

ADMIN LAW STUDY NOTES

INTRODUCTION

Administrative Law

- Administrative law is important to understand as government power is always legally relevant in any field. It is also important to understand limitations on this power, checks and balances, accountability mechanisms and the need for control.
- Administrative law decisions have a very practical impact on the lives of citizens. Often, these decisions are a reflection of the law through various principles and forms of accountability.
- Administrative law is constituted and controlled by law. It is essential that administrative power is not concentrated in order to avoid abuses of power. As such, accountability mechanisms are important, which is also highlighted by the separation of powers doctrine.
- Admin law is informed by the Constitutional concepts of the Rule of Law, Separation of Powers, Responsible Government and Constitutionalism.

Accountability and Control

- Many of these accountability mechanisms are external in the Australian administrative law system. The Government can be held to account through statutory bodies, the Constitution, calls for transparency, audits, whistleblowers, NGOs, the media, concerned citizens and external supervision.
- However, accountability mechanisms are not a form of control over administrative power. Different mechanisms of accountability are all interrelated.
 - Legal accountability takes the form of legal norms enforced by the courts.
 - Bureaucratic accountability is a form of internal accountability, and often takes the form of tribunal review. This includes the Administrative Review Council (ARC).
 - Political accountability is focused on policy and outcomes.

Merits and Legality

- It must be determined which administrative action is preferable in different situations. Legislative and individual decisions can be subject to review as long as they are in the executive branch.
- Legality of actions can be derived from the Constitution, statute law, principles of statutory interpretation, and administrative action norms.
- Public and private law interact a lot in admin law. Private actors often fulfil roles in government administration, and the private law sector also attempts to hold the government to account.

Intro to Judicial Review

- In order to determine whether the court has jurisdiction in a matter, the following questions may be answered. ¹Does the court have jurisdiction? ²Is there a 'matter' at issue? ³Is the matter justiciable? ⁴Does the applicant have standing? ⁵Is there an appropriate ground of review that results in jurisdictional error? ⁶Is there an available remedy? ⁷Has obtaining a remedy been validly excluded by statute?
- These questions are intertwined and cannot be fully separated.

LEGALITY, MERITS AND CONSTITUTIONAL SOURCES OF JURISDICTION

Legality/Merits Distinction

- In order for judicial review of administrative law to be possible, courts must have jurisdiction in the matter, the issue must be justiciable, there must be legal standing, a grounds for review, a possible remedy, and no valid exclusion of judicial processes.
- Courts consider the legality of government decisions, but are unable to consider the merits of decisions (AG(NSW) v Quin (1990)).
- Courts can use *certiorari* to replace the original decision for their own, use *writs of prohibition* to prohibit the commencement or continuation of an illegal act, or *writs of mandamus* to compel the party to perform a legal duty. Courts should not exercise administrative powers through this process.