

INTRODUCTION

- Judicial review = where court determines whether administrative bodies have properly respected the boundaries of their powers and functions formally assigned to them
 - Government holds power on behalf of its citizens. Must account for its exercise
- Prerogative powers are reviewable, except for national security [*Council of Civil Service Unions*] & international relations [*MAHE v Peko*]
- Grounds of judicial review = established categories of error. Court determines whether or not a decision has been lawfully made
 - Must establish the court has jurisdiction to undertake judicial review
 - Ultimately, just an expression of basic principle that public authorities must exercise their powers in accordance with law

JURISDICTIONAL PRE-REQUISITES

- [*Plaintiff s157*] the centrality and protective purpose of the jurisdiction of the court places significant barriers in the way of legislative attempts to impair judicial review of administrative action.
 - Must ensure propounded laws are constitutionally valid and ministerial or other official action lawful and within jurisdiction
 - An authoritative decision-maker making decisions, ultimately all matters where there is a contest goes to HC
 - Court must be obedient to its constitutional function. Pursuant to s75, it limits the powers of Parliament or executive to avoid, or confine, judicial review
- Federal court was formed to reduce workload of HC, gained jurisdiction to judicial review (s39B(1)) mirroring HC s75(v) jurisdiction
 - S44(2A) Judiciary Act – federal court facilitates remittal of HC commenced matters (come back to federal court after it was started in HC)
 - S39B(1A) – allows federal court to look at any matters under any laws made under Parliament
- Associated jurisdiction – conferred by s32 of Federal Court Act, allowing federal court to handle the hold of a matter when not all matters in the case can come under its jurisdiction (administrative claims can mix with non-administrative claims)
 - Don't have to send other matters to another court
 - But Federal Court is confined to federal claims, ^ doesn't have to be from same set of facts
- Accrued jurisdiction – general inherent power of superior courts to fully settle the matter before the court for convenience
 - Not confined to federal claims
 - Must arise from same set of facts
- No pre-requisites in State level

- SOURCE OF JURISDICTION: [S16 Supreme Court Act](#) - the Supreme Court is invested with and shall exercise such and the like jurisdiction, powers, and authority within Western Australia
- Limitations inherent in what remedies you seek (constitutional writs under [s75\(v\)](#))
- Standing = special interest test
- Must establish ground of judicial review
- Justiciable? National security. Only not justiciable if that's the only reason of decision

General Law JR vs. ADJR:

- ADJR – simplified remedies, extension to grounds of review, overrides pre-existing privative clauses (s4), have right to reasons
 - BUT have to satisfy pre-requisites under ADJR: ‘decision’ ‘administrative character’ and ‘made under an enactment’
 - List of decisions excluded from ADJR under Schedule 1
 - GG decisions are not reviewable s3(1)(c)
- Governors, GGs are reviewable under CL + no ADJR equivalent
 - Supreme Court Act s16, no jurisdictional pre-requisite, only limitations inherent in the writs

Federal level at CL – pre-requisites under s75(v) CC, s39B(1) Judiciary Act

- SOURCE OF JURISDICTION: s71 Constitution – judicial power of Cth vested in HC and such other courts as the Parliament establishes
 - Appellate jurisdiction (s73) and original jurisdiction (s75)
- Limited by Constitution s75(v) (HC) and Judiciary Act s39B(1) (Federal Court)
 - ‘matter’ = disputable issue or controversial matter. Concrete question that can be discussed by the court
 - ‘officer of the Cth’ = federal public servants. Body corporate cannot be officers of the Cth (privatisation or corporatisation removes itself from oversight of the court)
 - Entitlement to a named remedy – where the difficulties lie

Federal level – pre-requisites under ADJR Act

- Work in parallel with general law
 - ADJR = decision of administrative character made under an enactment + standing (person aggrieved) + grounds (s5 & 6)
 - CL = matter + officer of Cth + named remedy
- 1. ‘a decision to which this Act applies’** = a decision of an administrative character made, proposed to be made, or required to be made under an enactment s3(1)
- Reports/recommendations (s3(3)). Narrowly interpreted -> most likely have to apply [Bonds] test
 - Power to make must be established by statute
 - Statute must provide the making of report or recommendation as condition precedent to making final decision
 - Statute must provide decision to be made subsequent to report or recommendation
 - Conduct engaged for the purpose of a decision (s6 & 3(5))
 - s3(5) is not that useful, but includes: taking evidence or holding investigations
 - Manner in which proceedings have been conducted
 - Procedural aspect of decision making (failure to take evidence or refuse to adjourn proceedings = procedural conduct)
 - For purpose of making a decision? Doesn’t really matter that conduct was undertaken by another person that isn’t the final DM
 - Refusal/failure to make a decision (s7 & s3(2))

- [Right to Life Association] rejected a trial for abortion. REVIEWABLE
- Decision [\(s3\(2\)\)](#) =
 - making, suspending, revoking or refusing to make an order, award or determination;
 - giving, suspending, revoking or refusing to give a certificate, direction, approval, consent or permission;
 - issuing, suspending, revoking or refusing to issue a licence, authority or other instrument;
 - imposing a condition or restriction;
 - making a declaration, demand or requirement;
 - retaining, or refusing to deliver up, an article; or
 - doing or refusing to do any other act or thing