

## Reasons for decisions

### Why give reasons

The giving of reasons is one of the basic principles of good administration and is often a requirement of natural justice/procedural fairness. Members of the public are entitled to an explanation as to why there has been an exercise of power that was adverse to or otherwise directly affected their interests.

### The purposes of reasons

Where a decision is required to be made by a public official, there is at least one alternative decision that could have been made. The simplest circumstances would be a yes/no option. Alternatively, depending on the discretions available to the decision-maker, it may be a yes, a partial yes, a deferred yes, a conditional yes, a time limited yes or a no. The reasons given for such a decision (other than a simple yes) should at least be sufficient to enable the recipient to understand why that particular decision was made and not any of the other potential decisions that could have been made. The giving of reasons also serves a number of other vital purposes, including:

#### Transparency:

- A person affected by a decision is better able to see:
  - › the facts and reasoning that were the basis for the decision
  - › that the decision was not made arbitrarily or based on mere speculation or suspicion
  - › to what extent any arguments they put forward have been understood, accepted or formed a basis for the decision
  - › whether they have been dealt with fairly
  - › whether or not they should exercise any rights of objection, review or appeal and the case they will have to answer or counter should they exercise any such right.
- A person affected by a decision is also better able to adjust his or her position to ensure that if the discretion is exercised again he or she is more likely to succeed or will not be adversely affected.

#### Accountability:

- Decision-makers who are required to give reasons have a greater incentive to base their decisions on acknowledged facts.
- Supervisors and managers are better able to see if legal requirements, agency/government policies and standard practices have been complied with.
- 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.

#### Quality:

- Decision-makers who are required to give reasons have a greater incentive to rigorously and carefully identify and assess the relevant issues and properly justify recommendations and decisions.
- 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.

### Circumstances where reasons are particularly important

Reasons should be given to adequately explain:

- decisions which are not in accordance with a relevant established policy
- decisions which are likely to detrimentally affect the rights or interests of individuals or organisations to any material extent, and
- conditions attached to any approval, consent, permit, licence or other authorisation.

### Drafting of reasons

Reasons should be drafted with their potential audience in mind. Reasons should be in plain English, and intelligible to a person with no legal or other relevant technical training. The language should be clear, unambiguous and not be merely a re-statement of or a quote from any relevant legislation.

### Scope of reasons

It is not necessary for reasons to address each and every issue raised by an applicant/complainant/ party to proceedings. In discharging a duty to give adequate reasons. It is enough that the substantial issues on which the decision turns are dealt with.

## Content of reasons

Depending on the circumstances, to be adequate a statement of reasons may need to include:

- identification of the decision being made
- the sources of all information relevant to the decision
- an adequate statement of the evidence relied on (if the existence or otherwise of a fact is one on which the decision turns, eg. any essential pre-conditions set out in legislation or agency policy)
- findings on material questions of fact that may arise, including inferences drawn from those facts (if findings on a material fact are not set out it could be inferred that the fact was not considered) and whether in relation to material facts the evidence was accepted or rejected (where the evidence on a material fact is conflicting, reference should be made to the available evidence and why certain evidence was preferred)
- the decision-maker's understanding of the applicable law and any issues of law which arise (which may necessitate summarising, paraphrasing or quoting relevant legislation)
- if the decision-maker is adopting the recommendation of another person or body, the decision-maker's reasons why this approach is being adopted
- conclusions derived from the facts and the law.

## Communication of reasons

The document in which a decision is communicated (be it a notice, form, letter, facsimile, report or the like) should contain four essential elements.

### 1. Formal and procedural matters:

- the identity of the decision-maker
- when the decision was made and, if relevant, the date from which it operates or period within which it is effective
- the authority under which the decision was made (eg. a section of an Act, a clause of a regulation, a provision of a policy or guideline or a delegation of authority)
- whether any essential procedural steps have been taken or pre-conditions met.

### 2. The decision – the decision itself.

### 3. Reasons for the decision – as discussed earlier.

### 4. Any rights of the person affected:

- any rights of objection, review or appeal
- any time period within which such rights must be exercised.

## Further information

For further information see also:

*Good Conduct and Administrative Practice – Guidelines for state and local government* (2nd edition), NSW Ombudsman, May 2006.

## Contact us for more information

Our business hours are: Monday to Friday, 9am–5pm (*Inquiries section closes at 4pm*)

If you wish to visit us, we prefer you make an appointment. Please call us first to ensure your complaint is within our jurisdiction and our staff are available to see you.

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Telephone Interpreter Service (TIS): 131 450  
We can arrange an interpreter through TIS or you can contact TIS yourself before speaking to us.