

## Administrative Law Notes

### Week 1, Lecture 1:

Admin law governs public law decision- making + involves aspects of law concerned with the legality of decisions made by the executive, judiciary & legislature. It applies only to government decision- making + not the private sector.

**Executive:** Decisions taken by the Gov General, Governor, Ministers, public servants or bodies.

**Judiciary:** Decisions of judges (HC is part of this arm of gov)

**Legislature:** Legislative decisions subject to admin law are those to make subordinate legislation. They're delegated legislative decisions made by GG when specifically authorised by legislature usually relating to regulation, by laws etc. (ch 1 constitution)

- Person affected by a decision can apply for a court to examine the decision for legal flaws.
- **Judicial Review:** If an error is found, the court remits the matter back to decision makers who are bound to remake the decision according to the law.
- Judicial review in Aus occurs at common law, pursuant to a statute & Const s 75(v)
- **Merits Review: A review of an original decision:** Reviewing body looks at all relevant circs & applicable law (merits of case) according to the jurisdiction granted to it. As the reviewer exercises the same authority as the original decision- maker, it can **replace** a decision if an error of law is found. Merits review is wider than judicial review, which may examine a decision only for errors of law & can't actually replace it (bc judicial court can't exercise necessary executive/ legislative power required to replace a law; *R v Kirby; Ex Parte Boilermakers' Society of Australia*).
- Admin law essentially enshrines accountability especially of the executive
- **Constitution s 73:** HC has original & appellate jurisdiction to hear & determine appeals from all judgements, decrees & orders or judges/ justices, another federal court etc.

### Remedies:

- Constitution s 75 refers to writs of mandamus, which command inferior courts to compel an official to do his duty according to the law.
- Judicial review remedies don't result in damages but rather identify the error and fix it.
- At Commonwealth level, a person who is aggrieved against a decision of an administrative character by virtue of a statute can seek remedies under *Administrative Decisions Judicial Review Act 1977*. Any decision to which the act applies is capable of being judicially reviewed by the Federal or Federal Circuit Court.

- All prerogative writs are judicial review remedies + they include certiorari, prohibition, mandamus, quo warranto, habeas corpus, equity, injunction, declaration
- Judicial review is not about justice but about recognising + identifying errors of law + changing them. Writs of prohibition stop errors of law
- **Writ of error** [a writ before a superior court to procure the reversal of an inferior court's judgement because of error, largely overtaken by *certiorari*, & later by statutory appeals]
- **Writ of certiorari** [*to be informed/ certified of*] originally a writ directing the proceedings, or record of a cause, to be brought from an inferior court before a superior court : a writ enabling the quashing of a decision of a lower court
- **Writ of mandamus** [*we command*] writ to an inferior court to compel an official to do his duty according to law
- **Writ of prohibition** [*we forbid*] writ to an inferior court to stop an official from effectuating an unjust decision]
- **Writ of habeas corpus** [*You must have the body*] writ asking a superior court to investigate the lawfulness of detention & to secure release of a person detained illegally
- **Writ of quo warranto** [*by what warrant/authority?*] originally the writ issued by a superior court calling on a person to show by what warrant/authority s/he held office.
- **An injunction**: a judicial order restraining the implementation of a decision
- **A declaration**: [*to make clear*] a judgement or order declaring the rights [of the parties].
- Until recently, writs were known as 'prerogative writs', & equitable remedies [declaring of rights & the restraint of action] were 'equitable remedies'.

