

General Administrative Law Foundations/Purposes _____ Error! Bookmark not defined.

Goals _____ Error! Bookmark not defined.

Administrative Law Harmony _____ Error! Bookmark not defined.

Why is Admin Law Important? _____ Error! Bookmark not defined.

'The Executive' _____ Error! Bookmark not defined.

Separation of Powers _____ Error! Bookmark not defined.

Rule of Law _____ Error! Bookmark not defined.

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Non-J and Rule of Law _____ **Error! Bookmark not defined.**

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Legitimate Expectations _____	Error! Bookmark not defined.
Content Test: (e.g. disclosing prejudicial information) <i>VEAL</i> _____	Error! Bookmark not defined.
Rule against Bias _____	Error! Bookmark not defined.
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What does the DM have to consider? _____ Error! Bookmark not defined.

Was there adequate consideration? _____ Error! Bookmark not defined.

Role of Courts _____ Error! Bookmark not defined.

*****Improper/Unauthorised Purpose'***** _____ Error! Bookmark not defined.

*****'Inflexible Application of Rule/Policy'***** _____ Error! Bookmark not defined.

Is the Policy/Guideline inconsistent with the statutory power? _____ Error! Bookmark not defined.

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*****Facts/Law'***** _____ Error! Bookmark not defined.

Error of Law _____ Error! Bookmark not defined.

Error of Fact _____ Error! Bookmark not defined.

Jurisdictional Fact _____ Error! Bookmark not defined.

*****No evidence'***** _____ Error! Bookmark not defined.

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Privative Clauses _____ Error! Bookmark not defined.

Federal Level _____ Error! Bookmark not defined.

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Merits Review & Tribunals _____ Error! Bookmark not defined.

Why More than JR? _____ Error! Bookmark not defined.

Tribunals _____ Error! Bookmark not defined.

Tribunals v Courts _____ Error! Bookmark not defined.

State Level _____ Error! Bookmark not defined.

Merits Review 'System' _____ Error! Bookmark not defined.

The Administrative Appeals Tribunal _____ Error! Bookmark not defined.

AAT Act _____ Error! Bookmark not defined.

WHO: Standing _____ Error! Bookmark not defined.

WHAT: 'Decision & made under an enactment' (*Customs*) _____ Error! Bookmark not defined.

Powers & Considerations _____ Error! Bookmark not defined.
Remedies _____ Error! Bookmark not defined.
Normative Function of AAT _____ Error! Bookmark not defined.
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Internal Review Alternatives _____ Error! Bookmark not defined.

Reconsideration and Review of Decisions _____ Error! Bookmark not defined.
Reviews and Complaints _____ Error! Bookmark not defined.
Internal Complaint Procedure _____ Error! Bookmark not defined.
Internal Review _____ Error! Bookmark not defined.

Ombudsman _____ Error! Bookmark not defined.

Constitutional and Institutional Location _____ Error! Bookmark not defined.
Ombudsman & upholding RoL _____ Error! Bookmark not defined.
Who can Complain? _____ Error! Bookmark not defined.
What can the complaint entertain? _____ Error! Bookmark not defined.
How are complaints handled? _____ Error! Bookmark not defined.
Basis of Recommendations _____ Error! Bookmark not defined.
Other Functions? _____ Error! Bookmark not defined.
Outcome of Investigations: Remedies _____ Error! Bookmark not defined.
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Too Agency Friendly? Is role Systematic change (broader picture) or indiv complaints? ____ Error!
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John McMillan: Ombudsman and RoL _____ Error! Bookmark not defined.

Anita Stuhmucke _____ Error! Bookmark not defined.

Freedom of Information _____ Error! Bookmark not defined.

What is FOI? _____ Error! Bookmark not defined.
Value of Information _____ Error! Bookmark not defined.
FOI History: Australia _____ Error! Bookmark not defined.
Main Functions _____ Error! Bookmark not defined.
What is Information? _____ Error! Bookmark not defined.
Federal FOI Regime _____ Error! Bookmark not defined.
Recent Reforms _____ Error! Bookmark not defined.
Institutions _____ Error! Bookmark not defined.
Access _____ Error! Bookmark not defined.
Cost _____ Error! Bookmark not defined.
Scope _____ Error! Bookmark not defined.
Exemptions: Public Interest Immunity _____ Error! Bookmark not defined.
Complaints & Review _____ Error! Bookmark not defined.

Case Law Issues _____ Error! Bookmark not defined.

FOI and Privacy _____ Error! Bookmark not defined.

FOI and Secrecy _____ Error! Bookmark not defined.

Whistle-blower Protection _____ Error! Bookmark not defined.

OAIC Cuts _____ Error! Bookmark not defined.

FOI and Accountability _____ Error! Bookmark not defined.

McMillan: Admin Law and Cultural Change _____ Error! Bookmark not defined.

Balancing Transparency and Gov Effectiveness (Moon& Adams)____ Error! Bookmark not defined.

Judicial Review

- Australian JR must:
 - Not encroach on merits of admin decision-making
 - Courts bear responsibility for interpreting and applying law which constrains administrative decision-makers
- Declares and enforces law determining limits on power conferred by statute upon admin decision-makers (*Enfield*)

Application Requirements

- **Jurisdiction:** The court must have jurisdiction to review impugned act or decision
- **Justiciable issue:** Application must raise 'justiciable issues'
- **Standing:** Applicant must be appropriate person to bring application
- **Ground of Review:** Must be a breach of administrative law norm
- **Remedies:** Court must have power to grant appropriate remedy
- **Not Restricted:** Legislature has not validly excluded or diminished court's review jurisdiction

Decision maker under no obligation to exercise the power

e.g. *S417(7) Migration Act* "(7) The Minister does not have a duty to consider whether to exercise the power under subsection (1) in respect of any decision, whether he or she is requested to do so by the applicant or by any other person, or in any other circumstances."

- Minister doesn't have to make a decision, if so than an applicant is precluded from seeking mandamus to order minister to make the decision (*Plaintiff M61*)

Legality NOT merits (*Quin*)

- JR provides no remedies to protect interests
- Executive must often balance interests of wider public & interests of individuals
 - **Courts are not equipped** to evaluate policy considerations
- Courts have duty to uphold & apply law that recognises autonomy of **3 branches of Government** & their **respective spheres of competence**
- If JR trespassed on merits of exercise of admin power would put **its own legitimacy at risk**

JR of Delegated Legislation; (*Evans*)

- Important political question about whether legislative power is too readily delegated to the executive?
- Authority of JR for delegated legislation (*Evans*)



Jurisdiction



- ❖ ___ would seek judicial review in the _____ under (ADJ Act) or Constitutional powers of review

*****Commonwealth*****

Full Federal Court

- *ADJR Act*: s8(1)-The Federal Circuit Court have jurisdiction to hear matters under the ADJR Act
- *Judiciary Act*
 - **s39B(1)** Vests in the Federal Court the entirety of the jurisdiction which s75(v) *Constitution* confers on High Court
 - **s39B(1A)(c)**: adds 'any matter arising under any laws made by the parliament'

High Court:

- ❖ For JR under the *ADJR Act*, X's decision must be 'a decision under which the ADJR Act applies. This required, under s3(1):
 - 1) a decision
 - 2) Of an administrative character
 - 3) Made under an enactment

ADJR Act

➤ **s3(1)**

"Decision to which this Act applies": *means a **decision of an administrative character** made, proposed to be **made**, or required to be made (whether in the exercise or discretion or not and whether before or after the commencement of this definition):*

- (a) **Under an enactment** referred to in paragraph (a), (b), (c) or (d) of the definition of enactment; or
- (b) By a commonwealth authority or an officer of the commonwealth under an enactment; other than
- (c) A decision by the Governor-General
- (d) A decision included in any of the classes of decisions set out in Schedule 1

'A Decision' (*Bond*)

- To establish there was a decision, must show that the decision was in relation to one of the following:
 - In relation to a decision to which this Act applies (s5(1))
 - Proposed and actual conduct engaged for the purpose of making a decision TWATA (s6)

- A failure to make a decision TWATAA (s7)
- **s3(2)**
 - making, suspending, revoking, refusing, issuing, imposing
 - (a) order, award or determination
 - (b) certificate, direction, approval, consent or permission
 - (c) licence, authority, or another instrument
- **s3(3)**
 - Making of a report or recommendation is deemed to be a decision
- Must be **'final or operative and determinative'** (*Bond*)
 - Cannot be preliminary/intermediate decision unless statute provides for making of indeterminate decision as condition precedent to making of final decision (*Bond*)
 - Determinative= likely to affect an individual's rights
- Must be **'substantive determinations'** (not factual or procedural) (*Bond*)
 - Distinguished from conduct
 - Fact finding often lack finality required
- **Decision read narrowly to avoid transferring ADJR into merits review**
 - **Premature review can also pose risks to efficient administration**

'Administrative Character'

- ❖ The decision is of an administrative character as it is neither judicial nor legislative (*Tang*)...
- ❖ The decision does not change the content of the law but applies it to ____'s individual case (*Tooheys*)
- Process of differentiation: neither legislative or judicial (*Tang*)
- If not, by deduction, deemed 'administrative': *Burns v ANU*
- Making of delegated/subordinate legislation NOT administrative in character

Legislative Factors

- Features of Decision:
 - Creates new rules of general application (legis.) rather than applying existing rules to particular cases (admin.)
 - Has binding legal effect
 - Raises broad policy questions
- Supervision of Decision
 - Is it subject to parliamentary oversight? (yes: legis, e.g. disallowable instrument)
 - Is there merits review available (then admin.)
- Production of the Decision
 - Cannot be made until there has first been wide public consultation
 - Requirement to notify that decision has been made?
- Can be varied or amended unilaterally by its maker
- Cannot be varied or amended by the Executive

- Triggers the operation of other legislative provisions

‘Under an Enactment’

- ❖ This decision was made under the _____ Commonwealth Act and therefore satisfies the s3(1) ADJR Act requirement
- ❖ This decision was made under a **rule/regulation/by law**, which qualifies as an instrument under s3(1)(cb) of *ADJR Act*
 - This means **subordinate and delegated legislation** will be a decision if conferred by an Act
 - However decisions made in accordance with subordinate legislation cannot be challenged by ADJR as delegated legislation itself is not an Act

1) Private Decisions of Gov Statutory Authorities

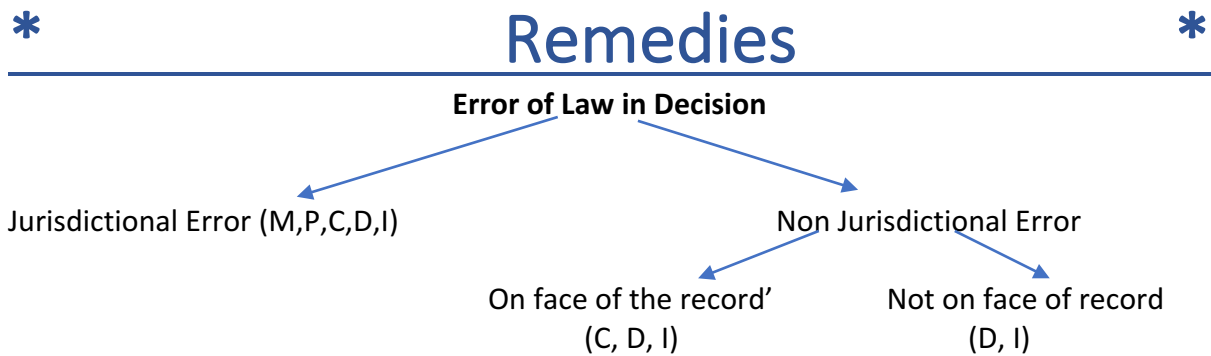
Decision (**Tang**):

- 1) **Is expressly or impliedly required or authorised by the enactment**
 - Was satisfied by *Griffith University Act*
 - 2) **Itself confers, alters or otherwise affects legal rights and obligations**
 - Tang enjoyed no relevant legal rights and the university had no obligations under *University Act* with respect to course of action adopted
 - Association was voluntary (mutual consensus)- no indication of contractual relationship
 - Act set up university to exist
- Kirby dissent:
- No body of law available
 - Decision to terminate relationship between parties also came under Act and involved exercise of ‘public power’: ‘provide education’, ‘confer awards’ — chose not to
 - Unreasonable imposition: how is power balance ‘mutal consensus’
 - Serious effect on student
- Denial of review= resulted in an absence of any legal principles by which the relationship between the parties would be regulated and structured
 - No contract
 - How does ‘rights and obligations’ test flow from ADJR text?

2) Public Decisions by Non-Gov Entities

- Main question to be considered is **whether it is necessary or appropriate to read the Act as authorizing or requiring this decision?**
- In **NEAT Domestic** it was decision of Wheat Authority that was required and authorised by the statute in question. AWBI’s consent was a precondition to that decision.
- Legal Source of power= company’s legislation
- Whether body owes its existence to the Act: or company (*NEAT*)
 - Is it an incorporated body?

- Objectives to pursue economic interests of company?
- Private nature
 - Not possible to impose public obligations
- Is it the operative legislative requirement?: *Neat*= WEA's decision to consent
 - AWBI's capacity to consent came from corporate personality



Remedies

- **Certiorari**
 - Quashing decision/depriving it of legal effect
 - Retrospective or prospective
 - Decision must have some form of legal effect on rights of subjects
(Ainsworth)
- **Prohibition**
 - Decision-maker ordered to refrain from doing something in process of making their decisions
 - Too late once decision made
- **Mandamus**
 - Enforce the performance of public duties
 - Actual or 'constructive' failure to perform a duty/exercise jurisdiction
 - Constructive= JE in performance of function
 - Can compel action in regard to certain directions and discretions
 - No obligation to make decision but must at least consider whether to make one
 - Not applicable if duty of DM to perform decision duties (Ainsworth)
- **Injunction**
 - Developed from private law
 - May perform similar function to prohibition or mandamus
 - Can be used in cases where there is no JE to prevent a body acting based on unlawful decision (eg. PBS)
- **Declaration**
 - 'shallow remedies'
 - No legal effect
 - Declare decision is invalid or unlawful
 - Popular remedy—plaintiffs get something
 - Obtained against gov likely to be respected and terms carried out even w/o obligation to do so
 - Party has real interest in decision: question was not hypothetical (Ainsworth)

- A writ may not be granted if (*Aala*)
 - More convenient or satisfactory remedy available
 - No useful result could ensue
 - Relevant breach would not likely have changed the outcome of the decision
- Focus of inquiry upon 'authority or jurisdiction' given to person who seeks writ (*Aala*)
 - **Prohibition**: what are the limits of that person's authority to decide a question or exercise a power?
 - **Mandamus**: has the person failed to exercise a power which they are bound to exercise?

***** Merits/ Legality *****

JR Jurisdiction (SoP)

Attorney-General (NSW) v Quin

	<i>Quin (1990)</i>
Decision	<ul style="list-style-type: none"> ➤ Decision not judicially reviewable ➤ Quin’s LE’s not to be met by JR ➤ Minister’s Appeal allowed
Jurisdiction	High Court
Facts	<ul style="list-style-type: none"> - 1982 <i>NSW Local Courts Act</i> - Attorney General: <ul style="list-style-type: none"> ○ 1987—policy of appointing magistrate by merit selection <ul style="list-style-type: none"> ▪ Mr Quin not reappointed under new policy ○ Successful in Court of Appeal - AG appealed to HC - Concerns about fitness for office - Mr Quin & 4 other magistrates not appointed to new magistrate court system
Issue(s)	<ul style="list-style-type: none"> - What is the jurisdiction of judiciary to protect individual’s legitimate expectations against adverse exercises of an administrative power?
Conclusion/Test	<p><u>Brennan J</u></p> <ul style="list-style-type: none"> - JR provides no remedies to protect interests <ul style="list-style-type: none"> ○ Scope not to be framed in this way - JR invoked to set aside admin acts/decisions that are unjust/unlawful - Merits of admin action (to extent they can be distinguished from legality) are for the repository (political/exec) of that relevant power - Executive must often balance interests of wider public and interests of minority groups/individuals <ul style="list-style-type: none"> ○ Courts are not equipped to evaluate policy considerations ○ Adversary system not ideally situated - Courts have duty to uphold & apply law that recognises autonomy of 3 branches of Government & their respective spheres of competence - If JR were to trespass on merits of exercise of admin power= put its own legitimacy at risk

***** Jurisdiction/ JR Scope *****

ADJR Act Requirements

➤ **s3 (1): 'Decision to Which this Act applies'**

➤ 'A Decision'

Australian Broadcasting Tribunal v Bond

	<i>Bond</i> (1990)
Decision	<ul style="list-style-type: none"> ➤ Decision to be reviewed must be final operative and determinative ➤ Not intended to allow for constant disruptions to slow down administrative process
Jurisdiction	High Court: ADJR
Facts	<ul style="list-style-type: none"> - Alan Bond= WA entrepreneur - Bought Ch9 network' - Question of whether he was 'fit and proper person' to hold TV broadcasting license <ul style="list-style-type: none"> ○ Suggestions he was not --due to bribing issues - Brought proceedings to challenge every step of ABT process
Issue(s)	<ul style="list-style-type: none"> - Could ADJR be used to challenge 'decisions' that were steps in process of deciding his license approval? - What is a decision?
Conclusion/Test	<ul style="list-style-type: none"> - Must be final, operative and determinative <ul style="list-style-type: none"> ○ Cannot be preliminary/intermediate decision unless statute provides for making of indeterminate decision as condition precedent to making of final decision - Must be 'substantive determinations' (not factual or procedural) (<i>Bond</i>) <ul style="list-style-type: none"> ○ Distinguished from conduct ○ Fact finding often lack finality required - Must be more than a 'mere step' taken in course of reasoning on way of making final decision - <i>ADJR</i> not intended to be used for obstructive purposes - Bond's misuse fragmented the regulatory process