



JUSTICE BEHIND BARS



## Judicial Review: Prison and Parole Board Decisions

This factsheet relates to judicial review of prison and parole decisions made by State Government decision makers, such as Queensland Corrective Services and the Parole Board Queensland.

There are different laws and limitation periods that apply to judicial review applications for decisions made by Commonwealth Government decision makers, such as the Commonwealth Parole Office or for Immigration matters.

PLS encourages all prisoners to seek legal advice about their individual circumstances if they want to start judicial review proceedings.

### What is judicial review?

A “judicial review” means that you make an application to the Supreme Court asking the court to set aside a decision to be reconsidered by the decision maker.

- A judicial review is not an appeal of a decision.
- The court will not consider whether the decision is fair or correct.
- The court cannot make a new decision instead of the decision maker.

If the decision is found to be unlawful, the court can only set the decision aside and send it back to the decision maker for reconsideration. This means that even if you are successful in a judicial review, the decision may remain the same.



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## What types of decisions can be judicially reviewed?

Not all decisions can be challenged through judicial review. Generally, you cannot apply for a judicial review unless a decision has been made about you by a government body that is provided for under legislation.

### Examples:

- **Decision by Parole Board Queensland to refuse your release on parole**
  - ✓ Can be judicially reviewed
  
- **Decision by Accommodation Manager about which unit you are placed in**
  - ✗ Cannot be judicially reviewed

## Getting reasons

The first step to take if you wish to judicially review a decision is to make sure you have written reasons explaining how the decision was made. A court cannot assess if there is a problem with the way a decision has been made without looking at the reasons for the decision. Reasons for a decision must include any findings on material questions of fact and refer to any evidence upon which those findings were based.

You may receive reasons at the time of receiving a decision. For example, if your parole application is refused, the Parole Board Queensland are required to provide you with written reasons for their decision under section 193(5)(a) of the *Corrective Services Act 2006* (Qld). However, proper reasons are not always provided at the time of making a decision, even when the law requires it.

**If you have not received reasons for the decision, you need to write to the decision maker requesting a statement of reasons. A request for a statement of reasons must be made within 28 days of you receiving notice of the decision.** A decision maker must provide you with written reasons for the decision within **28 days** of receiving a valid request for a statement of reasons. A sample request for a statement of reasons is **enclosed** with this factsheet.

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## What types of arguments can be made?

Judicial review applications are about the decision making process and not the outcome of a decision. You cannot argue in a judicial review that a decision is wrong or unfair.

Some common arguments that are made include that decision makers have:

- Failed to take into account relevant considerations
- Taken into account irrelevant considerations
- Inflexibly applied a policy instead of considering an individual case
- Failed to provide natural justice (an opportunity to be heard on negative factors before a final decision is made)

## Limitation periods

Legal time limits apply to filing judicial review applications. Failing to take the required steps within the relevant time limit might mean that you will not be able to bring an application.

A request for a statement of reasons must be made within **28 days** of receiving notice of a decision.

An application for judicial review must be filed in the Supreme Court within **28 days** of receiving written notification of the decision. If you requested a statement of reasons, you have **28 days** from receiving the statement of reasons, to file an application for judicial review.

## Getting legal advice

Judicial review applications are complex. PLS recommends getting legal advice from a lawyer who practices in administrative law about whether you are likely to be successful before filing a judicial review application in the Supreme Court.

If you are unsuccessful in a judicial review application, it is possible for an adverse costs order to be made against you. This means the court could make an order for you to pay the costs incurred by the other party in responding to the application.

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PLS provides free legal advice about judicial review applications, including:

- What types of decisions can be judicially reviewed;
- Whether you need to request a statement of reasons for a decision; and
- Whether you have prospects of success in judicially reviewing a decision.

The information PLS needs from you to provide judicial review advice will depend on what type of decision you seek to have reviewed. At a minimum, PLS would need:

- Any documents you provided to the decision maker; and
- Any documents the decision maker provided you, including reasons for the decision.

In some cases, PLS can provide free legal representation for judicial review applications. However, PLS is a very small community legal centre and will only provide representation to prisoners in custody where their case meets our litigation criteria and where a barrister has provided advice the case has reasonable prospects of success.

### How to contact PLS



#### Telephone

If you need legal advice about judicial review you can call PLS for free on the prison Arunta telephone system on **Tuesdays and Thursdays from 9am to 1pm**.



#### Mail

You can write a letter to us to us at: **GPO Box 257, Brisbane, QLD, 4001**.

Please include a copy of any relevant documents.

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## Sample Statement of Reasons

*Dear Sir/Madam*

**RE:** \_\_\_\_\_

*I refer to the decision of (insert date) to (insert details of decision)*

*So that I may be fully informed in relation to the decision, I respectfully request, pursuant to Section 32(1) of the Judicial Review Act 1991, that you provide a Statement of Reasons for the decision.*

*Thank you for your consideration of this request.*

*Yours sincerely*

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