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**Administrative Decision Making – tips for making life easy**

**Good decision making is essential to smooth functioning of all management processes.**

**Good decision making reduces negative consequences and facilitates good resource allocation.**

### Legislation

In many cases legislation impacts on the range of decisions that can be made. In interpreting legislation it is important to identify the section to be applied and to establish the plain English meaning of the wording – there are some words that have a special definition within legislation and most Acts contain a ‘Definitions’ section. Interpretation must be made in the context of the whole Act. The University Legal Officers are available for advice.

### Reasons

A good decision will have reasons attached to explain or justify it. In a good administration program the reasons behind decisions will be visible and available to those whom the decision affects. Some Acts identify that a person who is aggrieved by an administrative decision is entitled to request and be given a summary of the reasons for the decision. Being able to articulate a reason promotes accountability and provides transparency, allowing greater scrutiny and possibly understanding and acceptance. Reasons should form part of any reporting/recording process.

### Duty of Care

A duty of care is a legal obligation to avoid causing harm or injury to others, and a breach of this duty of care can give rise to a liability for compensation. Duty of care can also be used to describe a broader concept of special responsibilities owed to a community. There may be an ordinary duty to take reasonable care or there may be special safety arrangements required for specific tasks. Reasonable care must be taken to avoid risks and dangers that are foreseeable.

### Natural Justice and Procedural Fairness

This a legal requirement that must be applied to government decision-making – if there has been a breach of natural justice, then a decision can be declared invalid. Simply put, natural justice is a code of fair practice. It particularly relates to a decision that would affect an existing interest - in an investigation of an allegation of improper behaviour the object and the subject must be heard. The purpose of natural justice is to ensure decision-making is fair and equitable. Consideration of fairness requires that a person is told about the case against them and they must be heard in reply – the notion of a right of reply. Natural justice requires a hearing before a decision is taken, full disclosure of allegations and facts before a decision is made and that a person is given a reasonable opportunity to respond. It is also incumbent on the decision-maker genuinely to consider and be fully aware of what a person is saying in their defence.

The notion of having a hearing before a decision is vital and it is inappropriate to declare that a draft or in-principle decision has been made pending a response – any hearing must precede any decision. A hearing might be considered premature if not all the relevant disclosures had been made. Natural justice would be considered denied if a decision-maker was aware of a breach of natural justice and then did not remedy this breach.

Natural justice also assumes a lack of bias and the presence of reliable and credible information

### Facts

Most decisions are made after a period of fact finding. Some facts are not disputed, but at other times the factual basis for a dispute or question may be far from clear. The decision-maker then faces the question of which version of the facts they will accept as the basis for their decision. Public confidence depends heavily on whether there has been proper and defensible fact finding.

A decision-maker should accept all information and evidence, some of which might be discarded later, but refusing to consider information will taint any decision. Decision-makers can call on their knowledge of a situation or the way the system works and can draw inferences where the facts are not clear; they can also use others to investigate matters and accept recommendations from researchers.

A decision would be invalid if it were based on facts that were not relevant, and there is an obligation to hear both sides of the story. Rules of evidence as they apply in a court setting do not apply to facts used to inform a decision in routine administration, however the significance of an issue must be considered. There is no onus of proof requirement in routine administrative decisions, however the decision-maker must be satisfied that all relevant information has been considered. Hearsay evidence is not always reliable, and it is far better to use facts that can be corroborated by independent sources.

Facts used to draw conclusions and make decisions should be included in all reporting/recording tasks.

### Policy

Policy can only be relied upon when making a decision if it is consistent with the legislation covering the activity. Policy within the University is usually viewed as the formally expressed and published policy; however, informal policy can also be recognised, and an inappropriate application of policy can lead to a court declaring a decision invalid. If a policy is used as an excuse for not addressing an individual matter, then that would be considered inappropriate. Policy must not obstruct the facts of the matter. Legislation should be considered binding, but this is not necessarily so with a policy. Also if a policy is written and relied upon but has not been made available for individuals to read and understand, then that again is inappropriate. When a decision is made based on policy this must be noted in the recording and reporting processes.

### Authority to Make a Decision

An officer of the University must be authorised to take that decision on behalf of the University. The Position Description and the Delegations Manual will detail levels of authority.

### Government Information (Public Access) Act 2009 {the new Freedom of Information}

Under the Government Information (Public Access) Act 2009 persons may make application for release of documents. Release is not always granted in full for a variety of reasons, and some censorship might be applied. The most common reason to deny access, or partly censor, is that the documents reveal information of a personal nature about an individual other than the applicant. All applications must be handled through the Right to Information Officer because there is specialist knowledge required when determining release of documents and also significant reporting requirements placed on the University.

The University can waive the allowable processing fees for students getting their own information.

### Privacy

The University holds vast amounts of personal information about students and staff members. W; e are obliged under the Privacy Act 1989 to store that information safely and to keep it confidential.

People must give their consent before their name is kept on a list or database of any type other than those statutory reporting obligations (communicable diseases, mandatory child protection notification and the like). The basic premises before creating any list are that:

* Reason for listing is identified
* Information will only be used for the reason it was collected – no data mining or ‘fishing expeditions’
* Individual has the right to view their listing and ensure accuracy or make amendments or attach comments
* Organisation has the responsibility to ensure accuracy and currency
* Listing has a finite life
* The individual is entitled to know how long their information will be kept.

The Privacy Officer is available for advice

Any questions? Please don’t hesitate to contact The University Ombudsman