

ADMINISTRATION LAW SUMMARIES

T2: JURISDICTION TO CONDUCT JUDICIAL REVIEW

ADJR ACT – s8 Jurisdiction to [Federal Court](#) and [Federal Circuit Court](#)

- [Decision](#) s5; [conduct](#) leading to decision s6)
 - ATB v Bond
 - [Decision is final and operative](#) – determinative of all issues, provided for under statute, the substantive determination
 - Conduct – admin activity preceding decisions that might reveal a flawed process
 - s3(3) ADJR – deems the making of a report a decision for the purposes of the Act
- ‘[of an administrative character](#)’: *Toohey; Roche*
 - Tooheys; Roche – admin decisions apply a general rule to a particular case
 - If it is not legislative or judicial then it will be administrative
- ‘[Under an enactment](#)’:
 - *Griffith University v Tang* – not merely pursuant to an enactment
 - *ANU v Burns* – rights/duties were derived from employment contract, not University Act
- “[person aggrieved](#)” – see Topic 3 Standing
- Check exclusions – schedule 1 or s3 (Governor General)

Common Law

[High Court](#): 75(v) Cth Const; and [Federal Court](#): s39B Judiciary Act (same terms of s75(v))

- In any [matter](#) (*McBain* – real controversy between parties – not hypothetical)
- in which a [writ](#) of [mandamus](#) or [prohibition](#) or an [injunction](#) is sought
- against an [officer of the Commonwealth](#)
 - executive; cabinet; ministers; public servants; royal commissioners
- Also consider [justiciability](#)
 - Status of decision maker (cabinet), sources of power (e.g prerog powers); nature of power
 - *Fai v Winneke* – justiciable even if made by Govnr in Council on advice of Minister
 - CCSU – need to look at nature/subject matter of power – national security = non-justiciable
 - *Peko* – doubts whether cabinet decisions should ever be subject to judicial review

[High Court](#): S75(iii) Cth Constn is an alternative option – original jurisdiction where Cth or person being sued on behalf of Cth is a party – Cth statutory body or royal commission

[Is there a privative clause?](#) T9

T3: STANDING

ADJRA

- ss 5/6, & s 3(4) - “person aggrieved”, includes “person whose interests are adversely affected”
- ADJR standing test “at least as broad” as Claw test (*Marine & Power Engineers*, per Gummow J).

COMMON LAW (applies to applications under *Judiciary Act* and *Constitution*)

- “Private right or special interest in the subject matter of the decision” (*ACF*)

To show ‘special interest’ and/or ‘person aggrieved’:

- [Private Individuals/companies](#) must show greater interest than other members of the public
 - If decision is specifically about them, this will be easy.
 - If not, consider “ripples of affection” (*Argos*).