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Apply to the DECISION-MAKER (or, if Cabinet/Governor in Council, to the relevant MINISTER). Time limits: 28 DAYS after receiving a WRITTEN RECORD of the decision (s33(4)(a)); or a **REASONABLE TIME** if no written record was given (s33(4)(b)). If the decision-maker intends to refuse for lateness, they must notify the applicant within 14 DAYS of the request (s33(5)) – the applicant can then challenge that refusal under s33(6).

The decision-maker's response (within 28 days of a valid, in-time request)

The decision-maker must do **ONE** of three things: (1) **give a statement of reasons** (s34); (2) **notify the applicant** that they are **NOT** entitled to reasons (s33(2)(a)) – the applicant can then apply to the Court under s38 for an order (s38 is BROADER than the ADJR Act equivalent – it also covers a decision-maker who simply ignores the request altogether); or (3) the decision-maker can itself **apply to the Court under s39** for a ruling that the applicant is not entitled to reasons.

Non-compliance with the statutory duty to give reasons is itself a **NON-JURISDICTIONAL** error of law: *Wingfoot Australia Partners Pty Ltd v Kocak* (2013).

3.2 Exceptions to the Right to Reasons (ss35-37)

- s35 – CONFIDENTIAL information relating to the personal or business affairs of someone **OTHER** than the applicant need not be disclosed (linked to 'competitive commercial activities' – defined in s3, and Schedule 2 cl 14).
- s36(1)(a) – deliberations or a decision of **CABINET** or a Cabinet committee are exempt.
- s36(1) – information may be exempted where the Attorney-General **CERTIFIES** that disclosure would be contrary to the public interest.

Haj-Ismail v Minister for Immigration and Ethnic Affairs (1981) 36 ALR 516

Facts: Concerned the reviewability of a public-interest non-disclosure certificate.

Principle / Rule: Courts MAY go behind an Attorney-General's public interest certificate (526-7) – the certificate is not beyond scrutiny.

- s37 – the decision-maker must give **NOTICE** explaining why reasons are being withheld; if removing exempt material would make the remaining statement **FALSE** or **MISLEADING**, the decision-maker may refuse to give any statement at all; s37(5) preserves the court's ordinary discovery/evidence powers regardless.

3.3 Evidentiary Status of a Statement of Reasons

A statement of reasons is not necessarily conclusive evidence of what the decision-maker actually thought at the time:

Minister for Immigration and Ethnic Affairs v Taveli (1990) 23 FCR 162

Facts: Raised whether a court must accept a formal statement of reasons as accurate.

Principle / Rule: A decision-maker might draft a statement of reasons well AFTER the actual decision in a way calculated to defeat a later JR challenge – a court is NOT bound to accept the statement as accurate, and it may not even be ADMISSIBLE as evidence of the real reasons (165-167, 179, 183, 189-190). Whether the decision-maker can be CROSS-EXAMINED on their reasons may be critical in such cases.

Minister for Immigration and Ethnic Affairs v Arslan (1984) 55 ALR 361

Facts: The decision-maker's statement of reasons included a conclusion adverse to the applicant's character.

Principle / Rule: If a statement of reasons reveals the decision was made UNLAWFULLY, courts will readily give it weight as an ADMISSION AGAINST INTEREST (363). But the statement is only evidence of the decision-maker's VIEWS at the time – not direct evidence of the underlying facts (e.g. a finding that 'X is of bad character' is evidence that the decision-maker believed that, not evidence that X actually is of bad character) (364).

4. Time Limits for Judicial Review Applications (s26 JR Act)

ADJR Act equivalent: s11 (operates the same way). The applicable rule depends on whether **WRITTEN NOTICE** of the decision was given to the applicant.

4.1 Where Written Notice Has Been Given

Basic rule (s26(2), s26(5)(d)): the application must be made within 28 DAYS of the giving of written notice of the decision. Where the applicant has ALSO sought/received written reasons, time runs differently – s26(5).

4.2 Where No Written Notice Has Been Given

Sections 26(3)-(4) apply instead: the applicant has a '**REASONABLE TIME**' within which to apply.

Stergis v Boucher (1989) 86 ALR 174

Facts: Discussed the general policy underlying the different Part 3 time limits and what a 'reasonable time' means where no written notice is given.

Principle / Rule: Where s26(2) does not apply (no document setting out the decision was given), the applicant has a reasonable time in all the circumstances – see also *Worthley v ASC* (1993).

4.3 Extensions of Time

The court MAY extend the s26(2) period: s26(1)(b).

Lucic v Nolan (1982) 45 ALR 411

Facts: Considered the court's starting approach to a late JR application.

Principle / Rule: Fitzgerald J: there is a **PRIMA FACIE RULE** that proceedings not commenced in time should NOT be allowed to proceed (416) – endorsed in Queensland in *Kuku Djungan Aboriginal Corporation v Christensen* [1993] (Moynihan J).

Hunter Valley Developments Pty Ltd v Minister for Home Affairs and Environment (1984) 58 ALR 305

Facts: The leading Federal Court authority on the **factors relevant to an extension of time**.

Principle / Rule: Wilcox J (310-312) – relevant factors include: whether there is an **ADEQUATE EXPLANATION for the delay**; whether any **PREJUDICE** would be caused to the decision-maker/respondent; the **PUBLIC INTEREST**; and (where possible to assess) the MERITS of the substantive application. See also *Hoffman v Queensland Local Government Superannuation Board* [1994] (Thomas J) – **an explanation for delay is not strictly a PRECONDITION for an extension**, but the inability to explain delay normally counts against the applicant.

5. Exclusions From Judicial Review

5.1 Schedule Exclusions (s18(2)) and Government-Owned Corporations (s18A)

- s18(2) JR Act removes, from the scope of judicial review, the Acts and decisions listed in Parts 1 and 2 of SCHEDULE 1 of the JR Act (equivalent: ADJR Act Schedule 1, read with s4(a)).
- s18A JR Act (via Schedule 6) excludes certain decisions of **GOVERNMENT-OWNED CORPORATIONS** from JR Act review, so GOCs can compete on even terms with private businesses – see *Waratah Coal Pty Ltd v Nicholls* [2013].
- Unlike the ADJR Act (ss19, 19A – **decisions can also be excluded by REGULATION**), the Queensland JR Act has NO regulation-making exclusion power – EARC recommended against it, so Queensland exclusions must be made by Parliament itself.
- s9A ADJR Act (inserted 2000) significantly restricts JR Act-style review of decisions made by **LOWER COURTS** in criminal proceedings (e.g. committals).