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# Update Summary

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**UPDATE 98**

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**QUEENSLAND ADMINISTRATIVE LAW**

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

## Right to Information Act 2009

### Updated:

- *Actual consideration* of documents would seem to be necessary before it can “appear” to the agency or Minister that all the documents are comprised of exempt information. See *Mokbel v Queensland Police Service* [2023] QCATA 158, at [2.1455]

### New:

- The general rationale for a Cabinet documents exemption, has been inserted, at [2.6801.2]
- Schedule 3, s 1 – Cabinet matter brought into existence before commencement of the RTI Act, has been inserted, at [2.6801.4]
- A summary of the Cabinet matter exemption in s 36 of the repealed FOI Act, has been inserted, at [2.6801.6]
- Section 36(2) – the exemption does not apply to matter officially published by a decision of Cabinet, has been inserted, at [2.6801.8]
- Schedule 3, s 2 – the 10-year Cabinet and State budgetary process exemption, has been inserted, at [2.6802.2]
- Section 2(1)(a) – information brought into existence for the consideration of Cabinet, has been inserted, at [2.6802.4]
- Section 2(1)(b) – disclosure which would reveal any consideration of Cabinet or would otherwise prejudice the confidentiality of Cabinet considerations or operations, has been inserted, at [2.6802.6]
- Section 2(1)(c) – information brought into existence in the course of the State's budgetary processes, has been inserted, at [2.6802.8]
- Section 2(4) – a report of factual or statistical information attached, has been inserted, at [2.6802.10]
- Section 2(2)(b) – officially published by a decision of Cabinet, has been inserted, at [2.6802.12]
- Note s 18A - referred to in the commentary above at [2.490a], has been inserted, at [2.6802.12A]
- Introduction: The general application of the exemption, has been inserted, at [2.6808.2]
- The first task: Does Sch 3, s 8(2) of the RTI Act render the exemption in Sch 3, s 8(1) of the RTI Act inapplicable?, has been inserted, at [2.6808.4]
- Would disclosure found an action for breach of confidence?, has been inserted, at [2.6808.6]
- A cause of action for breach of a contractual obligation of confidence, has been inserted, at [2.6808.8]

- A cause of action for breach of an equitable duty of confidence/a cause of action for breach of fiduciary duty of confidence and fidelity, has been inserted, at [2.6808.10]
- Detriment where government or a government agency has supplied the information, has been inserted, at [2.6808.12]
- Government information – when will the Fairfax doctrine apply?, has been inserted, at [2.6808.14]
- Are defences to an action for breach of confidence separately considered in applying the exemption?, has been inserted, at [2.6808.16].

## Judicial Review Act 1991

### Updated:

- The facts and circumstances of the decision of the Court of Appeal mirror closely those in *Tang*. See *Alskeini v Queensland University of Technology* [2020] QCA 285, at [1.590].
- The applicant sought review of a decision by the respondent to refuse its application for a surrender of leases it held. See *Breakwater Pacific Pty Ltd v Chief Executive, Department of Resources* [2024] QSC 107, at [1.590].
- The limited role of a court exercising judicial review is to set lawful limits on the exercise of the discretion - not to substitute its own view of what the decision should have been. See *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24; 60 ALJR 560; 66 ALR 299; [1986] HCA 40, at [1.1800].
- The High Court acknowledged that Ministers exercising a statutory power rely on their department to sift and organize material and prepare summaries. See *Minister for Immigration, Citizenship and Multicultural Affairs v McQueen* [2024] HCA 11, at [1.1800].

