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Update Summary

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QUEENSLAND ADMINISTRATIVE LAW

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Updated commentary has been provided by **Bill Lane**

Judicial Review Act 1991

Updated:

- The applicant received a 'direction' given by a corrective services officer which denied him in-person contact with a particular person. See *Lawrence v Fuller & Anor* [2023] QSC 156, at [1.305].
- A decision by a magistrate to commit a person to stand trial for an indictable offence has been regarded as an 'administrative type decision'. See *R v Schwarten; Wildschut, Ex p* [1965] Qd R 276, at [1.480].
- The Supreme Court considered that it was "*irresistibly clear*" that the legislative regime was inconsistent with the Minister having a "wide obligation" to afford procedural fairness. See *Austin BMI Pty Ltd v Deputy Premier* [2023] QSC 95, at [1.2760].
- Unless natural obligations have been expressly and unequivocally excluded, the identification issue does not affect an implied obligation to afford procedural fairness. See *Brisbane City Council v Leahy* [2023] QCA 133, at [1.1480].
- "Double might" emphasises that the test centres are on a real "possibility" rather than "probability". See *QYFM v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs* [2023] HCA 15; *CNY17 v Minister for Immigration and Border Protection* [2019] HCA 50, at [1.1510].
- The apprehended bias test involves a two-step inquiry. See *Ebner v Official Trustee in Bankruptcy* (2000) 205 CLR 337; 75 ALJR 277; [2000] HCA 63, at [1.1510].
- Section 46(1)(b) does not provide the court with any guidance as to the exercise of the discretion. See *Carborough Downs Coal Management Pty Ltd v Nicholson* [2023] QCA 119, at [1.2900].

[S23.2] June 2023 Update Summary

New and updated commentary has been provided by **Bill Lane**

Ombudsman Act 2001

Updated:

- The primary role of the office of Ombudsman was to ensure that *any person* aggrieved by some act or omission in the exercise of executive functions of

government would be able to make a complaint. See *Glenister v Dillon* [1976] VR 550, at [3.110].

- The finality or irrevocability of a decision will not generally be a bar to jurisdiction. See also *"K" v NSW Ombudsman* [2000] NSWSC 771, at [3.130].
- Observations made in subsequent NSW Supreme Court decisions indicate a broader approach. See *Botany Council v The Ombudsman* (1995) 37 NSWLR 357, at [3.384].
- Ombudsman legislation did not expressly distinguish the term "policy" from "administrative action". See *Booth v Dillon [No 2]* [1976] VR 434, at [3.384.2].
- The Full Court of the Victorian Supreme Court considered a challenge to the Victorian Ombudsman's jurisdiction to investigate complaints. See *Glenister v Dillon* [1976] VR 550, at [3.384.3].
- Statutory discretionary powers are to be exercised reasonably. See *Minister for Immigration and Citizenship v Li* (2013) 249 CLR 332, at [3.473].
- *Even if* a report containing adverse comment could be said to affect the "rights" of the person to whom the comment relates, the actual procedure to be followed was expressly prescribed by the statute. See *R v Dixon; Prince, Ex p* [1979] WAR 116, at [3.504].

New:

- **Introduction: The Queensland Ombudsman at a glance**, has been inserted at, [3.100]
- **The origins of the Queensland Ombudsman**, has been inserted at, [3.105]
- **History of the ombudsman model and its emergence in Australia**, has been inserted at, [3.110]
- **The shifting role of the Ombudsman**, has been inserted at, [3.120]
- **The core functions of the Queensland Ombudsman under the *Ombudsman Act 2001*(Qld)**, has been inserted at, [3.125]
- **The Ombudsman as a choice of remedy**, has been inserted at, [3.130]
- **Courts and court offices**, has been inserted, at [3.332]
- **Judicial consideration - challenges to jurisdiction**, has been inserted, at [3.384.1]

- Section 23(1) The Ombudsman *“may refuse”* to investigate a complaint, has been inserted, at [3.473]
- How an investigation may be conducted, has been inserted, at [3.503]
- General procedures for investigations, has been inserted, at [3.504].