

QCAT review jurisdiction

This fact sheet may assist:

- persons entitled to seek review of decisions made by Queensland government departments and statutory agencies (the decision maker) which QCAT has specifically been empowered to review
- government and statutory agency decision makers whose decisions may be reviewed by QCAT.

What happens after a decision maker has made a decision affecting me?

When a decision which is reviewable by QCAT is made by a government department or statutory agency, written notice must be given by the decision maker to each person entitled to review the decision, which states:

- the decision
- details of the decision maker's authorisation to make the decision
- the reasons for the decision
- that the person has a right of review in QCAT
- the time frame for filing an application for review, usually this is 28 days after the decision is received
- how the application for review may be made
- any right of the person to ask for an order seeking that the implementation of the decision be suspended or stayed by QCAT, until QCAT has reviewed the decision.

All of the information may be contained in one document or letter. Sometimes, the statement of reasons will be attached as a separate document.

What will the statement of reasons tell me?

The statement of reasons explains how the decision was reached. The statement of reasons must set out:

- the evidence or other material that the decision maker took into account when making the decision
- findings made by the decision maker on material questions of fact
- the relevant legislation and any government policy being applied
- the reasoning process applying the law and/or government policy to your circumstances
- the decision maker's conclusions and decision.

How will a statement of reasons help me?

The provision of statements of reasons promotes accountability of public administration. It is fair that citizens know why decisions which affect them have been made by government officials and statutory agencies.

The statement of reasons will set out the legislation, or law, and any Government policy being applied. Sometimes, a decision will not be made in favour of a person under particular legislation, because their circumstances do not fall within the contemplated conditions set out by Parliament. If this is the basis on which the decision was made, it should be clear from the statement of reasons.

Sometimes, the legislation allows a broad discretion to be exercised. The reasons will explain why the original decision maker did not exercise the discretion in favour of the person. This will provide some indications about the sorts of matters that a person seeking review might need to address in order to succeed on a review application. In some situations, it might also help the person to understand why it may be difficult for them to convince the tribunal to make a different decision.

If a person applies for a review, it is the decision which is reviewed, not the reasons for it.

QCAT is not required to find an error in the original decision maker's reasons in order to make a different decision and there is no presumption that the original decision is correct.

However, it is important for the person entitled to review the decision to understand the reasons for it. This assists a person who is dissatisfied with the decision to make an informed choice about whether to make an application to review the decision.

If the person makes an application, the statement of reasons will assist them in understanding how to begin preparing for their case at QCAT. The statement of reasons will also assist the tribunal to understand the decision that has been made.

What if I did not receive a statement of reasons or the statement doesn't explain why the decision was made?

A person entitled to a statement of reasons who has not received one is entitled to make a written request to the decision maker for a statement. There are time limits for making the request. These time limits are set out in section 158 of the *Queensland Civil and Administration Act 2009* (see **Attachment 1**).

Also in some circumstances QCAT can make an order requiring that a statement of reasons be given, or if a statement has been given which does not give adequate explanations, that an additional statement of reasons be given containing more specific information.

What is QCAT's function when it reviews a reviewable decision?

In deciding a review application the tribunal makes its own, new decision about the matter.

QCAT stands in the shoes of the decision maker and makes its own decision on the merits of the case about how the legislation applies in the person's circumstances.

For this purpose, QCAT can make any decision the original decision maker could have made. It must make the correct and preferable decision according to law on the relevant information or evidence available in the proceeding.

The decision must be legally and factually correct and if more than one decision is lawfully open, the tribunal must reach the preferable decision. However, the tribunal must apply the legislation which is relevant.

QCAT cannot change legislation, only Parliament can do that. If you think the law is wrong and should be changed, you may wish to approach a Member of the Queensland Parliament to discuss your concerns about the legislation.

Attachment 1

QUEENSLAND CIVIL AND ADMINISTRATIVE TRIBUNAL ACT 2009

158 Obtaining statement of reasons

(1) This section applies if a person who may apply to the tribunal for a review of a reviewable decision has not been given a written statement of the reasons for the decision.

(2) The person may ask the decision maker for the reviewable decision to give the person a written statement of the reasons for the decision.

(3) The request must be-

(a) in writing, whether by letter, facsimile or email; and

(b) made within 14 days after the person-

(i) was notified of the decision; or

(ii) is, under an enabling Act, taken to have been given notice of the decision by publication of the decision in the gazette, a newspaper or in another way; or

(iii) if subparagraph (i) or (ii) does not apply - the day the person became aware of the decision.

(4) The decision maker must give the person the statement within a reasonable period of not more than 28 days after the request is made.

Note-

See the Acts Interpretation Act 1954, section 27B (Content of statement of reasons for decision).

(5) The person is entitled to receive a written statement of reasons for the reviewable decision whether or not the provision of the enabling Act under which the decision is made requires that the person be given a written statement of reasons for the decision.