

# ADMINISTRATIVE LAW

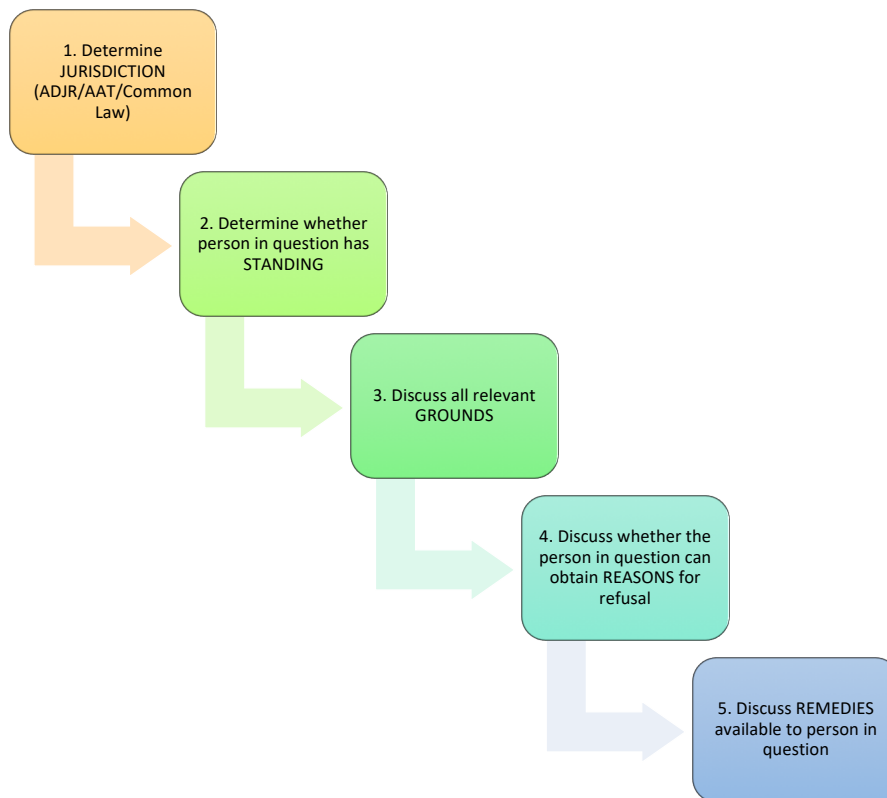
EXAM WRITING GUIDE

## 1. Exam Structure:

The fact pattern will likely deal with a rejected application by a governmental authority for a license/permit/approval/application. The exam consists of 3 questions:

**Q1: Discuss the affected person's rights under the AAT Act (15 marks)**

**Q2: Discuss the affected person's rights under the ADJR Act (25 marks)**



**Q3: Short answer question:** can range from Common Law remedies, rights/standing of an involved 3<sup>rd</sup> party organisational group, issues as a result of a 2<sup>nd</sup> decision maker's decision/conduct, privative clause, how your discussion from Q1 or 2 may differ if a certain section of the legislation was amended, etc. (10 marks)

## 2. What to look out for in Exam Legislation:

You will be provided the exam's legislation during the study week. You will not be required to refer to any other related legislation as the exam will only require you to refer to that particular legislation. Once you have obtained the exam legislation, you will need to take note of the following and identify the relevant sections:

- What are the criteria for an approval of a permit/license/application? "The Minister must be satisfied that... / The Secretary must, in writing, approve a person if..." Note to apply this part of the legislation to the fact pattern when raising grounds of argument;
- Determine the criteria required to be approved for an application;
- Determine what grounds for refusal exists for an application. The fact pattern would likely consist of a decision maker refusing an application based on any of the grounds for refusal;
- Ascertain whether there is any review rights / providing of reasons. Also note if legislation outlines what kind of decision(s) can be reviewable. If this is evident, this may form part of the argument that the legislation is not meant to preclude review rights (related to 'privative clause' and 'reasons' discussion);
- Note what actions the decision maker must undertake before granting approval / refusing an application (related to 'jurisdictional fact' and 'procedural fairness' discussion). Note whether it must be executed in a specific number of days or must be in writing;
- Determine whether there is a section related to the delegation of powers. Also determine if there is any indication of the boundaries of the power that is delegated;
- Consider deadlines for the person in question and the decision maker in order to commence certain actions (e.g. review rights, notifying in writing, etc.)
- Note whether legislation provides for AAT review rights (in relation to Q1)

Primary Person in question = X

Decision Maker = DM

<highlighted> = to insert relevant exam legislation section

## QUESTION 1:

s 25(1)(a) of AAT Act states that applications may be made to the AAT for review of decisions made in the exercise of powers conferred by that enactment.

### (i) Definition of 'Decision'?

s 3(3) of AAT Act: Unless the contrary intention appears, a reference in this Act to a decision includes a reference to:

- (a) making, suspending, revoking or refusing to make an order or determination;
- (b) giving, suspending, revoking or refusing to give a certificate, direction, approval, consent or permission;
- (c) issuing, suspending, revoking or refusing to issue a licence, authority or other instrument;
- (d) imposing a condition or restriction;
- (e) making a declaration, demand or requirement;
- (f) retaining, or refusing to deliver up, an article; or
- (g) doing or refusing to do any other act or thing.

**CONSIDER: Made in the exercise of powers conferred by an enactment that confers JURISDICTION on the AAT?**

- The statute must expressly state that the decision is reviewable by the AAT
- Application filed within 28 days of being notified of the decision: s 29(2) (unless specified otherwise)

<refer to Exam Legislation and identify whether there is AAT review rights>

Elaborate that X should be able to make an application to the AAT for review of the decision: "Therefore, X has the right because there is a provision in the statute which gives jurisdiction to the AAT."