

Powers of the Constitution

Constitutional – High Court of Australia - (ss 75(iii), 75(v) Constitution)

- Section 75(v) of the Commonwealth Constitution confers jurisdiction on the High Court of Australia where "a writ of mandamus or prohibition or an injunction is sought against an officer of the Commonwealth" (v); or (iii) in which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party;

• Officer of the Commonwealth

- Requires a nexus between the decision maker and the government.
- a person appointment by the Cth to an identifiable office who is paid by the cth for the performance of their functions under the office and who is responsible to and removable by the cth concerning the office'; **Broadbent v Medical Board of Qld**
- If decision making is contracted out, then decision maker probably not an officer of the Court: **Plaintiff M61 (2010)**

• Matter

- 'immediate right, duty or liability to be determined by a court': Re Judiciary & Navigation Acts
- Must be a justiciable controversy

• Remedies

- Certiorari (order to quash decision/ deprive of legal effect)
 - Available for any legal error manifest on the face of the record. Requires that there be a 'judicial decision' – made in exercise of judicial function - so that it can be quashed.
 - **Standing:** A purpose of these writs is to ensure that a public body (commonly an inferior court or tribunal) acts accordingly to law in discharging its functions. Proceeding for these writs can be initiated by a "stranger" – a person with no private legal right or interest to protect because there is a public interest benefit in ensuring that adjudicative bodies act within their jurisdiction.
 - A court nevertheless has a discretion to refuse a writ and may be less inclined to exercise its discretion in favour of a stranger as opposed to a person aggrieved.
- Prohibition (injunction)
 - Only available for 'jurisdictional' legal error. Doesn't need a decision. Seek if you anticipate the decision maker was going to make a decision which you believed would be unlawful (EG someone files an indictment before a Magistrate who could only hear summary offences)
Standing: The standing requirement for declaration and injunction is the same; that the applicant has a special interest in the subject matter of the proceedings.

- Mandamus (compel action)
 - Only available for 'jurisdictional' legal error.
 - **Standing:** The writ of mandamus commands the performance of a duty of a public nature that remains unperformed. The (restrictive) test for standing is that mandamus will be granted to a prosecutor who demonstrates a sufficient interest or specific legal right in enforcing a public duty that is owed to them.
- Habeas corpus (instruct a gaoler to release a prisoner being unlawfully detained).
 - **Standing:** The dominant purpose of habeas corpus is to seek the release from detention or imprisonment of a person who is being unlawfully detained. To deal with the practical difficulty faced by a person in confinement of commencing proceedings, "anybody in the community who knows that a person is wrongfully imprisoned has a right to have the writ to discharge that person out of imprisonment: *R v Waters* [1912] VLR 372 at 375.

ADJR Act 1977 (Cth)

Introduction

- Shifted attention from available remedies towards whether a grounds of review can be established
 - i.e. where a legal error can be shown
- Applications may be either to the Federal or Federal Magistrates Courts.
- Right to reasons: s 13
- Procedure to apply for review: s 11.
- Applications may be brought by 'aggrieved' persons for:
 - A 'decision to which this Act applies': s5.
 - Proposed and actual conduct engaged for the purpose of making a 'decision to which this Act applies': s6.
 - A failure to make 'a decision to which this Act applies': s7.

'decision to which this Act applies' requirements under s 3(1):

1. A decision:
 - A 'decision' will generally be 'required or authorised by a statute' and be 'substantive, final and operative' in a practical sense 'finality' element; reviewable decisions will, in general, be 'final or operative and determinative' Bond.
 - Intermediate decision made on the way to an ultimate decision may be reviewable if required under statute: Bond.
 - The High Court held that the actions were not reviewable as decisions or conduct. The terms 'decision' and 'conduct' should be read restrictively. 'Decision' refers to administrative activity that is substantive and final or operative and 'conduct' refers to administrative activity preceding a decision that reveals a flawed procedural processes, as opposed to substantive issues: Bond.
 - Course of reasoning is not a decision and the decision must be the "substantive determinations".
 - what constitutes a decision will vary from case to case but in this situation, the reaching of a conclusion after considering matters of public interest which had been brought to the secretary's attention, constituted a decision. There was a 'final and ultimate decision not to give the direction: Right to life association.
2. Of administrative character
 - Decisions which are neither 'legislative' nor 'judicial' will be classified as administrative: Burns v ANU.
 - A legislative act is the creation and promulgation of a general rule without reference to particular cases; an administrative act cannot be exactly defined, but it includes the adoption of a policy, the making and issue of a specific direction, and the application of a general rule to a particular case in