

## JUDICIAL REVIEW AT COMMONWEALTH LEVEL

### ADMINISTRATIVE DECISIONS (JUDICIAL REVIEW) ACT 1977 (Cth)

#### 1<sup>st</sup> OPTION: DOES THE AD(JR) Act apply?

- Decision to which this act applies: s 3
  - Decision
  - Administrative character
  - Under an enactment:
  - NOT
    - by the Governor-General
    - decision included in any of the classes set out to **Schedule 1**

#### → Decision: as per *Australian Broadcasting Tribunal v Bond* (1990) 170 CLR

- substantive, final, operative, determinative
- not just 'step along the way'
- s 3(2) of AD(JR) Act 1977 (Cth) also outlines what a decision is
  - **s 3(2) ADJR** in this act reference to a decision includes reference to:
    - a) making, suspending or refusing to make an order, award or determination
    - b) giving, suspending, revoking or refusing to give a certificate, direction, approval, consent or permission
    - c) issuing, suspending, revoking or refusing to issue a license authority or other instrument;
    - d) imposing a condition or restriction
    - e) making a declaration, demand or requirement
    - f) retaining, or refusing to deliver up, an article; or
    - g) doing or refusing to do any other act or thing

*.... and a reference to a failure to make a decision shall be construed accordingly*

**s 3(3) ADJR** where a provision is made by an enactment for the making or report or recommendation **BEFORE** a decision is made in the exercise of a power under that enactment another law, the making of such report or recommendation itself shall be **DEEMED**, for the purposes of this act to be **MAKING A DECISION**.

- IF something *must* be done under statute = is reviewable decision supported by **s 3(3) ADJR**

#### → Administrative Character: as per *Roche Products Pty Ltd v National Drugs and Poisons Schedule Committee* (2007) 163 FCR 451

- making of legislation is not reviewable under AD(JR) Act= not a decision of administrative character
- Roche: facts:
  - Classification and scheduling of a drug under *Therapeutic Goods Acts 1989* (Cth): decision said to be of legislative character, not administrative character

- Said to be a general decision as the classification applied to many people not specific group
- Distinguish from Roche: does it apply to specific circumstances? (think executive power)
- Legislative decision= not administrative
  - Examples: general, prospective, requirement of public consultation and notification eg. Publishing in gazette)

**\*\*\*NOTE: If not of administrative character: AD(JR) Act does not apply → seek judicial review through s 39B of Judiciary Act or s 75(v) of the Constitution**

**→ under an 'enactment':**

Made under enactment **s3(a),(b),(c),(d) ADJR**

- AD(JR) s 3 enactment means:
  - (a) an Act,...
  - (c) an instrument (including rules, regulations or by-laws) made under such an Act or under such an Ordinance

Based on this you argue grounds under either

- **Decision s 5** - must be 'final, operative, determinative and substantive' **ABT v Bond**
- **Conduct s 6** (actions taken (the way in which the proceedings were conducted), not (small) decisions made along the way (**Bond**)).
- **Failure** to make a decision when there is a duty to **s 7 x**

**WHY CHOOSE AD(JR) ACT?**

- **Right to reasons: s13**
- **Any error of law reviewable: no need to prove jurisdictional error**
- **Simplified and more flexible remedies**