

Queensland



JUDICIAL REVIEW ACT 1991

**Reprinted as in force on 14 January 1997
(includes amendments up to Act No. 37 of 1996)**

Reprint No. 3A

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Information about this reprint

This Act is reprinted as at 14 January 1997. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes.

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of previous reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

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JUDICIAL REVIEW ACT 1991

[as amended by all amendments that commenced on or before 14 January 1997]

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

Short title

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

Division 2—Interpretation

Definitions

3. 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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“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.

“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, re-hearing 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
- (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.

“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.

Meaning of “decision to which this Act applies”

4. 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
 - (ii) from a tax, charge, fee or levy authorised by or under an enactment.

Meaning of “making of a decision” and “failure to make a decision”

5. 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.

Making of report or recommendation is making of a decision

6. 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.

Meaning of person aggrieved

7.(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
- (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.

Conduct engaged in for making decision—preparatory acts

8. 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.

Power conferred by enactment—non-statutory scheme or program

9. 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.

Division 3—Relationship with other review rights

Rights conferred by Act additional to other review rights

10.(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.

When application for other review may be dismissed

11. 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.

When application for statutory order of review may be dismissed

12. 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.

When application for statutory order of review must be dismissed

13. 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.

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

14. 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;

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

Exercise of powers under div 3

15.(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**Commonwealth Administrative Decisions (Judicial Review) Act****16.(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.

(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.

Parliamentary Commissioner for Administrative Investigations

17. The rights conferred by this Act on a person to make application to the Court are to be disregarded for the purposes of the *Parliamentary Commissioner Act 1974*, section 13(3).

Operation of other laws

18.(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**Application of Act to GOCs**

18A. This Act does not apply to decisions of a GOC mentioned in schedule 6 to the extent provided under the application provision mentioned for the GOC in the schedule.

PART 2—JURISDICTION**Jurisdiction of Supreme Court**

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

PART 3—STATUTORY ORDERS OF REVIEW**Application for review of decision**

20.(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;
- (d) that the decision was not authorised by the enactment under

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- 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.

Application for review of conduct related to making of decision

21.(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;
- (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;

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- (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.

Application in relation to failure to make decision

22.(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.

(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.

Meaning of “improper exercise of power” (ss 20(2)(e) and 21(2)(e))

23. 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
- (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.

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

24. 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.

Way of making application

25. 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.

Period within which application must be made

26.(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—
 - (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
- (d) in any other case—the day on which a document setting out the terms of the decision is given to the applicant.

Applicant not limited to grounds in application

27. 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.

Application to be made party to proceeding

28.(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.

Stay of decision

29.(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—

- (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.

Powers of the Court in relation to applications for order of review

30.(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—

- (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

Decision to which part applies

31. 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.

Request for statement of reasons

32.(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.

Decision maker must comply with request except in certain circumstances

33.(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
 - (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.

Content of statement

34. The statement must contain the reasons for the decision.

Exception for information relating to personal or business affairs

35.(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
- (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.

Exception for information covered by Attorney-General's certificate

36.(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
- (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.

Consequences of s 35 or 36 applying to information

37.(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
- (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.

Application for order to comply**38.(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.

Application for order that person not entitled to statement**39.(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.

(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.

Application for further statement**40.(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

Certain prerogative writs not to be issued

41.(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 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.

Abolition of *quo warranto*

42.(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.

Application for review

43.(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)—

- (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).

Who may make application

44. 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.

Way of making application

- 45.** An application for 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.

Time of making application

46.(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.

Powers of court

47.(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
- (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

Power of the Court to stay or dismiss applications in certain circumstances

48.(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—
 - (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.

Costs—review application

49.(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;

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

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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);

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).

Costs—application for reasons for decision

50. 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.

Intervention by Attorney-General

51.(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.

Change in occupancy of office

52.(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.

Respondent to applications concerning decisions of Governor in Council

53. 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.

Amendment of documents

54. 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.

Strict compliance with rules not required

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

No filing fee for application for reasons for decision

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

SCHEDULE 1**OPERATION OF OTHER LAWS**

section 18

**PART 1—ENACTMENTS THAT PROVIDE FOR
NON-REVIEW OR LIMITED REVIEW OF
DECISIONS**

1. *Casino Control Act 1982*, sections 28(3), 31(23), 32(7), 38(3) and 44(4)
2. *Family Security Friendly Society (Distribution of Moneys) Act 1991*, section 25
3. *Industrial Relations Act 1990*, sections 13 and 93
4. *Queensland Building Services Authority Act 1991*, section 100
5. *Retail Shop Leases Act 1994*, section 88
6. *Small Claims Tribunal Act 1973*, section 19
7. *Workplace Health and Safety Act 1989*, section 108

**PART 2—ENACTMENTS TO WHICH THIS ACT
DOES NOT APPLY**

1. *District Courts Act 1967*, sections 91E, 91F and 91V(1)
2. *Magistrates Courts Act 1921*, sections 10F, 10G and 10W(1)
3. *Supreme Court of Queensland Act 1991*, sections 98, 99 and 115(1)

SCHEDULE 2**DECISIONS FOR WHICH REASONS NEED NOT BE GIVEN**

section 31

Administration of criminal justice

1. 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 (including warrants under the *Criminal Justice Act 1989*, section 71); 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.

Civil proceedings

2. 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

SCHEDULE 2 (continued)

- (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.

Official misconduct etc.

3.(1) Decisions in relation to the investigation of persons for misconduct (including official misconduct) under the *Criminal Justice Act 1989*.

(2) Decisions in relation to the initiation of matters in the original jurisdiction of a Misconduct Tribunal constituted under that Act.

Intelligence Division of Criminal Justice Commission

4. Decisions made in the performance of the functions of the Intelligence Division of the Criminal Justice Commission under the *Criminal Justice Act 1989*, section 58.

Certain decisions under Criminal Justice Act

5. Decisions made under the *Criminal Justice Act 1989*, sections 62, 70, 81, 82 and 84.

Recovery proceedings

6. 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

SCHEDULE 2 (continued)

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

Personnel management

7. 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.

Appointment decisions

8. 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

SCHEDULE 2 (continued)

established under an enactment; and

- (d) an excluded matter under the *Public Service Act 1996*.¹

Police Service decisions

9. 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.

Industrial matters

10. 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

¹ For the definition of “excluded matter” see the *Public Service Act 1996*, section 116(1). Excluded matter is defined as follows—

“**excluded matter**” means—

- (a) a decision to appoint, or not to appoint, a person under this Act or as a statutory office holder; or
- (b) the contract of employment of, or the application of this Act or a provision of this Act to—
 - (i) the commissioner; or
 - (ii) a chief executive or other senior executive; or
 - (iii) a senior officer; or
 - (iv) another officer whose employment is on contract for a fixed term;or
- (c) a decision to take or not to take action, if the decision results from the policy, strategy, nature, scope, resourcing or direction of the public service or a department; or
- (d) the removal of a statutory office holder under this Act.

SCHEDULE 2 (continued)

- (b) another Service established by an enactment; or
- (c) the staff of a State authority or local government authority.

Local government budgets

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

Local government rates

12. 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.

Tendering and awarding of contracts

13. Decisions relating to—

- (a) the selection of a tenderer following the conduct of a competitive tendering process; and
- (b) the awarding of contracts.

Competitive commercial activities of certain State authorities

14. 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.

SCHEDULE 2 (continued)

Assessments and calculation of tax etc.

15. Decisions making, or forming part of the process of making, or leading up to the making of, assessments, reassessments, calculations or determinations of—

- (a) tax, duty or other impost; or
- (b) fees under the *Tobacco Products (Licensing) Act 1988*;

(other than a decision on an objection made and determined under an enactment).

Collection of tax etc.

16. Decisions relating to the collection of—

- (a) tax, duty or other impost under any enactment; or
- (b) fees under the *Tobacco Products (Licensing) Act 1988*.

SCHEDULE 3**COMPARATIVE TABLE**

section 16(2)

This Act	Commonwealth Decisions (Judicial Review) Act	Administrative
1	1	
2	2	
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)	
13–17	—	
18	4	
19	8	
20	5(1)	
21	6(1)	
22	7	

SCHEDULE 3 (continued)

This Act (cont'd)	Commonwealth Decisions (Judicial Review) Act (cont'd)	Administrative Decisions (Judicial Review) Act (cont'd)
23	5(2) and 6(2)	
24	5(3) and 6(3)	
25	11(1)	
26	11(1), (3), to (5)	
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)	

SCHEDULE 3 (continued)

This Act (cont'd)	Commonwealth Decisions (Judicial Review) Act (cont'd)	Administrative Decisions (Judicial Review) Act (cont'd)
55	11(8)	
56	11(9)	
57–61	—	
schedule 1	schedule 1	
schedule 2	schedule 2	
schedules 3-5	—	

SCHEDULE 6**APPLICATION OF ACT TO GOCs**

section 18A

GOC	Application provision
1. Queensland Rail, or a port authority (within the meaning of the <i>Transport Infrastructure Act 1994</i>), that is a GOC	<i>Transport Infrastructure Act 1994</i> , s 110A
1. A port authority, within the meaning of the <i>Transport Infrastructure Act 1994</i> , that is a GOC	<i>Transport Infrastructure Act 1994</i> , s 99
2. Queensland Investment Corporation	<i>Queensland Investment Corporation Act 1991</i> , s 37
4. State electricity entity, within the meaning of the <i>Electricity Act 1994</i>	<i>Electricity Act 1994</i> , s 256

ENDNOTES

1 Index to endnotes

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5	List of legislation	49
6	List of annotations	50

2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 14 January 1997. Future amendments of the Judicial Review Act 1991 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R	=	Reprint No.
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

4 Table of earlier reprints

Reprint No.	Amendments included	Reprint date
1	to Act No. 36 of 1992	3 July 1992
2	to Act No. 68 of 1992	9 December 1992
3	to Act No. 32 of 1995	1 July 1995

5 List of legislation

Judicial Review Act 1991 No. 100

date of assent 17 December 1991

ss 1–2 commenced on date of assent

remaining provisions commenced 1 June 1992 (1992 SL No. 110)

as amended by—

Statute Law (Miscellaneous Provisions) Act 1992 No. 36 ss 1–2 sch 2

date of assent 2 July 1992

commenced on date of assent

Statute Law (Miscellaneous Provisions) Act (No. 2) 1992 No. 68 ss 1–3 sch 1

date of assent 7 December 1992

commenced on date of assent

Queensland Investment Corporation Amendment Act 1994 No. 38 pts 1, 4

date of assent 14 September 1994

ss 1–2 commenced on date of assent

remaining provisions commenced 1 October 1994 (see s 2 and 1994 SL No. 341 ss 2, 8)

Electricity Act 1994 No. 64 ss 1–2, 293 sch 4

date of assent 1 December 1994

commenced 1 January 1995 (1994 SL No. 467)

Courts Legislation Amendment Act 1995 No. 23 pts 1, 5

date of assent 11 April 1995

ss 1–2 commenced on date of assent

remaining provisions commenced 29 May 1995 (1995 SL No. 141)

Transport Infrastructure Amendment (Rail) Act 1995 No. 32 pt 1, s 23 sch

date of assent 14 June 1995

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1995 (see s 2(2) and 1995 SL No. 162 ss 2(3), 19)

State Financial Institutions and Metway Merger Facilitation Act 1996 No. 29 ss 1–2, 97 sch 2

date of assent 10 September 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1996 (see s 2(2), s 3 sch 3 and notice publ gaz 29 November 1996 p 1257)

Public Service Act 1996 No. 37 ss 1–2, 147 sch 2

date of assent 22 October 1996

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1996 (1996 SL No. 361)

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s 60 om R2 (see RA s 40)

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sch 1 amd 1995 No. 23 s 31(2)–(4)

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Competitive commercial activities of certain State authorities

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s 7 amd 1992 No. 68 s 3 sch 1

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amd 1994 No. 64 s 293 sch 4; 1995 No. 32 s 23 sch; 1996 No. 29 s 97 sch 2