

Queensland

Judicial Review Act 1991

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Judicial Review Act 1991

An Act relating to the review on questions of law of certain administrative decisions, and for the reform of procedures relating to judicial review at common law, and for other purposes

Part 1 Preliminary

Division 1 Introductory

1 Short title

This Act may be cited as the *Judicial Review Act 1991*.

Division 2 Interpretation

3 Definitions

In this Act—

certiorari order means an order the relief or remedy under which is in the nature of, and to the same effect as, the relief or remedy that could, but for section 41, have been granted by means of a writ of certiorari.

competitive commercial activity means an activity carried on, on a commercial basis, in competition with a person, other than—

(a) the Commonwealth or a State or Territory; or

(b) a State authority; or

(c) a local government authority.

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corporatised corporation means a corporate entity under the *Local Government Act 2009*.

court means the Supreme Court.

duty includes a duty imposed on a person in the person's capacity as a servant of the Crown.

enactment means an Act or statutory instrument, and includes a part of an Act or statutory instrument.

judge means a judge of the Supreme Court.

person includes an unincorporated body.

prerogative injunction means an injunction of the kind mentioned in section 42(2).

prerogative order means an order of a kind mentioned in section 41(2).

prohibition order means an order the relief or remedy under which is in the nature of, and to the same effect as, the relief or remedy that could, but for section 41, have been granted by means of a writ of prohibition.

rail government entity see the *Transport Infrastructure Act 1994*, schedule 6.

reasons, in relation to a decision, means—

(a) findings on material questions of fact; and

(b) a reference to the evidence or other material on which the findings were based;

as well as the reasons for the decision.

review, in part 1, division 3, includes a review by way of—

(a) reconsideration, rehearing or appeal; or

(b) the grant of an injunction or of a prerogative or statutory writ or order; or

(c) the making of a declaratory or other order.

reviewable matter means—

(a) a decision; or

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(b) conduct, including conduct engaged in for the purpose of making a decision; or

(c) a failure to make a decision or to perform a duty according to law.

royalty see the *Taxation Administration Act 2001*, schedule 2.

rules of court mean the rules of court of the Supreme Court.

service includes the Queensland Police Service.

State authority means an authority or body (whether or not incorporated) that is established by or under an enactment, but does not include a local government authority.

statutory order of review means an order on an application made—

(a) under section 20 in relation to a decision; or

(b) under section 21 in relation to conduct engaged in for the purpose of making a decision; or

(c) under section 22 in relation to a failure to make a decision.

4 Meaning of *decision to which this Act applies*

In this Act—

decision to which this Act applies means—

(a) a decision of an administrative character made, proposed to be made, or required to be made, under an enactment (whether or not in the exercise of a discretion); or

(b) a decision of an administrative character made, or proposed to be made, by, or by an officer or employee of, the State or a State authority or local government authority under a non-statutory scheme or program involving funds that are provided or obtained (in whole or part)—

(i) out of amounts appropriated by Parliament; or

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(ii) from a tax, charge, fee or levy authorised by or under an enactment.

5 Meaning of *making of a decision* and *failure to make a decision*

In this Act, a reference to the ***making of a decision*** includes a reference to—

(a) making, suspending, revoking or refusing to make an order, award or determination; or

(b) giving, suspending, revoking or refusing to give a certificate, direction, approval, consent or permission; or

(c) issuing, suspending, revoking or refusing to issue a licence, authority or other instrument; or

(d) imposing a condition or restriction; or

(e) making a declaration, demand or requirement; or

(f) retaining, or refusing to deliver up, an article; or

(g) doing or refusing to do anything else;

and a reference to a ***failure to make a decision*** is to be construed accordingly.

6 Making of report or recommendation is making of a decision

If provision is made by an enactment for the making of a report or recommendation before a decision is made, the making of the report or recommendation is itself taken, for the purposes of this Act, to be the making of a decision.

7 Meaning of person aggrieved

(1) In this Act, a reference to a person aggrieved by a decision includes a reference—

(a) to a person whose interests are adversely affected by the decision; or

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(b) in the case of a decision by way of the making of a report or recommendation—to a person whose interests would be adversely affected if a decision were, or were not, made in accordance with the report or recommendation.

(2) In this Act, a reference—

(a) to a person aggrieved by conduct that has been, is being, or is proposed to be, engaged in for the purpose of making a decision; or

(b) to a person aggrieved by a failure to make a decision;

includes a reference to a person whose interests are, or would be, adversely affected by the conduct or failure.

8 Conduct engaged in for making decision—preparatory acts

A reference in this Act to conduct engaged in for the purpose of making a decision includes a reference to the doing of anything preparatory to the making of the decision, including—

(a) the taking of evidence; or

(b) the holding of an inquiry or investigation.

9 Power conferred by enactment—non-statutory scheme or program

A reference in this Act to the exercise of a power conferred by an enactment includes a reference to the exercise of a power, or performance of a function, under a non-statutory scheme or program involving funds that are provided or obtained (in whole or part)—

(a) out of amounts appropriated by Parliament; or

(b) from a tax, charge, fee or levy authorised by or under an enactment.

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Division 3 Relationship with other review rights

10 Rights conferred by Act additional to other review rights

(1) The rights conferred by this Act on a person to make an application to the court in relation to a reviewable matter are in addition to any other rights that the person has to seek a review of the matter (whether by the court, another court or a tribunal, authority or person).

(2) Subject to section 41, the existence of a remedy by way of an application for review does not exclude any jurisdiction of the court to grant other relief.

11 When application for other review may be dismissed

Despite section 10, but without limiting section 48, the court, or another court, may, in a proceeding instituted otherwise than under this Act, dismiss an application for review of a reviewable matter because an application has been made to the court under section 20 to 22 or 43 in relation to the matter.

12 When application for statutory order of review may be dismissed

Despite section 10, but without limiting section 48, the court may dismiss an application under section 20 to 22 or 43 that was made to the court in relation to a reviewable matter because—

(a) the applicant has sought a review of the matter by the court or another court, otherwise than under this Act; or

(b) adequate provision is made by a law, other than this Act, under which the applicant is entitled to seek a review of the matter by the court or another court.

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13 When application for statutory order of review must be dismissed

Despite section 10, but without limiting section 48, if—

(a) an application under section 20 to 22 or 43 is made to the court in relation to a reviewable matter; and

(b) provision is made by a law, other than this Act, under which the applicant is entitled to seek a review of the matter by another court or a tribunal, authority or person;

the court must dismiss the application if it is satisfied, having regard to the interests of justice, that it should do so.

14 When application for statutory order of review concerning interim initial proceeding must be dismissed

Despite section 10, but without limiting section 48, if—

(a) an application under section 20 to 22 or 43 is made to the court in relation to a reviewable matter made or engaged in by a tribunal, authority or person in the course of a proceeding (the ***initial proceeding***) before the tribunal, authority or person (the ***decision-maker***); and

(b) review of the matter is available because of provision made by a law (including this Act) under which the applicant is entitled to seek a review by the court, another court, or another tribunal, authority or person, of any decision of the decision-maker at the end of the initial proceeding; and

(c) the court considers that it is desirable to dismiss the application in order to avoid interference with the due and orderly conduct of the initial proceeding because, in all the circumstances, the balance of convenience (including the interests of the applicant, another party or another person, the public interest and the consequences of delay in the initial proceeding) so requires;

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the court must dismiss the application if it is satisfied, having regard to the interests of justice, that it should do so.

15 Exercise of powers under div 3

(1) A power under this division to dismiss an application—

(a) must be exercised by order; and

(b) may be exercised at any time in the relevant proceeding, but the court concerned must try to ensure that any exercise of the power happens at the earliest appropriate time.

(2) The court may make an order under this division—

(a) of its own motion; or

(b) on an application by a party to the proceeding.

(3) The court may receive evidence on the hearing of an application for an order under this division.

(4) An appeal may be brought from an order of the court under this division only with the leave of the Court of Appeal.

Division 4 Relationship with other laws

16 Commonwealth Administrative Decisions (Judicial Review) Act

(1) If—

(a) a provision of the *Administrative Decisions (Judicial Review) Act 1977* (Cwlth) expresses an idea in particular words; and

(b) a provision of this Act appears to express the same idea in different words because of different legislative drafting practice;

the ideas must not be taken to be different merely because different words are used.

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(2) A comparative table of the provisions of this Act and the provisions of the *Administrative Decisions (Judicial Review) Act 1977* (Cwlth) is set out in schedule 3.

18 Operation of other laws

(1) This Act has effect despite any law in force at its commencement.

(2) However, this Act does not—

(a) affect the operation of an enactment mentioned in schedule 1, part 1; or

(b) apply to decisions made, proposed to be made, or required to be made, under an enactment mentioned in schedule 1, part 2.

Division 5 Application of Act

18A Application of Act to GOCs, rail government entities and State electricity entities

This Act does not apply to—

(a) a decision of a GOC mentioned in schedule 6 to the extent provided under the application provision mentioned for the GOC in the schedule; or

(b) a decision of a rail government entity to the extent provided under the *Transport Infrastructure Act 1994*, section 486; or

(c) a decision of a State electricity entity within the meaning of the *Electricity Act 1994* to the extent provided under section 256 of that Act.

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18C Application of Act to State and relevant entity under Transport Infrastructure Act 1994

(1) This Act does not apply to a decision of the State or a relevant entity made in carrying out its functions under the *Transport Infrastructure Act 1994*, chapter 8, part 3A.

(2) In this section—

functions includes powers.

relevant entity see the *Transport Infrastructure Act 1994*, section 279A.

Part 2 Jurisdiction

19 Jurisdiction of Supreme Court

The court has jurisdiction to hear and determine applications made to it under this Act.

Part 3 Statutory orders of review

20 Application for review of decision

(1) A person who is aggrieved by a decision to which this Act applies may apply to the court for a statutory order of review in relation to the decision.

(2) The application may be made on any 1 or more of the following grounds—

(a) that a breach of the rules of natural justice happened in relation to the making of the decision;

(b) that procedures that were required by law to be observed in relation to the making of the decision were not observed;

(c) that the person who purported to make the decision did not have jurisdiction to make the decision;

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(d) that the decision was not authorised by the enactment under which it was purported to be made;

(e) that the making of the decision was an improper exercise of the power conferred by the enactment under which it was purported to be made;

(f) that the decision involved an error of law (whether or not the error appears on the record of the decision);

(g) that the decision was induced or affected by fraud;

(h) that there was no evidence or other material to justify the making of the decision;

(i) that the decision was otherwise contrary to law.

(3) This section applies only to a decision made after the commencement of this Act.

21 Application for review of conduct related to making of decision

(1) If a person has engaged, is engaging, or proposes to engage, in conduct for the purpose of making a decision to which this Act applies (whether by the person engaging in the conduct or by another person), a person who is aggrieved by the conduct may apply to the court for a statutory order of review in relation to the conduct.

(2) The application may be made on any 1 or more of the following grounds—

(a) that a breach of the rules of natural justice has happened, is happening, or is likely to happen, in relation to the conduct;

(b) that procedures that are required by law to be observed in relation to the conduct have not been, are not being, or are likely not to be, observed;

(c) that the person proposing to make the decision does not have jurisdiction to make the proposed decision;

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(d) that the enactment under which the decision is proposed to be made does not authorise the making of the proposed decision;

(e) that the making of the proposed decision would be an improper exercise of the power conferred by the enactment under which the decision is proposed to be made;

(f) that an error of law—

(i) has been, is being, or is likely to be, committed in the course of the conduct; or

(ii) is likely to be committed in the making of the proposed decision;

(g) that fraud has taken place, is taking place, or is likely to take place, in the course of the conduct;

(h) that there is no evidence or other material to justify the making of the proposed decision;

(i) that the making of the proposed decision would be otherwise contrary to law.

(3) This section applies only to conduct engaged in, or proposed to be engaged in, after the commencement of this Act.

22 Application in relation to failure to make decision

(1) If—

(a) a person has a duty to make a decision to which this Act applies; and

(b) there is no law that fixes a period within which the person is required to make the decision; and

(c) the person has failed to make the decision;

a person who is aggrieved by the failure of the person to make the decision may apply to the court for a statutory order of review in relation to the failure to make the decision on the ground that there has been unreasonable delay in making the decision.

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(2) If—

(a) a person has a duty to make a decision to which this Act applies; and

(b) a law fixes a period within which the person is required to make the decision; and

(c) the person failed to make the decision before the end of the period;

a person who is aggrieved by the failure of the person to make the decision within the period may apply to the court for a statutory order of review in relation to the failure to make the decision within the period on the ground that the person has a duty to make the decision despite the end of the period.

(3) This section applies only to a decision required to be made after the commencement of this Act.

23 Meaning of *improper exercise of power* (ss 20(2)(e) and 21(2)(e))

In sections 20(2)(e) and 21(2)(e), a reference to an improper exercise of a power includes a reference to—

(a) taking an irrelevant consideration into account in the exercise of a power; and

(b) failing to take a relevant consideration into account in the exercise of a power; and

(c) an exercise of a power for a purpose other than a purpose for which the power is conferred; and

(d) an exercise of a discretionary power in bad faith; and

(e) an exercise of a personal discretionary power at the direction or behest of another person; and

(f) an exercise of a discretionary power in accordance with a rule or policy without regard to the merits of the particular case; and

(g) an exercise of a power that is so unreasonable that no reasonable person could so exercise the power; and

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(h) an exercise of a power in such a way that the result of the exercise of the power is uncertain; and

(i) any other exercise of a power in a way that is an abuse of the power.

24 Decisions without justification—establishing ground (ss 20(2)(h) and 21(2)(h))

The ground mentioned in sections 20(2)(h) and 21(2)(h) is not to be taken to be made out—

(a) unless—

(i) the person who made, or proposed to make, the decision was required by law to reach the decision only if a particular matter was or is established; and

(ii) there was no evidence or other material (including facts of which the person was or is entitled to take notice) from which the person could or can reasonably be satisfied that the matter was or is established; or

(b) unless—

(i) the person who made, or proposes to make, the decision based, or proposes to base, the decision on the existence of a particular fact; and

(ii) the fact did not or does not exist.

25 Way of making application

An application for a statutory order of review must—

(a) be made in the way prescribed by rules of court; and

(b) set out the grounds of the application; and

(c) be lodged with a registry of the court.

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26 Period within which application must be made

(1) An application to the court for a statutory order of review in relation to a decision that has been made and the terms of which were recorded in writing and set out in a document that was given to the applicant (including a decision that a person purported to make after the end of the period within which it was required to be made) must be made within—

(a) the period required by subsection (2); or

(b) such further time as the court (whether before or after the end of that required period) allows.

(2) The period within which an application for a statutory order of review is required to be made is the period beginning on the day on which the decision is made and ending 28 days after the relevant day.

(3) If—

(a) there is not a period prescribed for the making of an application for a statutory order of review in relation to a particular decision; or

(b) there is not a period prescribed for the making of an application by a particular person for a statutory order of review in relation to a particular decision;

the court may take the following action if it is of the opinion that the application was not made within a reasonable time after the decision was made—

(c) if paragraph (a) applies—refuse to consider an application for a statutory order of review in relation to the decision;

(d) if paragraph (b) applies—refuse to consider an application by the person for a statutory order of review in relation to the decision.

(4) In forming an opinion for the purposes of subsection (3), the Court—

(a) must have regard to—

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(i) the time when the applicant became aware of the decision; and

(ii) if subsection (3)(b) applies—the period prescribed for the making by another person of an application for a statutory order of review in relation to the decision; and

(b) may have regard to such other matters as it considers relevant.

(5) In subsection (2)—

relevant day means—

(a) if the decision includes, or is accompanied by a statement giving, the reasons for the decision—the day on which a document setting out the terms of the decision is given to the applicant; or

(b) if paragraph (a) does not apply and a written statement giving the reasons for the decision is given to the applicant (otherwise than because of a request under section 32) not later than 28 days after the day on which a document setting out the terms of the decision is given to the applicant—the day on which the statement is given; or

(c) if paragraph (a) does not apply and the applicant requests the person who made the decision to give a statement under section 32—the day on which—

(i) the statement is given; or

(ii) the applicant is notified under section 33(2) that the applicant was not entitled to make the request; or

(iii) the applicant is notified under section 33(5) or 37 that the statement will not be given; or

(iv) the court makes an order under section 39 declaring that the applicant was not entitled to make the request; or

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(d) in any other case—the day on which a document setting out the terms of the decision is given to the applicant.

27 Applicant not limited to grounds in application

The applicant for a statutory order of review is not limited to the grounds set out in the application but, if the applicant wishes to rely on a ground not set out in the application, the court may direct that the application be amended to specify the ground.

28 Application to be made party to proceeding

(1) If—

(a) a person is interested in—

(i) a decision; or

(ii) conduct (including conduct that has been, is being, or is proposed to be, engaged in for the purpose of making a decision); or

(iii) a failure to make a decision or perform a duty according to law; and

(b) an application has been made to the court under this Act in relation to the decision, conduct or failure;

the person may apply to the court to be made a party to the application.

(2) The court may grant or refuse the application.

29 Stay of decision

(1) The making of an application to the court under section 20 in relation to a decision does not—

(a) affect the operation of the decision; or

(b) prevent the taking of action to implement the decision.

(2) Despite subsection (1), the court or a judge—

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(a) may, by order, suspend the operation of the decision; and

(b) may order a stay of any proceeding under the decision.

(3) The court or judge may make the order—

(a) of the court's or judge's own motion; or

(b) on the application of the person who made the application.

30 Powers of the court in relation to applications for order of review

(1) On an application for a statutory order of review in relation to a decision, the court may make all or any of the following orders—

(a) an order quashing or setting aside the decision, or a part of the decision, with effect from—

(i) the day of the making of the order; or

(ii) if the court specifies the day of effect—the day specified by the court (which may be before or after the day of the making of the order);

(b) an order referring the matter to which the decision relates to the person who made the decision for further consideration, subject to such directions (including the setting of time limits for the further consideration, and for preparatory steps in the further consideration) as the court determines;

(c) an order declaring the rights of the parties in relation to any matter to which the decision relates;

(d) an order directing any of the parties to do, or to refrain from doing, anything that the court considers necessary to do justice between the parties.

(2) On an application for a statutory order of review in relation to conduct that has been, is being, or is proposed to be, engaged in for the purpose of the making of a decision, the court may make either or both of the following orders—

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(a) an order declaring the rights of the parties in relation to any matter to which the conduct relates;

(b) an order directing any of the parties to do, or to refrain from doing, anything that the court considers necessary to do justice between the parties.

(3) On an application for a statutory order of review in relation to a failure to make a decision, or in relation to a failure to make a decision within the period within which the decision was required to be made, the court may make all or any of the following orders—

(a) an order directing the making of the decision;

(b) an order declaring the rights of the parties in relation to the making of the decision;

(c) an order directing any of the parties to do, or to refrain from doing, anything that the court considers necessary to do justice between the parties.

(4) The court may, at any time, of its own motion or on the application of a party, revoke, vary, or suspend the operation of, an order made by it under this section.

Part 4 Reasons for decision

31 Decision to which part applies

In this part—

decision to which this part applies means a decision that is a decision to which this Act applies, but does not include—

(a) a decision that includes, or is accompanied by a statement, giving the reasons for the decision; or

(b) a decision included in a class of decisions set out in schedule 2.

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32 Request for statement of reasons

(1) If a person makes a decision to which this part applies, a person who is entitled to make an application to the court under section 20 in relation to the decision may request the person to provide a written statement in relation to the decision.

(2) The request must be made by written notice given to—

(a) if the decision was made by the Governor in Council or by Cabinet—the Minister responsible for the administration of the enactment, or the scheme or program, under which the decision was made; or

(b) in any other case—the person who made the decision.

33 Decision-maker must comply with request except in certain circumstances

(1) Subject to this section, a person to whom a request is made under section 32 (the ***decision-maker***) must, as soon as practicable, and, in any event, within 28 days after receiving the request, provide the statement to the person who made the request (the ***requester***).

(2) If the decision-maker is of the opinion that the requester was not entitled to make the request, the decision-maker may, within 28 days after receiving the request—

(a) give to the requester written notice of the decision-maker's opinion; or

(b) apply to the Court under section 39 for an order declaring that the requester was not entitled to make the request.

(3) If the decision-maker gives a notice under subsection (2) or applies to the court under section 39, the decision-maker is not required to comply with the request unless—

(a) the court, on an application under section 38, orders the decision-maker to give the statement; or

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(b) the decision-maker has applied to the court under section 39 for an order declaring that the requester was not entitled to make the request and the court refuses the application.

(4) The decision-maker may refuse to prepare and give the statement if—

(a) in the case of a decision the terms of which were recorded in writing and set out in a document that was given to the requester—the relevant request was not made within 28 days after the day on which the document was given; or

(b) in any other case—the relevant request was not made within a reasonable time after the decision was made.

(5) If subsection (4)(a) or (b) applies to the decision-maker, the decision-maker must give to the requester, within 14 days after receiving the relevant request, written notice stating—

(a) that the statement will not be given to the requester; and

(b) the reasons why it will not be given.

(6) For the purposes of subsection (4)(b), a request for a statement in relation to a decision is taken to have been made within a reasonable time after the decision was made if the court, on application by the requester, declares that the request was made within a reasonable time after the decision was made.

34 Content of statement

The statement must contain the reasons for the decision.

35 Exception for information relating to personal or business affairs

(1) This section applies to information to which a request made to a person under section 32 relates if the information—

(a) relates to the personal affairs or business affairs of a person, other than the person making the request; and

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(b) is of a confidential nature.

(2) For the purposes of subsection (1), information is taken to be of a confidential nature if the information is information—

(a) that was supplied in confidence and continues to retain its confidential character; or

(b) the publication of which would reveal a trade secret; or

(c) the publication of which would, or could reasonably be expected to, adversely affect a State authority or local government authority in relation to its competitive commercial activities; or

(d) that was given under a duty imposed by an enactment; or

(e) the giving of which under the request would be in contravention of an enactment that expressly imposes on the person to whom the request is made a duty not to divulge or communicate information of that kind—

(i) to a person; or

(ii) to a person, other than a person included in a class of persons prescribed by regulation; or

(iii) except in circumstances prescribed by regulation.

(3) Section 37 specifies the consequences of this section applying to information.

36 Exception for information covered by Attorney-General's certificate

(1) This section applies to information relating to a matter if the Attorney-General certifies, by signed writing, that the disclosure of information relating to the matter would be contrary to the public interest—

(a) because it would involve the disclosure of deliberations or a decision of Cabinet or a Committee of Cabinet; or

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(b) for any other specified reason that could form the basis for a claim in a judicial proceeding that the information should not be disclosed.

(2) Section 37 specifies the consequences of this section applying to information.

37 Consequences of s 35 or 36 applying to information

(1) If a person has been requested under section 32 to give a statement to a person—

(a) the person to whom the request is made is not required to include in the statement any information in relation to which section 35 or 36 applies; and

(b) if the statement would be false or misleading if it did not include the information—the person is not required to give the statement.

(2) If, because of subsection (1)—

(a) information is not included in a statement given by a person; or

(b) a statement is not given by a person;

the person must give written notice relating to the request to the person who made the request.

(3) The notice must state—

(a) if subsection (1)(a) applies—

(i) that the information is not included; and

(ii) the reason for not including the information; and

(b) if subsection (1)(b) applies—

(i) that the statement will not be given; and

(ii) the reason for not giving the statement.

(4) The notice must be given—

(a) if subsection (1)(a) applies—at the time the statement is given; or

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(b) if subsection (1)(b) applies—as soon as practicable and, in any event, within 28 days after receiving the request.

(5) Nothing in this section affects the power of the court—

(a) to make an order for the discovery of documents; or

(b) to require the giving of evidence or the production of documents to the court.

38 Application for order to comply

(1) If—

(a) a person (the ***requester***) makes a request under section 32 to a person (the ***decision-maker***) for a written statement in relation to a decision; and

(b) the decision-maker does not comply with the request, or apply to the court under section 39 in relation to the request, within 28 days after receiving the request;

the requester may apply to the court for an order under this section.

(2) If the court considers that the requester was entitled to make the request, the court may order the decision-maker to give the statement within a specified period.

39 Application for order that person not entitled to statement

(1) If—

(a) a person (the ***decision-maker***) receives a request under section 32 from a person (the ***requester***) for a written statement in relation to a decision; and

(b) the decision-maker is of the opinion that the requester is not entitled to make the request;

the decision-maker may apply to the court for an order under this section declaring that the requester was not entitled to make the request.

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(2) If the court considers that the requester was not entitled to make the request, the court may, by order, declare accordingly, but otherwise the court must refuse the application.

(3) If the court refuses the application, the decision-maker must—

(a) prepare the statement to which the request relates; and

(b) give it to the requester within 28 days after the court's decision.

40 Application for further statement

(1) A person to whom a statement has been given under section 33 (the ***requester***) may apply to the court for an order under this section against the person who gave the statement (the ***decision-maker***).

(2) If the court considers that the statement does not contain adequate particulars of the reasons for the decision, the court may order the decision-maker to give to the requester, within a specified period, an additional statement containing further and better particulars in relation to specified matters or a further statement under section 33.

Part 5 Prerogative orders and injunctions

41 Certain prerogative writs not to be issued

(1) The prerogative writs of mandamus, prohibition or certiorari are no longer to be issued by the Court.

(2) If, before the commencement of this Act, the court had jurisdiction to grant any relief or remedy by way of a writ of mandamus, prohibition or certiorari, the court continues to have the jurisdiction to grant the relief or remedy, but must grant the relief or remedy by making an order, the relief or remedy under which is in the nature of, and to the same effect

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as, the relief or remedy that could, but for subsection (1), have been granted by way of such a writ.

(3) In an enactment in force immediately before the commencement of this Act, a reference to a writ of mandamus, prohibition or certiorari is taken to be a reference to an order of a kind that the court is empowered to make under this section.

42 Abolition of quo warranto

(1) Informations in the nature of *quo warranto* are abolished.

(2) If—

(a) a person acts in an office in which the person is not entitled to act; and

(b) an information in the nature of *quo warranto* would, but for subsection (1), lie against the person;

the court may—

(c) grant an injunction restraining the person from acting in the office; and

(d) declare the office to be vacant.

(3) In an enactment in force immediately before the commencement of this Act, a reference to an information in the nature of *quo warranto* is taken to be a reference to an injunction of the kind that the court is empowered to grant under this section.

43 Application for review

(1) An application for—

(a) a prerogative order; or

(b) a prerogative injunction;

must be made by way of an application for review.

(2) An application for a declaration or injunction (other than a prerogative injunction)—

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(a) may be made by way of an application for review if it would be appropriate to do so having regard to—

(i) the nature of the matters in relation to which relief may be sought; or

(ii) the nature of the persons against whom relief may be sought;

in an application for a prerogative order or prerogative injunction; and

(b) may be made by way of an application for review, whether or not a prerogative order or prerogative injunction is sought in the application.

(3) If—

(a) an application for a declaration or injunction (other than a prerogative injunction) is made under subsection (2); and

(b) the court considers—

(i) that the relief sought should not be granted on an application for review; and

(ii) that the relief may have been granted if it had been sought in an action begun by writ of summons or originating summons by the applicant at the time of starting the application for review;

the court may, instead of refusing the application, order the proceeding to continue as if it had been begun in the way mentioned in paragraph (b)(ii).

44 Who may make application

A person is entitled to make an application for review if the person's interests are, or would be, adversely affected in or by the matter to which the application relates.

45 Way of making application

An application for review must—

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(a) be made in the way prescribed by rules of court; and

(b) set out the grounds of the application; and

(c) be lodged with a registry of the court.

46 Time of making application

(1) Subject to any other enactment, an application for review must be made—

(a) as soon as possible and, in any event, within 3 months after the day on which the grounds for the application arose; or

(b) if the court extends the period of 3 months—before the end of the extended period.

(2) If the relief sought in an application for review is a certiorari order in relation to any judgment, order, conviction or other proceeding, the day on which the grounds for the application arose is, for the purposes of subsection (1), taken to be the day of the making of the judgment, order, conviction or other proceeding.

47 Powers of court

(1) The court may grant the declaration or injunction sought in an application under section 43 instead of, or in addition to, a prerogative order if it considers it would be just and convenient to do so having regard to—

(a) the nature of the matters in relation to which relief may be granted by way of a prerogative order; and

(b) the nature of the persons against whom relief may be granted by way of a prerogative order; and

(c) all the circumstances of the case.

(2) On an application for review—

(a) any relief mentioned in section 43(1) or (2) may be sought instead of, or in addition to, any other relief mentioned if it relates to the same matter; or

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(b) the court may grant the relief it considers the most appropriate available under this section, even if it is not included in the application.

(3) If—

(a) the relief sought in an application for review is a certiorari order; and

(b) the court is satisfied that there are grounds for setting aside the decision to which the application relates;

the court may, in addition to setting aside the decision, remit the matter to the court, tribunal, person or body concerned for further consideration, subject to such directions (including the setting of time limits for the further consideration, and for preparatory steps in the further consideration) as the court considers appropriate.

(4) If the relief sought in an application for review is a certiorari order or prohibition order, the court may—

(a) by order, suspend the operation of a decision or order of a court, tribunal, authority or person to which the application relates until further order of the court; or

(b) order a stay of the proceedings to which the application relates until—

(i) the determination of the application; or

(ii) such other time as the court orders.

Part 6 Miscellaneous

48 Power of the court to stay or dismiss applications in certain circumstances

(1) The court may stay or dismiss an application under section 20, 21, 22 or 43 or a claim for relief in such an application, if the court considers that—

(a) it would be inappropriate—

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(i) for proceedings in relation to the application or claim to be continued; or

(ii) to grant the application or claim; or

(b) no reasonable basis for the application or claim is disclosed; or

(c) the application or claim is frivolous or vexatious; or

(d) the application or claim is an abuse of the process of the court.

(2) A power of the court under this section—

(a) must be exercised by order; and

(b) may be exercised at any time in the relevant proceeding but, in relation to the power to dismiss an application, the court must try to ensure that any exercise of the power happens at the earliest appropriate time.

(3) The court may make an order under this section—

(a) of its own motion; or

(b) on an application by a party to the proceeding.

(4) The court may receive evidence on the hearing of an application for an order under this section.

(5) An appeal may be brought from an order under this section only with the leave of the Court of Appeal.

49 Costs—review application

(1) If an application (the ***costs application***) is made to the court by a person (the ***relevant applicant***) who—

(a) has made a review application; or

(b) has been made a party to a review application under section 28; or

(c) is otherwise a party to a review application and is not the person whose decision, conduct, or failure to make a decision or perform a duty according to law, is the subject of the application;

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the court may make an order—

(d) that another party to the review application indemnify the relevant applicant in relation to the costs properly incurred in the review application by the relevant applicant, on a party and party basis, from the time the costs application was made; or

(e) that a party to the review application is to bear only that party's own costs of the proceeding, regardless of the outcome of the proceeding.

(2) In considering the costs application, the court is to have regard to—

(a) the financial resources of—

(i) the relevant applicant; or

(ii) any person associated with the relevant applicant who has an interest in the outcome of the proceeding; and

(b) whether the proceeding involves an issue that affects, or may affect, the public interest, in addition to any personal right or interest of the relevant applicant; and

(c) if the relevant applicant is a person mentioned in subsection (1)(a)—whether the proceeding discloses a reasonable basis for the review application; and

(d) if the relevant applicant is a person mentioned in subsection (1)(b) or (c)—whether the case in the review application of the relevant applicant can be supported on a reasonable basis.

(3) The court may, at any time, of its own motion or on the application of a party, having regard to—

(a) any conduct of the relevant applicant (including, if the relevant applicant is the applicant in the review application, any failure to prosecute the proceeding with due diligence); or

(b) any significant change affecting the matters mentioned in subsection (2);

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revoke or vary, or suspend the operation of, an order made by it under this section.

(4) Subject to this section, the rules of court made in relation to the awarding of costs apply to a proceeding arising out of a review application.

(5) An appeal may be brought from an order under this section only with the leave of the Court of Appeal.

(6) In this section—

review application means—

(a) an application for a statutory order of review under section 20, 21 or 22; or

(b) an application for review under section 43; or

(c) an appeal to the Court of Appeal in relation to an order made by the court on an application mentioned in paragraph (a) or (b).

50 Costs—application for reasons for decision

On an application to the court under part 4 in which the respondent to the application is the person to whom a request was made under section 32 for a statement in relation to a decision, the court—

(a) may order that the respondent pay the costs of the applicant if the applicant is successful (in whole or part) in obtaining the relief sought; and

(b) may only order that the applicant pay the costs of the respondent—

(i) if the applicant is wholly unsuccessful in obtaining the relief sought; and

(ii) if the application—

(A) does not disclose a reasonable basis; or

(B) is frivolous or vexatious; or

(C) is an abuse of the process of the court.

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51 Intervention by Attorney-General

(1) The Attorney-General may, on behalf of the State, intervene in a proceeding before the court under this Act.

(2) If the Attorney-General intervenes in a proceeding—

(a) the Attorney-General is taken to be a party to the proceeding; and

(b) the court may, in the proceeding, make such order as to costs against the State as the court considers appropriate.

52 Change in occupancy of office

(1) If—

(a) a person has, in the performance of the functions of an office, made a decision in relation to which an application may be made to the court under this Act; and

(b) the person no longer holds the office or, for whatever reason, is not performing the functions of the office;

this Act has effect as if the decision had been made by the replacement person for the office.

(2) The reference to the replacement person for an office is a reference to—

(a) the person for the time being holding or performing the functions of the office; or

(b) if there is no person for the time being holding or performing the functions of the office or the office no longer exists—the person specified by—

(i) the Minister administering the enactment, or the scheme or program, under which the decision was made; or

(ii) a person authorised in writing by the Minister for the purposes of this section.

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53 Respondent to applications concerning decisions of Governor in Council

In an application for a statutory order of review, or an application for review, that relates to a decision of the Governor in Council, the respondent to the application is to be—

(a) the Minister responsible for the administration of the enactment, or the scheme or program, under which the decision was made; and

(b) in relation to a decision to which paragraph (a) does not apply—the Minister responsible for tendering to the Governor in Council advice in relation to the matter to which the application relates.

54 Amendment of documents

The court may—

(a) on such terms as it considers appropriate, permit a document lodged with a registry of the court in relation to an application under this Act to be amended; and

(b) direct that the document be amended in a way specified by the court.

56 Strict compliance with rules not required

Strict compliance with rules of court made for the purposes of this Act is not required and substantial compliance is sufficient.

57 No filing fee for application for reasons for decision

Despite anything contained in the rules of court, a filing fee is not payable on an application to the court under part 4.

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Part 7 Declarations

58 Small Claims Tribunals Act 1973 reference

(1) This section applies to the following item that was in schedule 1, part 1, immediately before the commencement of the *Statute Law (Miscellaneous Provisions) Act 2000*, schedule, amendments of the *Judicial Review Act 1991*, amendment 4 (the ***amendment***)—

7. *Small Claims Tribunals Act 1973*, section 19

(2) It is declared that the amendment never had any effect to omit the item and the item has been listed in schedule 1, part 1, at all times after the amendment.

(3) It is further declared that the declaration in section 58, repealed by the *Drug Legislation Amendment Act 2006*, section 73, never had any effect.

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Schedule 1 Operation of other laws

section 18

Part 1 Enactments that provide for non-review or limited review of decisions

Biosecurity Act 2014, section 498

Casino Control Act 1982, sections 28(3), 31(23) and 32(7)

District Court of Queensland Act 1967, section 28

Evidence Act 1977, section 21F

Family Security Friendly Society (Distribution of Moneys) Act 1991, section 25

Industrial Relations Act 2016, sections 554(3), 557(3) and 765

Local Government Act 2009, sections 21, 114 and 229

Magistrates Courts Act 1921, sections 43 and 50

State Development and Public Works Organisation Act 1971, section 76W

State Penalties Enforcement Act 1999, section 155

Transport Infrastructure Act 1994, section 422

Part 2 Enactments to which this Act does not apply

Building Industry Fairness (Security of Payment) Act 2017, chapter 3, part 4

Justices Act 1886, section 225

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Magistrates Act 1991, sections 5(5), 12(2)(a), 26 and 30

Magistrates Courts Act 1921, sections 42T and 42U(1)

Police Service Administration Act 1990, part 5A

Witness Protection Act 2000

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Schedule 2 Decisions for which reasons need not be given

section 31

1 Administration of criminal justice

Decisions relating to the administration of criminal justice, and, in particular—

(a) decisions in relation to the investigation or prosecution of persons for offences against the law of the State, the Commonwealth, another State, a Territory or a foreign country; and

(b) decisions in relation to the appointment of investigators or inspectors for the purposes of such investigations; and

(c) decisions in relation to the issue of search warrants under a law of the State; and

(d) decisions under a law of the State requiring—

(i) the production of documents or things; or

(ii) the giving of information; or

(iii) the summoning of persons as witnesses.

2 Civil proceedings

Decisions in relation to the institution or conduct of proceedings in civil courts, including decisions that relate to, or may result in, the bringing of such proceedings for the recovery of the proceeds of crime or the recovery of pecuniary penalties arising from contraventions of enactments, and, in particular—

(a) decisions in relation to the investigation of persons for such contraventions or the recovery of the proceeds of crime; and

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(b) decisions in relation to the appointment of investigators or inspectors the purposes of such investigations; and

(c) decisions in relation to the issue of search warrants under enactments; and

(d) decisions under enactments requiring—

(i) the production of documents or things; or

(ii) the giving of information; or

(iii) the summoning of persons as witnesses.

3 Corruption etc.

(1) Decisions in relation to the investigation of persons for corruption under the *Crime and Corruption Act 2001*.

(2) Decisions in relation to the initiation of matters in the original jurisdiction of QCAT under the *Crime and Corruption Act 2001*.

4 Intelligence functions of Crime and Corruption Commission

Decisions made by the Crime and Corruption Commission under the *Crime and Corruption Act 2001* in the performance of its functions under chapter 2, part 4, division 2 of that Act.

5 Certain decisions under Crime and Corruption Act 2001

Decisions made under the *Crime and Corruption Act 2001*, section 56(a), 73 or 83 or chapter 3, parts 6 to 8 by the commission, or a commission officer, under that Act.

5A Particular decisions under the Weapons Act 1990

(1) Decisions relating to whether a person is a fit and proper person for the purposes of the *Weapons Act 1990* if the decision is made on the basis of—

(a) criminal intelligence; or

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(b) other information mentioned in section 10B(1)(ca) or 10C(1) of that Act that is not publicly available.

(2) Decisions under the *Weapons Act 1990*, part 5A relating to the making or review of a firearm prohibition order, if the decision is made on the basis of criminal intelligence.

(3) In this section—

criminal intelligence see the *Weapons Act 1990*, schedule 2.

6 Recovery proceedings

Decisions in relation to the enforcement of judgments or orders for the recovery of amounts by—

(a) the State, a State authority or a local government authority; or

(b) an officer or employee of the State, a State authority or a local government authority.

7 Personnel management

Decisions in relation to personnel management (including recruitment, training, promotion and organisation) in relation to—

(a) the State public service; or

(b) any other service established by an enactment; or

(c) the staff of a State authority or local government authority;

other than a decision relating to, and having regard to the particular characteristics of, or other circumstances relating to, a particular person.

8 Appointment decisions

Decisions relating to—

(a) the making of appointments—

(i) in another service established under an enactment; or

(ii) to the staff of a State authority or local government authority; and

(b) the engagement of persons as employees—

(i) under another enactment that establishes a service; or

(ii) by a State authority or local government authority; and

(c) the making of appointments under an enactment or to an office established under an enactment; and

(d) an excluded matter under the *Public Sector Act 2022*.

9 Police Service decisions

Decisions of the Queensland Police Service relating to—

(a) the making of an appointment on promotion of a police officer; or

(b) the making of a selection of a police officer for—

(i) a transfer; or

(ii) the temporary performance of duties; or

(c) an appeal against a police officer's promotion or selection for the temporary performance of duties.

10 Industrial matters

Decisions in relation to the prevention or settlement of industrial disputes, or otherwise relating to industrial matters, in relation to—

(a) the State public service; or

(b) another service established by an enactment; or

(c) the staff of a State authority or local government authority.

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11 Local government budgets

Decisions relating to the framing of budgets by local government authorities.

12 Local government rates

Decisions relating to the exercise of the power of local government authorities—

(a) to make and levy rates; or

(b) to impose fees, charges, fares, rents and dues.

13 Tendering and awarding of contracts

Decisions relating to—

(a) the selection of a tenderer following the conduct of a competitive tendering process; and

(b) the awarding of contracts.

14 Competitive commercial activities of certain State authorities

Decisions of any of the following State authorities in relation to their competitive commercial activities—

(a) Gold Coast Events Co. Pty Ltd;

(b) Public Trustee of Queensland;

(e) Queensland Treasury Corporation.

15 Assessments and calculation of tax etc.

Decisions making, or forming part of the process of making, or leading up to the making of, assessments, reassessments, calculations or determinations of tax, duty or other impost, or of royalty, other than a decision on an objection made and determined under an enactment.

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16 Collection of tax etc.

Decisions relating to the collection of tax, duty or other impost, or of royalty, under any enactment.

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Schedule 3 Comparative table

section 16(2)

This Act	Commonwealth Administrative Decisions (Judicial Review) Act
1	1
3	3(1)
4	3(1)
5	3(2)
6	3(3)
7	3(4)
8	3(5)
9	—
10	10(1)
11	10(2)(a)
12	10(2)(b)
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18	4
19	8
20	5(1)
21	6(1)
22	7
23	5(2) and 6(2)
24	5(3) and 6(3)
25	11(1)

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27	11(6)
28	12
29	15
30	16
31	13(11)
32	13(1)
33	13(2) to (6)
34	13(1)
35	13A(1)
36	14(1)
37	13A(2) to (4) and 14(2) to (4)
38	13(4A)
39	13(4A)
40	13(7)
41–50	—
51	18
52	17
53	—
54	11(7)
56	11(9)
57	—
schedule 1	schedule 1
schedule 2	schedule 2

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This Act	Commonwealth Administrative Decisions (Judicial Review) Act
schedule 3	—

Schedule 6 Application of Act to GOCs

section 18A

	GOC	Application provision
1	a port authority (within the meaning of the *Transport Infrastructure Act 1994*) that is a GOC	*Transport Infrastructure Act 1994*, s 486
2	Queensland Investment Corporation	*Queensland Investment Corporation Act 1991*, s 37

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