

JUSTICIABILITY

The ADJR Act restricts justiciability through s 3. For judicial review at common law, other considerations are used. Justiciability is concerned where there are public interests to be protected

- Analogously to *McBain*, there is no justiciable issue because there is no controversy about rights, duties and liabilities (per Hayne J)
- Analogously to *Peko-Wallsend*, there is no justiciable issue because of the many policy questions involved (per Bowen CJ, addressing the environment, Aboriginal rights, mining and the nation's economic position)
- Y may rely on *Peko-Wallsend* for the proposition that Cabinet decisions should not be reviewed
- Y may argue that Executive Council decisions are not reviewable, but X would counter that a blanket exclusion would create a wide gap (*FAI Insurances v Winneke*)
- X may argue that a decision is justiciable even when it involves foreign government (*Hicks v Ruddock*)

JURISDICTION UNDER ADJR ACT

X seeks review of a decision through s 5 or review of conduct under s 6.

1. Meaning of decision and conduct (*ABT v Bond*, per Mason CJ)
 - The finding was a decision because it was a substantive, not procedural, determination
 - Ordinarily, an intermediate determination is not a decision, but it will be if the statute provides that the determination is an essential preliminary to a final decision
 - Conduct is action taken for the purpose of making a reviewable decision
2. Administrative character
 - A decision is more likely to be administrative if there is some kind of commercial undertaking (*FAC v Aerolineas Argentinas*, per Leane J)
 - A decision is more likely to be legislative if it creates a rule of general application, applies to a subject matter not particular people, involves public consultation and is published in the Gazette (*Roche*, per Branson J)
3. Under enactment
 - Y would argue that although the statute created the power to conclude agreements, the legal force of terminating the agreement derived from general law, not the statute itself (*Tang*, per Gleeson CJ)
 - Y would argue that X did not enjoy rights under the statute, and the statute did not expressly or impliedly require a decision to be made, so the relevant decision was not made under enactment (*Tang*, per Gummow, Callinan and Heydon JJ)