



# PREVENTION in focus

## Discretionary decision-making powers: Identifying potential corruption risks

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Well-considered decisions lie at the core of effective public service. Impartial, accountable and transparent decision making, particularly when it involves public servants exercising their discretion, is vital to preventing corruption.

Making decisions transparently and impartially, even about minor matters, can have a big impact on community perceptions of fairness and equity. It is important that public sector employees demonstrate their integrity and freedom from undue influence in decision making at all times, particularly in cases that rely on their personal judgement.

### What you should know

- Discretionary decision making that is impartial, transparent, accountable and properly recorded will help protect you from perceptions and allegations of corruption.
- Inappropriately exercising your discretion when making decisions can undermine the public's confidence in the public sector.
- Using your discretionary decision making powers improperly — for example, to benefit your own or a third party's interests — may lead to criminal charges and/or disciplinary action.

This publication outlines the importance of exercising discretionary decision making powers appropriately to minimise corruption risks to you and your agency.

*Failing to exercise discretionary powers properly may mean you are engaging in corrupt conduct.*

## What is discretionary decision making?

Discretionary decision making means making decisions based on reason and judgement, rather than just on pre-determined criteria.

Where the authority for making a decision comes from legislation or an internal procedure, it is common for the source of authority to provide criteria in relation to the decision.

The words “shall” or “must” usually dictate that the decision maker must make a particular decision if certain criteria are met, while the words “may” or “should” provide the decision maker with greater latitude to weigh up different factors in coming to a decision.

Discretionary powers may also come from other sources such as the Office of Constable.<sup>1</sup>

### Corruption and integrity risks in exercising discretionary powers

A public officer exercising their discretionary powers in a way that:

- is dishonest or biased
- knowingly or recklessly breaches public trust or
- is a misuse of agency-related information or material

may constitute corrupt conduct.

Failing to exercise your discretionary powers properly may mean that you are engaging in corrupt conduct, or create a perception that you are doing so. Engaging in corrupt conduct can result in criminal or disciplinary charges, which could lead to your being demoted or having your employment terminated.

Corruption risks in discretionary decision making can be avoided by adhering to your agency’s core values and its integrity framework.

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<sup>1</sup> The Office of Constable provides a number of discretionary powers for sworn police officers including the power to make decisions in relation to whether to commence a prosecution.

# Four principles for discretionary decision making



The four principles below should be considered each time you make a decision that relies on the proper exercise of your discretionary decision making powers, and will help you avoid any associated potential corruption risk. The case studies, drawn from recent investigations, illustrate how failure to act according to these principles has resulted in disciplinary action or criminal charges.

## 1. Authority

Check that you are authorised to make the decision. Where legislation provides the power to delegate, you should confirm that you have the delegation to make the decision. Delegations must be in writing and must be signed by the authorised body or person delegating the power.

Follow any procedures or policies that outline the specific legislative requirements involved in making the decision. In the absence of a policy and procedure, ensure you seek advice if you are unsure about how you need to make the decision, and record it.

## 2. Impartiality

You have a responsibility to remain impartial while exercising discretionary powers, and your decisions must always put the public interest above all others.

Gather all the relevant facts — this will enable you to make informed, considered decisions. You must demonstrate independence, objectivity and fairness throughout the entire decision making process.

## 3. Transparency

Declare and manage any conflicts of interest. You are obliged to disclose and manage actual, potential and perceived conflicts of interest. Having a conflict of interest is not the issue — it is how (and how transparently) you manage the conflict that is important.<sup>2</sup>

Be sure that you understand, or seek advice on, how your agency actively manages and monitors conflicts of interest, and be guided by these policies.

Create and maintain accurate records. The Queensland community should be able to understand the reasons behind public sector decisions. It is important that you honestly and accurately document the reasons for your decisions, and ensure that the records of those decisions (including approvals and authorisations) are maintained if you are called upon to produce them.

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<sup>2</sup> The *Public Service Act 2008* (sections 102 and 186) and your agency's Code of Conduct place an obligation on chief executives, senior executives and employees to disclose any interests they have that conflict, or may conflict, with the performance of their official duties.



## Related publications

- [\*Probity in councillors' use of councillor discretionary funds: An audit of councils and the local government department – Summary audit report – September 2019\*](#)
- [\*Prevention in Focus – Conflicts of interest – are you managing yours appropriately? – 29 June 2018\*](#)
- [\*Prevention in Focus – The potential cost of failing to perform duties as a police officer: What you should know – 31 May 2018\*](#)

If you have sought advice or recommendations from others (such as subordinates or external third parties), record that advice.

You are not obliged to accept their recommendations, but the fact that you have recorded them and provided your reasons for accepting/not accepting their recommendations enhances the transparency and legitimacy of your decisions.

## 4. Accountability

Being accountable includes taking ownership of, and responsibility for, your actions.

You should be prepared and able to justify how and why you exercised your discretionary decision making powers.

Be open to third-party review of your decisions and justifications, and invite feedback. This also gives you and your agency the chance to review its decision making frameworks, incorporate any recommendations for improvement and increase accountability and efficiency.

### Case study



#### Police officer failing to impartially exercise discretionary powers

A uniformed police officer monitoring vehicle speeds in a known high-risk area intercepted a motorcyclist exceeding the speed limit. The motorcyclist, an off-duty police officer, stated they were new to the area and unaware of the changing speed limit at that section of road. Body worn camera footage showed the officer acknowledging the motorcyclist as an off-duty colleague. The officer informed the motorcyclist about the speed zones, the location at which speed zones changed, and that police regularly patrolled the area. The officer did not issue a speeding ticket to the motorcyclist. On other occasions at that same stretch of road, the officer had not accepted any of the reasons given by other drivers and motorcyclists for exceeding the speed limit and had issued speeding tickets.

A police officer's common law discretionary powers allow for some degree of latitude in what action, if any, they take against a person who has committed an offence. In this case, an officer on duty decided not to issue an off-duty colleague — whose actions were unlawful and put the safety of others at risk — with a speeding ticket, although they had been issuing tickets to other drivers in identical circumstances.

In giving preferential treatment to a colleague, the officer failed to exercise their discretionary powers impartially. The subsequent disciplinary investigation identified that there was no clear reason for the officer failing to issue the motorcyclist with a speeding ticket. The officer was demoted, with restrictions placed on their progressing in rank.