

Merit Review (Cth)

Step 1:

What statutory power was used to make decision? Is merit review (AAT) available under relevant statute?

- AAT power to review must provide in the statute **Administrative Appeals Tribunal Act 1975 (Cth) s 25**
- Decision in fact made, regardless of whether it is legally made (**Collector of Customs (NSW) v Brian Lawlor Automotive Pty Ltd**)

Step 2:

Standing

- ✓ Person whose interests are affected by the decision (**AAT Acts s 27(1)**)
- ✓ Organisation (**AAT Acts s 27(2)**)
 - × BUT not organisation form after the decision made (**AAT Acts s 27(3)**)

Limits imposed by statute

- Pre-condition (ie. seek internal review)
- Time limit
 - ✓ Within 28 days of a decision made (**AAT Acts s 29(2)**), subject to discretionary extension (**AAT Acts s 29(4)**)
- Varying the normal procedure
- Varying the normal power of the body (alter the orders it can make)

Right to reason

- May request for a statement of reasons (**AAT Acts s 28**) UNLESS
 - × AG issue a public interest certificate where disclosure would prejudice international relations, national security (**AAT Acts s 28(2)**)
- Reason for decisions must be in writing (**AAT Acts s 43(2)**)

Process

- Make a **correct or preferable decision** before the Tribunal
 - ✓ Policy is a relevant factor to consider (**Drake v Minister for Immigration**)
 - × Cannot be subjective – must not involve personal standards or philosophy (**Re: Visa Cancellation Applicant and Minister for immigration**)
 - × Should not be influenced by community standards or community values
- May bring fresh evidence (**Shi v Migration Agents Registration Authority**)
- Determined on the changed fact (**Fairlight Instruments Pty Ltd**)
- No hearing rules, little formality, faster and cheaper (**AAT Acts s 33**)

Step 3:

Draw the facts in questions to make arguments.

Step 4:

Remedy

Make a decision in writing (**AAT Acts s 43(1)**)

Exam Answer template

Question 1: Merit Review (CTH)

P will be seeking review of decision made by (*Minister/officer*) to (*issue s 7 /refuse to issue s 11 /cancel s 22*) P's Australian travel document under (*section*) of the Australian Passport Act ('APA'). s 50 of APA allows for Merit Review with the AAT as provided in the Act. This is a preferable option because it's faster and cheaper.

