

Administrative Review Policy

June 2018



Queensland
Government

Administrative Review Policy

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1. Introduction

1.1 The need for administrative review

Administrative review provides a mechanism by which a person can seek redress against a decision made by a government entity that affects them. Administrative review also provides a mechanism for government to rectify decisions if they are wrong. Administrative review, over time, results in better government decisions when the outcome of the review process is referred back to the original decision maker.

1.2 The need for an administrative review policy

There is a need for a consistent and contestable approach across all government agencies when decisions about reforms of existing administrative review mechanisms are undertaken, or when a new right of administrative review is created.

A 2007 review conducted by the Department of Justice and Attorney-General (DJAG) found that at that time, there was an ad hoc approach to the development of administrative review mechanisms resulting in a system that was confusing to the community and that provided little opportunity for economies of scale or improvements in quality and consistency of decision making.

The 2007 review also found there was no detailed guidance available to government agencies to assess what kind of review mechanism should be used when new review rights were created (for example, external merit review, internal review or other dispute resolution processes).

The Office of the Queensland Parliamentary Counsel (OQPC) provides advice on merit review processes for particular legislative proposals to government agencies. The *Legislative Standards Act 1992*, section 4(3)(a) sets out the principle that legislation should have sufficient regard to the rights and liberties of individuals by ensuring that if legislation provides for administrative powers that could impact individual rights, liberties and obligations, the legislation should make the administrative powers subject to appropriate review. OQPC's advice is limited to the application of this principle to a particular legislative proposal.

Strategic Policy, DJAG provides advice about the general framework of merit review processes across government.

In 2009, the Queensland Civil and Administrative Tribunal (QCAT) was established, amalgamating 18 existing tribunals and transferring much of the administrative review jurisdiction of the courts and other review bodies to the new tribunal. The objective was to improve the delivery of civil and administrative justice in Queensland by promoting a consistent approach to decision making in like jurisdictions and establishing a single recognisable entry point for tribunal users.

In order to prevent the gradual increase in the number of separate tribunals from happening again, in October 2008, this administrative review policy was introduced to guide decisions about when administrative review is appropriate and, if so, whether that review process should be internal or external merit review, and what bodies should undertake external review.

1.3 The 2014 update to the administrative review policy

The Queensland Commission of Audit (the Commission) was established by the Queensland Government in 2012 to review the State's financial position and to make recommendations about:

- strengthening the Queensland economy;
- restoring the State's financial position, including its AAA credit rating; and

- ensuring value for money in the delivery of frontline services.

In February 2013, the Commission delivered its final report (CoA report), presenting 155 recommendations for reform. The Commission's recommendations included a recommendation that:

123 The Government expand and continue the reform process commenced with the Moynihan Review by ...streamlining any multiple review or appeal mechanisms for administrative decisions.

In making this recommendation, the Commission was particularly concerned about the costs to the State of providing for multiple review pathways, particularly where the applicant pays no or low fees in order to initiate a review.

The Queensland Government released its response to the CoA report in April 2013 – A Plan: Better Services for Queenslanders – in which it accepted this recommendation. To implement this recommendation, DJAG led a review of this policy with a view to ensuring it remains relevant and promotes a streamlined approach to review and appeal mechanisms for administrative decisions in line with the Commission's recommendation.

The revised policy reinforces the principles that:

- external review rights, where needed, should involve a review by QCAT rather than by the courts. The revised policy also removes the option for agencies to create new review bodies;
- agencies should always consider requiring applicants to apply for internal review of administrative decision prior to applying for external review. This is a guiding principle and the revised policy acknowledges there will be instances where matters will still need to proceed directly to external review. Guidelines on the types of decisions that may be suitable to progress directly to external review can be found at pages 10–11 of this policy; and
- departments should avoid multiple internal review processes, when these are provided for in addition to the right to an external review. The revised policy discourages agencies from having superfluous multiple levels of internal review, reflecting the Commission of Audit's finding that multiple review levels and avenues can be costly, particularly where the applicant pays no or low fees when initiating the review.

The policy also takes into account how the rules of natural justice or procedural fairness might apply when reviewing or establishing a new right of review. In line with these principles, the policy recognises that the more significant the impact a decision is likely to have on people's rights, interests or legitimate expectations, the greater the need for higher levels of reviewability and scrutiny, as well as access to expedited processes.

1.4 Explanation of terms

Attachment 1 sets out an explanation of terms used in this policy, including administrative review, merit review, the different kinds of review mechanisms, and the difference between civil and administrative review. The explanation of terms does not seek to define the particular terms (the terms are defined as they appear in the policy document). Attachment 1 simply provides some background explanation to users of the policy not familiar with the terms used in this policy.

1.5 Scope of administrative review policy

This policy is to guide decision making about:

- a) whether a decision should be subject to review;
- b) if so, whether that review process should be by way of external merit review, internal merit review and/or other dispute resolution process; and

- c) if it is a decision that should be subject to external merit review, what kind of external merit review process should be used.

The policy applies to:

- a) decisions made by Queensland Government agencies when creating a new right of review from an administrative decision made by government, or when reviewing existing rights of review. While agencies are not required to review existing legislation, if it is proposed to undertake a legislative review, including review rights, this policy applies; and
- b) decisions made under an enactment or other legislative power (for example a regulation).

The policy does not apply to:

- a) minor changes to existing review rights that do not significantly affect the mechanism of review. These minor changes do not warrant consideration of fundamental issues about which process to use etc;
- b) decisions in civil matters that do not involve administrative review of rights, for example decisions made by an individual or business. However, it is possible that some of the considerations raised in this policy are relevant to decisions made about review rights from decisions made by an individual or business;
- c) decisions that are not made under an enactment or other legislative power. Although non-legislative based decisions can be subject to review, that is not the main focus of this policy;
- d) complaints handling processes. The policy only applies to merit review processes. Merits review of a decision involves a consideration of whether, on the available facts, the decision made was a correct one. Complaints handling processes relate to complaints about the way the decision was made, including issues such as whether the actions or decisions made may be unlawful, unreasonable, unfair or improperly discriminatory. Complaints processes also deal with the merits of the decision made in many cases and, together with rights of administrative review, are an important component of supporting agencies to improve their administrative practice and support better decision-making; or
- e) decisions about whether judicial review under the *Judicial Review Act 1991* should apply. Judicial and merit review processes are different. Merit review involves standing in the shoes of the original decision maker, reconsidering the facts, law and policy aspects of the original decision. Judicial review has a narrower focus and relates primarily to the legality of how the decision was made. The right to judicial review applies to all administrative decisions under legislation, except to the extent that it is lawfully restricted.¹ However, under section 12 of the *Judicial Review Act*, an application for judicial review in relation to a reviewable matter can be dismissed in certain circumstances, including that adequate provision is made by a law under which the applicant is entitled to seek a review of the matter by the Supreme Court or another court. Merit review can apply to decisions that are also subject to judicial review. However, this policy only deals with questions of merit review, not judicial review.

¹ See *Kirk v Industrial Court (NSW)* (2010) 239 CLR 531.

2. Overview of administrative review policy

The policy guides decision making in three stages:

1. whether a decision should be subject to review at all;
2. if the decision should be subject to merit review, whether internal and/or external review mechanisms should be used (with internal review processes to generally require exhaustion before an application for external review can be lodged); and
3. if an external review mechanism is to be used, whether QCAT or another already established specialist body should be used.

The policy guides decision makers in deciding the appropriate review framework taking into account the particular circumstances concerned.

The policy also addresses:

- using service agreements to set out the conditions under which a new or existing review body will deliver services for the new (or changed) review right;
- processes to improve the quality of original decision making – providing mechanisms to ensure the outcome of the decisions on review are provided to the original decision maker; and
- how compliance with the policy is to be monitored.

A checklist to assist government agencies to use the policy is Attachment 2.

3. Stage 1 – Should the decision be subject to review?

3.1 General principles to guide whether a decision should be subject to review

The *Legislative Standards Act 1992* sets out general principles to guide when administrative decisions should be subject to review. Section 4(3)(a) of that Act requires legislation to have sufficient regard to the rights and liberties of individuals subject to administrative powers, and identifies the issue of whether the power is subject to appropriate review as being relevant to whether this requirement is satisfied.

Whether a particular decision that affects the rights of an individual should be reviewable or not depends on a range of circumstances. This policy identifies a number of considerations to guide agencies' interpretation and application of the high level principles in the *Legislative Standards Act*.

In considering whether a decision should be subject to review and the type of review that should be available, the common law principles of natural justice also apply. The basic principles of natural justice require that a person whose interests might be adversely affected by a decision be provided with an opportunity to present their case to the relevant decision-maker (the right to be heard), to be notified in advance that a decision is to be made and be given an opportunity to respond (procedural fairness), and have the matter determined by an unbiased decision-maker (an absence of bias). In the context of a legislative scheme conferring rights of review, the requirement to be unbiased, for example, will usually involve ensuring that the person who hears the review is separate from the original decision-maker.

For more information on the application of the fundamental legislative principles (FLPs) and principles of natural justice in the drafting of legislation, see the *OQPC Notebook* and *Principles of Good Legislation: OQPC Guide to FLPs* published by OQPC at <http://flp.govnet.qld.gov.au> or consult the publications of the portfolio committees and the Alert Digests of the former Scrutiny of Legislation Committee (see <http://www.parliament.qld.gov.au/work-of-committees/former-committees/slc>).

OQPC also publishes an index of FLP issues identified in the parliamentary portfolio and scrutiny committees' reports, which is available at <http://flp.govnet.qld.gov.au>.

The considerations in this policy are drafted broadly so as not to pre-determine whether the decision should be subject to review or not. The policy does not mandate review in specific circumstances. The considerations set out below are intended to provide Government with coherent and contestable guidance when decisions are made as to whether to provide a right of review.

3.2 Matters to be considered when deciding whether a decision should be subject to review

In deciding whether a decision should be subject to review, relevant matters include:

- a decision that is likely to affect the rights, interests or legitimate expectations of a person or class of persons should be reviewable on the merits, unless there is a good reason for it not to be subject to review. In determining whether a person's interests are likely to be affected by a decision, the nature, circumstances and seriousness of the issues raised should be considered;
- a decision that has a minor or negligible effect may not be appropriate for merits review;
- a decision that affects generally all those who come within its scope in the way that an Act of Parliament does, may not be appropriate for merit review, despite the fact that the decision is also likely to affect the interests of specific persons;
- a decision which is preliminary to the issue and does not determine the substantive issue may often not be appropriate for merits review since it is better to review only the substantive decision;
- a decision that will require the review body to re-allocate a limited resource where this will affect the portion of the resource available to other people, may be reviewable. However, the decision to provide the review right from the perspective of cost efficiencies should take into account:
 - i. whether the review body will be required to undertake such an extensive inquiry in order to establish relevant facts that it is not cost-effective to confer a right to merit review, particularly when considering the decision has a minor or negligible effect;
 - ii. the effect of the combined expertise of the primary decision maker and the procedure followed in making the decision – that is, a right of review may be less important where the expertise and the process is robust, the decision has limited effect and there are limited resources; and
 - iii. whether the provision of review would make the scheme ungovernable because of the number of reviews that would almost certainly be generated;
- a decision which cannot effectively be reversed by the review body is not appropriate for review;
- a decision which may only be exercised in an emergency will not be appropriate for review but a continuation of the state of emergency beyond a set time should be reviewable on the merits;
- a decision by an agency about granting rights of a commercial nature to an applicant may not be appropriate for merit review. Government may be able to justify the lack of merit review on the ground that the government is making the best commercial judgement as part of its management of state resources. This is particularly the case where industry engages with the government on the basis that it is submitting to all the terms of government involvement;
- a decision imposing enforceable obligations of a voluntary nature need not be subject to merit review;

- decisions on health and safety matters may not necessarily be required to be subject to review if the decision is made acting on expert advice rather than through the usual decision making process
- decisions of no great significance where local protest in established forums would be sufficient to hold the relevant Minister to account may not be appropriate for review, for example, decisions about running of schools need not be subject to review;
- decisions to issue a penalty infringement notice or to commence criminal proceedings are not subject to administrative review; and
- merits review may not be necessary for decisions where there is an appropriate alternative mechanism for review for example, where judicial review is available and inherently adequate, that is, once the decision is made, the only real practical review is to test the legal validity of the decision, or a Ministerial call-in is available and adequate.

4. Stage 2 – Should internal and/or external review mechanisms be used?

4.1 Deciding whether an internal and/or external review should be available

The second stage only applies if the agency decides to provide a right of review for a decision. The issue then is to determine whether the new (or changed) right of review should be dealt with by an external merit review body and/or an internal merit review body.

An internal merit review process involves a review of the decision by a more senior person within the same department in which the decision was made. An internal merit review process involves a merit review to determine whether the right decision has been made and is not a complaints handling system dealing with complaints about the way in which the decision is made.

Internal merit reviews have a number of benefits including that they generally provide a quick, simple and cost effective way to address an incorrect decision. Internal review can also involve non-statutory informal processes such as the development of a policy that informs the public about who they can talk to within the agency if they disagree with the decision. Internal review provides the agency with an opportunity to quickly correct its own error, while at the same time enabling more senior decision-makers to monitor the quality of original decision making. This can then be dealt with by directly addressing the issue with the decision maker, or if the issue is more widespread, by providing training within the government agency. This means that the use of internal review processes has potential over time to improve the overall quality of decision making and practices within government agencies.

The efficacy of internal review as a mechanism to correct errors made in decision making in a timely and cost-efficient way can be eroded, however, when agencies provide multiple levels of internal review without a clear need for this or demonstrated benefit. In line with the 2014 Commission of Audit's recommendation that multiple review or appeal avenues should be streamlined, there is an expectation that agencies will justify the creation of any new review structures that include more than one level of internal review where review structures also include a right of external review.

External merit review bodies include courts, tribunals or other bodies that perform review functions (sometimes called panels, boards or referees). The significant feature of external merit review is that it is independent of the original decision maker, as the review occurs outside of the influence of the original decision maker. Members of merit review bodies also have specialist skills at reviewing decisions that are particularly complex, as well as in matters that significantly affect the interests of a person or the general public. Decision-makers in internal review mechanisms also have specific expertise – the difference is in the relative availability of that expertise and the extent of the powers of the internal decision makers (which are sometimes more limited by way of legislation or rules).

Both internal and external merit review mechanisms may involve dispute resolution in the initial stages of the review, for example mediation or conciliation of the complaint about the decision.

The essential issue to decide whether an internal or external body should be used is whether the review process should operate within the government agency responsible for the original decision or whether the review should operate outside of the government agency responsible for the original decision, and be conducted by expert decision makers. In all cases, the objective should be to provide for an effective and appropriate review process, which also avoids wherever possible the existence of multiple review pathways.

4.2 The need to consider the use of internal review

Internal review must be considered in all cases as the first step in a review process. It may be that the nature of the decision warrants only internal review processes being implemented, that is, the decision is only ever subject to internal review and not external review.

In particular, internal review is appropriate when the nature of the decision or the subject matter of the decision lends itself to simple, informal and quick internal review mechanisms. For example, it is a decision by a government agency of a routine nature in an area that involves high numbers of decisions. Another example could be where a senior officer delegates the decision making to a lower ranking officer, and that lower ranked person's decision is then able to be reviewed by the Director-General as part of an internal review process.

However, in other cases that significantly affect the rights of an individual, a decision may be subject to internal review in the first step of the review process, with the outcome of the internal review then subject to an external review process.

When establishing or reviewing rights of review that are to include provision for both an internal review and external review, agencies should consider the benefits of requiring that internal review processes first be exhausted before external review is accessible. Ensuring that internal review is used in the first instance (where appropriate) assists in the provision of clear review pathways and can reduce the overall costs to agencies and government.

4.3 Deciding when matters may proceed directly to external review (without internal review)

Although **this policy requires internal review to be considered in all cases**, there will be occasions when it is not appropriate for a decision to be subject to internal review, even as a first step in the process, and it should be referred directly to external review.

The following are matters where external review bodies (without being first referred to an internal review process) should be considered:

- the merits of the decision are difficult to distinguish or evaluate and there is a need for independent and expert decision makers to conduct the merit review;
- the decision is made at the most senior level of the government agency (for example by the Director-General or the Minister personally) when there is no more senior level to be invoked in reviewing the decision;
- the decision has been made by a board or committee after relatively extensive inquiry by the board or committee;
- an individual's interests (financial or otherwise) would be significantly adversely affected by a requirement to go through an internal review process before an external review can occur;
- the decision is by an agency in relation to a competitive commercial activity; or

- the public interest in the decision means it is inappropriate that internal review processes apply, given that external review processes are independent of original decision maker and are more open to external scrutiny. For example, the decision to take away a doctor's licence to practise medicine.

The above list is not an exhaustive list, nor are these matters the sole considerations to determine whether the decision should automatically proceed to external review – they are intended as illustrative examples only.

5. Stage 3 – If a decision is to be subject to external review, which body should be used?

5.1 When does this stage apply?

This stage only applies if the agency has decided to make the review right subject to external merit review. The issue to be determined is which review body should have jurisdiction to hear the review.

QCAT has been established as a one-stop-shop for community justice and dispute resolution in Queensland. On this basis, **there should be no need to create any new external review bodies or to confer new administrative review powers on the courts.**

5.2 Existing review bodies should be used for external reviews (with QCAT to be considered as the first option)

Government agencies should use existing review bodies (QCAT, Mental Health Review Tribunal and Mental Health Court, Queensland Industrial Relations Commission, Land Court, Planning and Environment Court etc.) rather than the Magistrates Court.

Government agencies should specifically consider as a first option whether QCAT would be an appropriate review body. Some of the benefits of QCAT over other bodies include that it:

- employs processes already known to the community, enhancing access to justice and provides the opportunity for economies of scale;
- has the potential to increase consistency of decision making, enhancing community confidence in the justice system generally;
- has generic procedures that are designed to meet a range of different needs, with some provisions and processes tailored for specific needs of specific jurisdictions; and
- has a membership tailored to ensure specialist expertise is available if necessary.

The use of other existing review bodies should only be considered after QCAT has been considered and expressly rejected as the appropriate body, taking into account the issues detailed below. If QCAT is not considered to be the appropriate external review body, agencies should consider other existing review bodies rather than the Magistrates Court, also in terms of the issues detailed below.

5.3 Deciding if QCAT is the appropriate review body for external reviews

In general, in considering whether QCAT is the appropriate body, government agencies should consider whether:

- QCAT has members with appropriate expertise who could properly adjudicate the issue or members who, based on their current expertise, could develop the appropriate expertise. For example,

whether it is a matter where specific industry knowledge is not required and a generic review body can be used or, alternatively, the specific industry knowledge can be captured by appointing members to the tribunal with that specific knowledge;

- QCAT has processes that would be appropriate to deal with the issue (for example, expedited hearings if some of the reviews will be straightforward) and/or has processes (including registry access) appropriate to the needs of the stakeholders. Considerations of whether QCAT has the appropriate right to representation and costs orders are also relevant; and
- QCAT can meet the needs of the possible applicants in regional/rural/remote areas of Queensland to ensure their access to justice.

5.4 Consistency with the Queensland Civil and Administrative Tribunal Act 2009

When amending, creating or reviewing legislation conferring jurisdiction on QCAT, Government agencies should consider standard *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act) provisions, including constitution provisions, to maximise consistency with the QCAT Act.

6. Service level agreements with external merit review bodies, including QCAT

When government agencies propose to establish a new right of review or make significant changes to an existing right of review, the agency should determine a best estimate of the approximate cost of this. This includes estimating the number of matters likely to be dealt with; how long matters will take to hear and the cost of the hearings. These costs should be developed in consultation with the chosen external review body, such as QCAT.

Some existing merit review bodies have service level agreements that govern the conditions under which the merit review body will deliver the services (including the cost sharing arrangements) and detail the responsibilities of the agency administering the body. This provides an open and accountable system for the administration of the review body.

As a general principle agencies should enter into service level agreements to govern the conditions in which the review body will deliver the services and any cost sharing arrangements, the cost sharing agreement should be reduced into a memorandum of understanding (MOU).

As a general guide, the MOU should cover the following issues:

- specify the services provided by the review body covering administrative management arrangements as appropriate and determination of the matters;
- if a fee for service model is to be used, set out the amounts to be paid by the agency conferring the jurisdiction on the review body and when that occurs (for example, whether agencies pay for every hearing that results from their decision and if so, whether costs orders affect this). Note that a fee for service model may not be appropriate in some cases. The service agreement may address when the review body can charge the applicant a fee when seeking external review (if provided for by legislation, regulations or rules);
- if the review body is able to estimate in advance the costs involved in reviewing a matter (which will not be possible in all cases), the service level agreement could also address situations when actual costs exceed estimates because of unexpected numbers of reviews or individual reviews proving more elaborate and expensive than estimated. The agreement could provide for the ability to agree on maximum costs to the agency, subject to review at designated intervals; and

- provide for processes dealing with commencement, variation and termination of the agreement and resolution of any disputes arising out of the agreement.

Wherever possible, the agreed arrangements should also allow for a mechanism that will support the agency conferring the jurisdiction on the review body to report on the number and status of matters referred to the review body under the empowering Act (such as through information provided as part of invoicing arrangements).

7. Improving the quality of original decision-making

Administrative processes must be established to ensure that the outcome of the external merit review is communicated back to the original decision maker. This will help to improve the quality of the original decision making.

The external merit review process should include a system that involves some or all of the following mechanisms:

- publishing decisions on the external review body's website (where this is appropriate and if necessary, de-identifying the relevant material);
- publishing significant decisions in the external review body's annual report (where this is appropriate and if necessary, de-identifying the relevant material);
- after every decision, a copy of the decision is provided to the chief executive officer of the agency responsible for the decision. A review decision may not actually overturn a particular decision but may nonetheless have commentary on the decision making process which is useful for improving the quality of original decision making;
- after every decision that is adverse to the decision maker, or where it is different to the position advocated by either party, a copy of the decision is provided to the chief executive officer of the agency responsible for the decision;
- the original decision maker or the review body notifies key stakeholders about landmark decisions that establish a definitive approach to how the tribunal determines certain cases (for example, to community organisations that provide advice to users of the review body); and
- stakeholder committees with representatives from the relevant Government agency and the external review body that provides feedback on decisions as they arise.

These processes should be the responsibility of the external merit review body. When agencies are establishing new external merit review bodies it is their responsibility to ensure these processes are in place for the new body.

8. Monitoring compliance with policy

For the policy to be effective in the long term, Government must ensure that government agencies are complying with the policy.

The Cabinet Handbook requires government agencies to comply with the policy before Cabinet considers supporting a new right of review being established, or where significant changes are proposed to existing review processes. The Cabinet Handbook process ensures a centralised and consistent system to monitor agency's compliance with the policy.

The Department of the Premier and Cabinet, as the agency responsible for monitoring compliance with requirements in the Cabinet Handbook has an ongoing monitoring role in ensuring agencies' compliance with the policy.

Attachment 1: Explanation of Terms

Administrative review mechanisms are legal processes that provide redress against a decision made by a government entity. For example, when a government agency makes a decision about licensing a childcare centre, that decision can be reviewed by the Queensland Civil and Administrative Tribunal.

Alternative Dispute Resolution (ADR) is an umbrella term for processes, other than judicial determination, in which an impartial person assists those in a dispute to resolve the issues between them. It includes mediation and conciliation. ADR is commonly used as an abbreviation for alternative dispute resolution, but can also be used to mean assisted or appropriate dispute resolution. Some also use the term ADR to include approaches that enable parties to prevent or manage their own disputes without outside assistance.

Civil justice mechanisms are legal processes that provide redress in a civil dispute between two parties that does not involve the criminal law. For example, the Queensland Civil and Administrative Tribunal determines certain disputes between residents and owners of residential parks.

External merit review is the process by which a person or body other than the primary decision maker reconsiders the facts, law and policy aspects of an original decision and determines what the correct decision is. External merit review is conducted by an independent body. When an internal body or departmental officer conducts the review of the decision it is called **internal review**.

Judicial review relates primarily to the legality of how the decision was made – it does not permit review of the merits or the substance of the decision. Merit review in Queensland is performed by a number of different judicial and quasi-judicial bodies including the Queensland Civil and Administrative Review Tribunal. Merit review can also be conducted by the Supreme, District and Magistrates Courts. Judicial review is only performed by the Supreme Court, under the *Judicial Review Act 1991*.

Merit review processes are different to judicial review processes. Merit review involves standing in the shoes of the original decision maker and reconsidering the facts, law and policy aspects of the original decision.

A **tribunal** is an independent body established by legislation that hears and determines disputes between parties. Disputes in tribunals are usually determined by members appointed for limited terms by the Minister responsible for the legislation establishing the tribunal. Members of tribunals can also be judicial officers (judges or magistrates), but are more often lawyers or experts in the particular field that is in dispute.

Attachment 2: Administrative Review Policy Checklist

This checklist is to assist government agencies to use the policy.

1. Does the policy apply? (section 1.5 of the policy)

- The nature of the review right is merit review, not judicial review or a complaint about how the decision is made independent of its merits – the review is about whether the decision was correct or not.
- The review right is a right to a review of a government agency decision, not a decision of an individual or private business.

2. Should the decision be subject to review? (section 3 of the policy)

- The decision should be subject to review, having taken into account the issues identified in stage 1 (section 3) of the policy.

3. Should an internal or external merit review mechanism be used or both? (section 4 of the policy)

- Both internal and external review processes have been considered.
- Internal review has been considered as the sole mechanism for review, as well as the first stage of an initial review process.

Note: Where possible, consider the need to exhaust internal review processes prior to providing a right to external review.

4. If an internal review process has been chosen:

- It is appropriate for the review process to be conducted within the government agency that made the original decision.
- The decision lends itself to a simple, informal and quick internal review mechanism, for example:
 - it is a decision by a government agency of a routine nature in an area that involves high numbers of decisions; or
 - the decision has been made by a delegate of the person responsible for making the decision. For example, when the Director-General has delegated the decision to an operational officer at a lower level and the Director-General can review the decision as part of an internal review process.
- If it is intended to provide as part of the review process for multiple levels of internal review (prior to an external review) the need for this has been thoroughly assessed and can be adequately justified.

5. If an external review process has been chosen:

- The nature of the decision either:
 - (a) Has already been internally reviewed and external review is the next step; or
 - (b) Internal review has been considered and deemed inappropriate and the matter should be externally reviewed in the first instance. Some examples where external review may be appropriate as the first step in the review process include:
 - the merits of the decision are difficult to distinguish or evaluate and there is a need for independent and expert decision makers to conduct the merit review;

- the decision is made at the most senior level of the government agency (for example by the Director-General or the Minister personally) when there is no more senior level to be invoked in reviewing the decision;
- the powers of the internal decision-maker are limited by legislation and must be referred to an external body for further review;
- the person subject to the decision elects to have the decision heard directly by the external review body, rather than the internal review mechanism (where this is allowed in legislation);
- the decision has been made by a board or committee after relatively extensive inquiry by the board or committee;
- an individual's interests (financial or otherwise) would be significantly adversely affected by a requirement to go through an internal review process before an external review can occur;
- the decision is by an agency in relation to a competitive commercial activity; or
- the public interest in the decision means it is inappropriate that internal review processes apply, given that external review processes are independent of the original decision maker and are more open to external scrutiny. For example, the decision to take away a doctor's licence to practise medicine, or the decision to appoint a guardian for a person with impaired capacity to make decisions affecting their life.

6. Which EXISTING external review body should be used? (section 5 of the policy)

- The Queensland Civil and Administrative Tribunal has been considered first as the review body.
- The merit review body chosen has members with appropriate expertise that could properly adjudicate the issue, or members who, based on their current expertise, could easily develop the appropriate expertise.
- The merit review body has processes that would be appropriate to deal with this issue (for example, expedited hearings if some of the reviews will be straight forward) and/or have processes (including registry access) appropriate to the needs of the stakeholders.
- The merit review body will meet the needs of the possible applicants in regional/rural/remote areas of Queensland to ensure their access to justice.

7. Service level agreements (section 6 of the policy)

- The cost of the external review have been estimated in consultation with the preferred external review body.
- There has been consideration given to a cost sharing agreement reduced into a memorandum of understanding, unless exceptional circumstances exist justifying other arrangements.

8. Improving the quality of decision making (section 7 of the policy)

- The process has been put in place to ensure the outcome of the external merit review is provided to the original decision maker to improve the quality of decision making (via the accepted method proposed in the administrative review policy).