

# Jurisdiction:

Does the court have jurisdiction to review the decision?

## 1 ADJR Act: Federal Court Jurisdiction

Under s 5 and s 6 an aggrieved person can seek review of a decision to which the 'act applies.' For the decision to be reviewable under the ADJR act there has to be a decision of an administrative character made under enactment (s 3)

### a) Was there a 'decision.'

The test established in *Bond* by Mason J is that it has to be (1) final, operative and determinative and (2) must be substantive and not procedural. Final is given to means that it cannot be an interim decision unless statute provides for making of intermediate decision and it must be likely to affect an individual's rights thus determinative.

A decision includes:

- Making, suspending, revoking or refusing to make an order, award or determination (S3(2)(a))
- Giving, suspending, or refusing to give a certificate of approval (s3(2)(b))
- Issuing, suspending, revoking or refusing a license (s3(2)(c))
- Imposing a condition or restriction on a license (s3(2)(d))

### b) Of an "administrative character"

A decision of an administrative character is described to be neither legislative nor judicial (*Tang, ANU v Burns*). The general indicators of legislative nature of legislative nature established in *Qld v Central Qld Aboriginal Corporation* is described to include: 'general rule like quality, binding legal effect, raises broad questions of policy and subject to parliamentary oversight.'

### c) "Made under an enactment"

Decision made under enactment must (1) be expressly or impliedly required or authorised by statute and must (2) confer, alter or affect legal rights or obligations (*Tang*)

1. In satisfying the first limb of the test, there must be a source of power to either
  - appoint the decision-maker;
  - Source of power to make the decision; or
  - Source of the decision's legal effect
  - NB: Failed in NEAT: AWBI didn't have express/implied authority under the Wheat Marketing Act; power was conferred on WEA. Unlike WEA, AWBI did not need statutory authority to do issue approvals because it did not derive its power from the Act, its power stemmed from its status as a legal entity.
    - Argument that private corporation not public body and determination is not a decision

- 2 In satisfying the second limb, the rights, obligations need not be those already in existence. The ADJR Act can apply to contracts, but the source of the rights/obligations must not be derived from the contract (Tang)
  - NB: Failed in Tang: Act didn't carry any entitlement for Tang to study her degree or any obligations to follow certain procedures – relationship between Tang and Uni was one of mutual consensus/voluntary association. Had there been a contract, because the rights/obligations would arise from it and not legislation, would similarly be no GoR
  - Failed in ANU v Lewins: university promotion policy did not allow ANU to unilaterally alter employment contractual rights

Conclusion:

[x] can seek review under the ADJR Act as there has been a decision (s 5, 3) which is an administrative determination made under an enactment with final and operative character (*Bond*). As this is a Cth Act, the ADJR Act (under s 8) can be heard in the FCA. The HCA does not apply as it normally sends down applications to the FCA per s 44(2) of the Judiciary Act

[x] can therefore seek remedies under s 16(1)

## 1 Constitutional Review Jurisdiction

Review may be sought under s 75(v) Constitution, or s 39(b) of the Judiciary Act. The requirement is that there has to be a 'matter' against an 'officer of the commonwealth'.

a) *Matter*

The 'matter' test requires there to be an immediate right, duty or liability at stake (*Griffith v Tang*)

b) Officer of the Cth

Officer of the Cth is described to be a natural person with formal appointment to office, is paid by Cth and is removable by the Cth (*Broadbent*).

It does not include statutory corporations/ government owned bodies (*Aust Post*), outsourced departmental officers (*Plaintiff M 61*) or corporate bodies (*NEAT*)