	75%
Local Government	18%
Universities	7%

Complaints by agency group within
the public sector in 2013-14

• Corrective Services	25%
• Police	13%
• Housing	12%
• Transport	8%
• Child Protection	6%
• Education	6%
• Other Statutory Authorities and Agencies	13%
• Other Departments	17%

The role of the Ombudsman – Other functions

- Own motion investigations
- Child Death Review and Family and Domestic Violence Fatality Review
- Inspections, monitoring and scrutiny functions
- Energy and Water Ombudsman
- State Records Commissioner (ex-officio)

The Ombudsman and good decision making

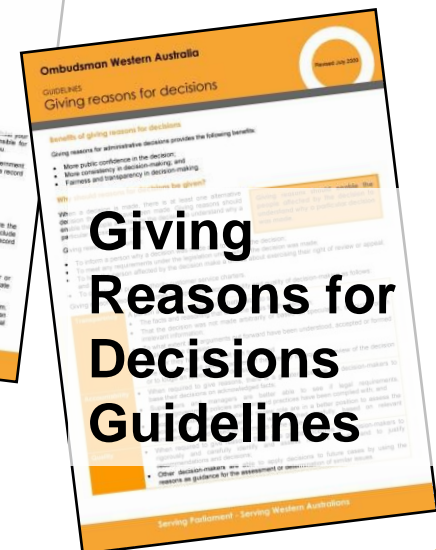
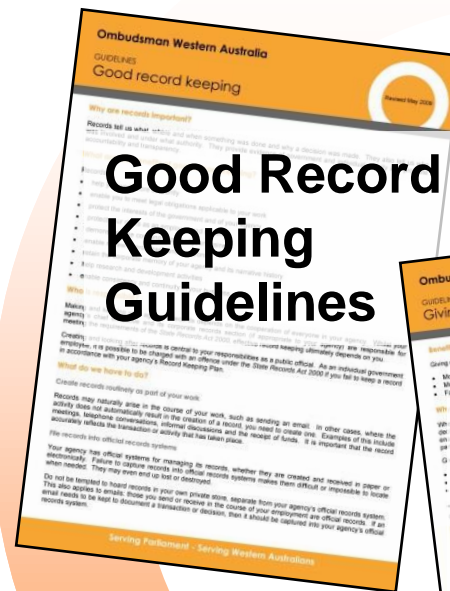
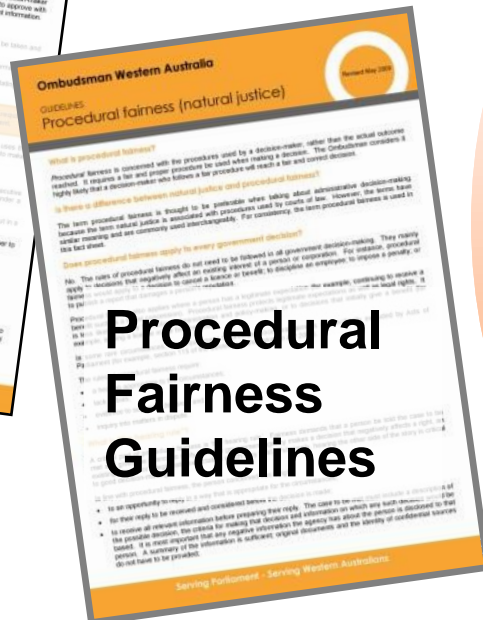
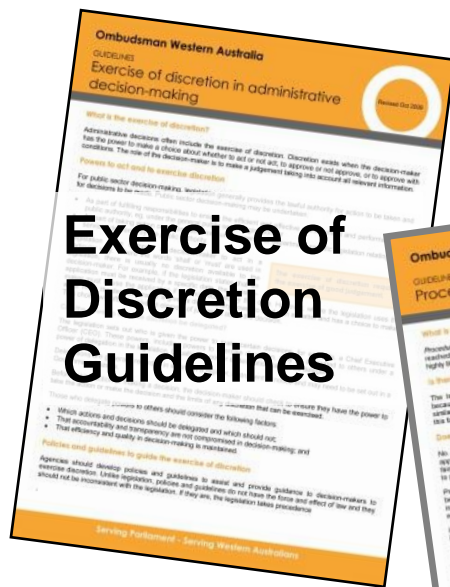
- Through the investigation of complaints the Ombudsman can, and does, contribute to good, and improved, decision making.

The Ombudsman and good decision making (cont.)

- In addition to the investigation of complaints from members of the public about decision making, Ombudsman-initiated investigations are also undertaken. These investigations are referred to by our office as own motion investigations.
- Own motion investigations are intended to result in improvements to public administration that are evidence-based, proportionate, practical and where the benefits of the improvements outweigh their costs.

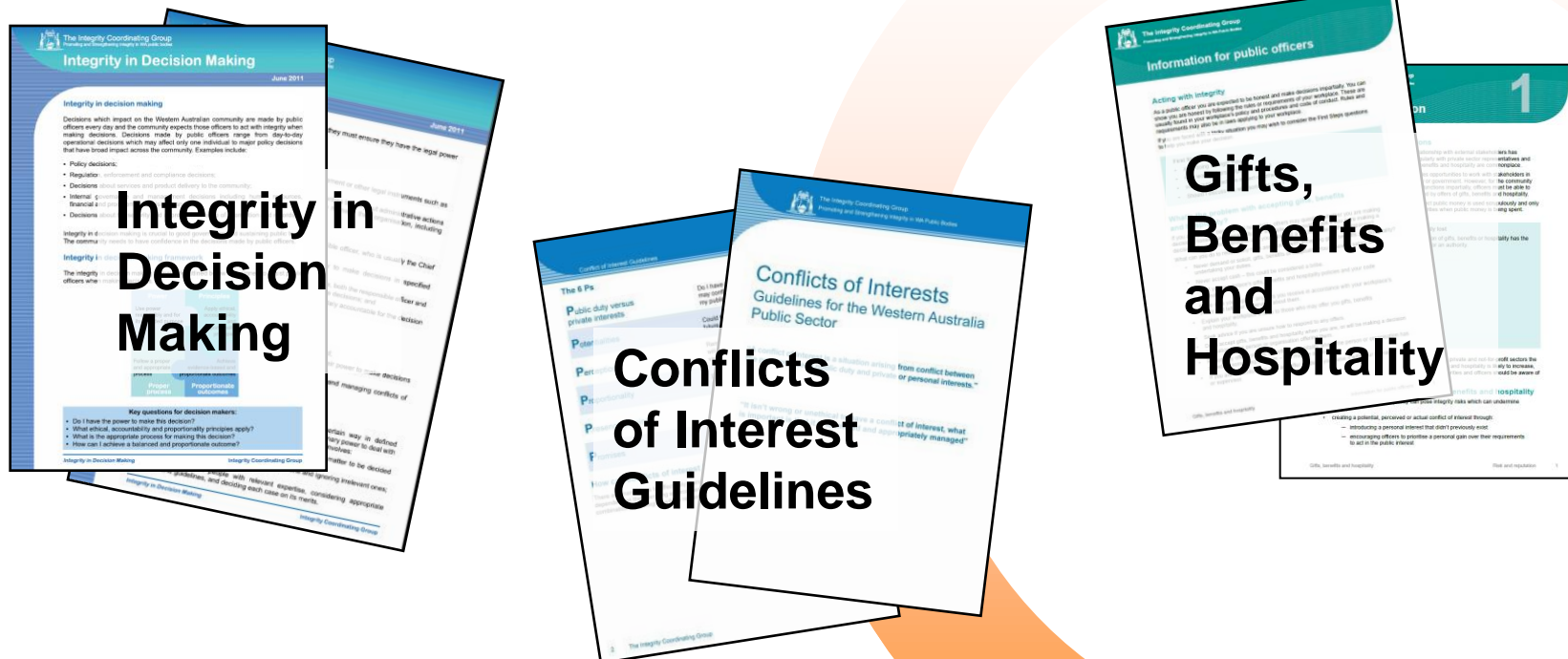
The Ombudsman and good decision making (cont.)

- The Ombudsman also produces a range of guidelines to assist with good decision making principles and practices in public authorities.



The Ombudsman and good decision making (cont.)

- In addition, the Ombudsman is a member of the Integrity Coordinating Group, which has developed products to support good decision making.

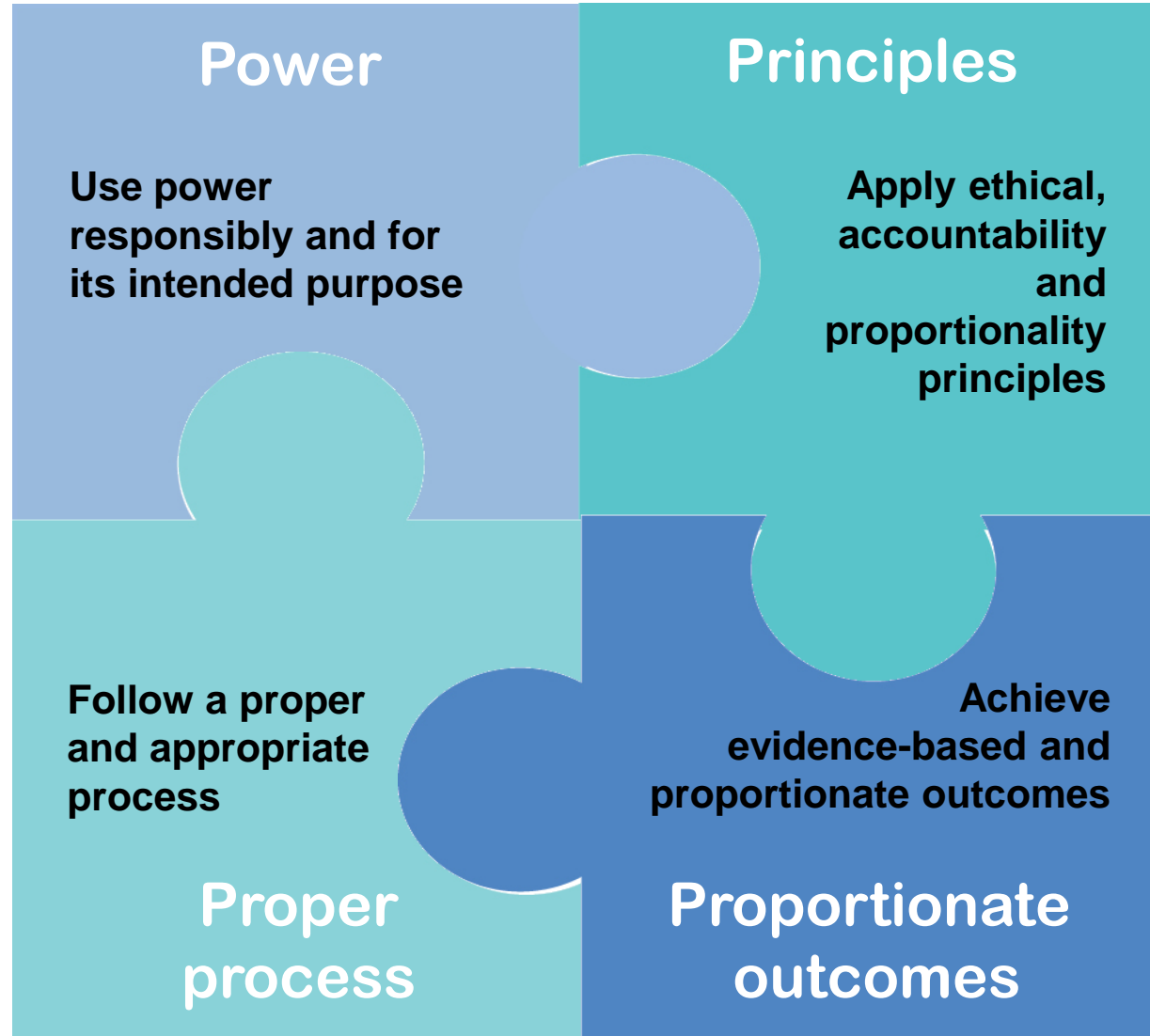


Integrity in decision making: Principles and good practice

- The Integrity Coordinating Group comprises:
 - The Public Sector Commissioner;
 - The Ombudsman;
 - The Auditor General;
 - The Corruption and Crime Commissioner; and
 - The Information Commissioner.

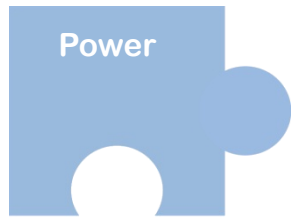
Integrity in decision making: Principles and good practice (cont.)

Integrity in Decision Making



Integrity in decision making: Principles and good practice (cont.)

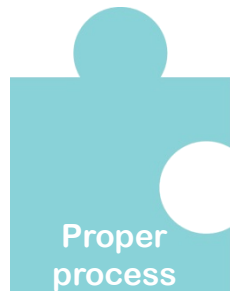
- **Key questions**



Do I have the power to make this decision?



What ethical, accountability and proportionality principles apply?



What is the appropriate process for making this decision?

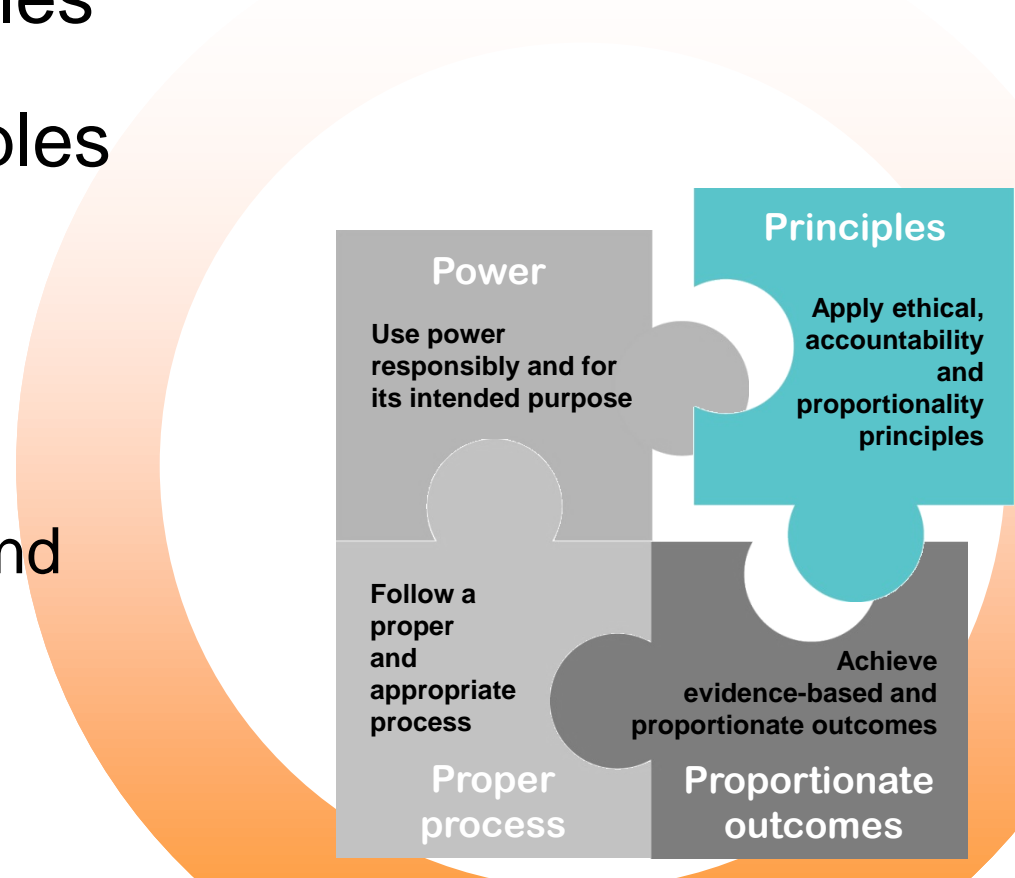


How can I achieve a balanced and proportionate outcome?

Integrity in decision making: Principles and good practice – Principles

- Ethical principles
- Accountability principles
- Proportionality principles

The Public Sector Commissioner provides guidance on accountable and ethical decision making.

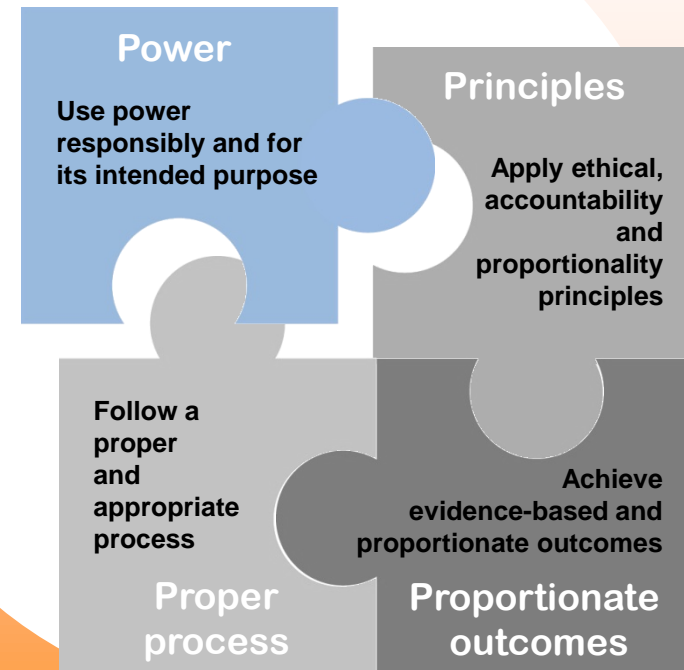


Integrity in decision making: Principles and good practice – Power

Key question: Do I have the power to make this decision?

Before making a decision, think about:

- The basis for exercising power – through statute or delegation
- Using the power for the purpose for which it was intended
- The extent and limitations of the power
- The relevant considerations when exercising judgement
- Where to get advice or relevant expertise

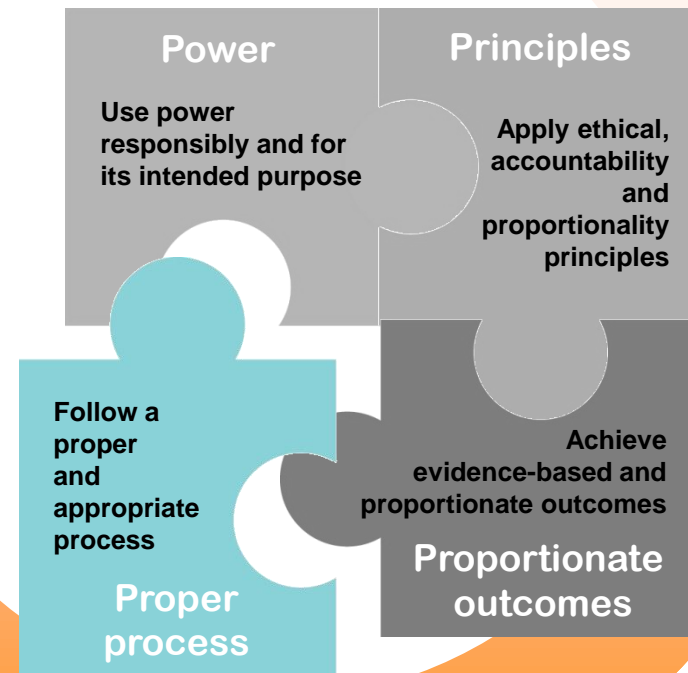


Integrity in decision making: Principles and good practice – Proper process

Key question: What is the appropriate process for making this decision?

Before making a decision, think about:

- The information to be collected and considered
- Whether procedural fairness applies
- Recording and communicating the decision
- The information to be released, to whom, and when
- Informing about internal and external review processes
- Reflecting on the decision to consider potential improvements to the process for the future

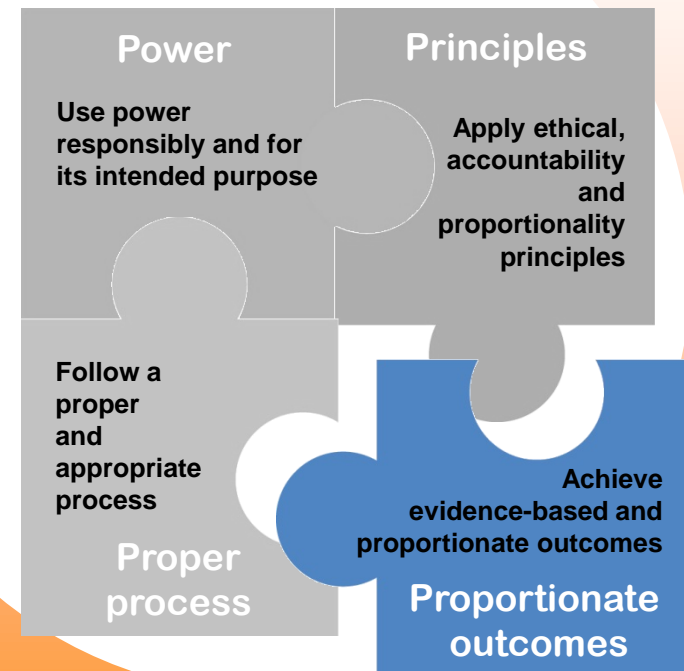


Integrity in decision making: Principles and good practice – Proportionate outcomes

Key question: How can I achieve a balanced and proportionate outcome?

Before making a decision, think about:

- Ensuring the decision is evidence-based
- The costs and benefits of the proposed decision
- Reflecting on the outcome to ensure it is balanced and proportionate
- The consequences of the decision
- Using feedback from past decisions as opportunities for learning and improving outcomes for similar decisions



Ombudsman investigations

Parliamentary Commissioner Act 1971

8(1) *Before entering upon the exercise of the duties of their respective offices the Commissioner, the Deputy Commissioner and the Acting Commissioner shall each take an oath or affirmation that he will faithfully and impartially perform the duties of his office, and that he will not, except in accordance with this Act, divulge any information received by him under this Act.*

Ombudsman investigations (cont.)

Parliamentary Commissioner Act 1971

19(4) If, at any time during the course of an investigation, it appears to the Commissioner that there may be grounds for making a report on that investigation that may affect or concern any department or authority to which this Act applies he shall, before making that report, afford to the principal officer thereof an opportunity to comment on the subject matter of the investigation.

Ombudsman investigations (cont.)

Parliamentary Commissioner Act 1971 – s. 23

The Commissioner shall not, in disclosing information or making a statement ... with respect to a particular investigation – set out opinions that are, either expressly or impliedly, critical of any department or authority to which this Act applies or any person [unless, before doing so, he has afforded]:

(a) if the opinions relate to a department or authority, the principal officer of the department or authority and the officer of that department or authority principally concerned in the complaint; or

(b) if the opinions relate to a person, that person,

the opportunity to appear before him and to make submissions, either orally or in writing, in relation to the complaint.

Ombudsman investigations (cont.)

Parliamentary Commissioner Act 1971

25(7) The Commissioner shall not in any report under this Act make any comment defamatory of or adverse to any person unless that person has been given an opportunity of being heard in the matter and his defence is fairly set forth in the report.

Questions