

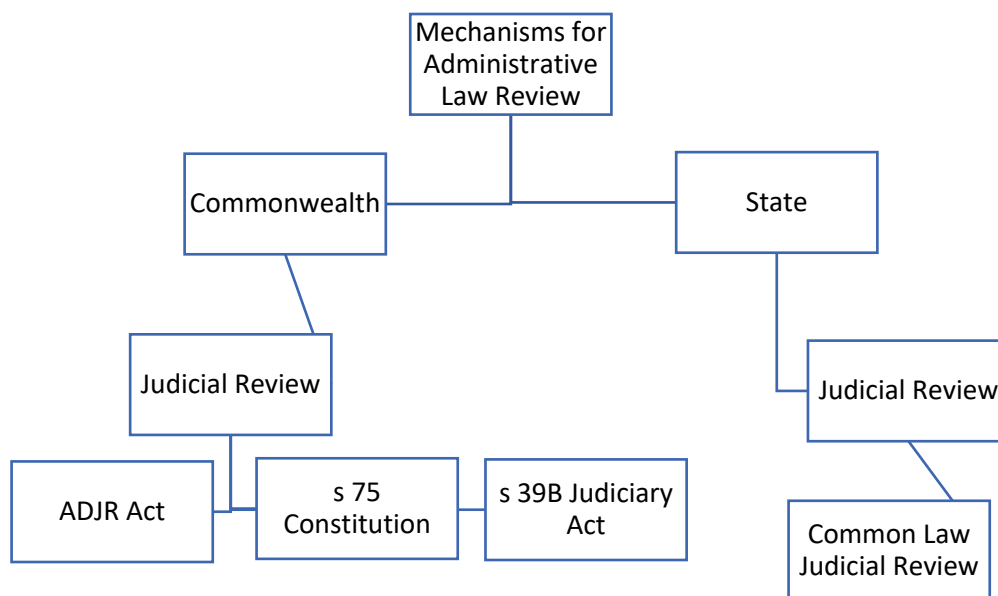
TOPIC 10: INTRODUCTION TO JUDICIAL REVIEW AND JURISDICTION

10.1 OVERVIEW OF JUDICIAL REVIEW

The judiciary reviews the executive by determining if the decision was lawful

- Did the decision maker act outside of their power
- Were the procedures followed
- Was the decision so irrational as to be a failure to exercise lawful functions?

Then the decision can be quashed and remitted to the original decision-maker.



10.2 WHAT IS JUDICIAL REVIEW?

Judicial review is concerned with the **lawfulness of decisions** made by the executive, not whether they are wise and fair.

The following must be met for a successful judicial review application:

- (1) The court must have **jurisdiction** to conduct the judicial review
- (2) The court must accept the issues are **justiciable**
- (3) The applicant must have **standing**
- (4) The court must have the power to **grant a remedy**
- (5) There must be a **ground of review**
- (6) The legislature must not have validly **excluded the court's review jurisdiction** (ie: privative clauses)

10.3 JURISDICTION

This relates to the authority of the court(s) to interfere with decisions by the executive. A court can only hear a matter if it has jurisdiction to do so.

There are two classes of courts:

- (1) Superior courts of record of general jurisdiction
- (2) Courts of limited jurisdiction

If you are in the Commonwealth, there is common law jurisdiction and ADJR jurisdiction. If you are in NSW there is only common law jurisdiction.

10.4 COMMON LAW JURISDICTION

High Court	Primary Commonwealth Court that gets jurisdiction from s 75 Constitution and s 39B Judiciary Act.
Federal Court	Job share with the High Court and gets jurisdiction from s 39B Judiciary Act
NSW Supreme Court	Primary NSW Court that gets jurisdiction from s 23 Supreme Court Act.

These three provisions allow common law judicial review to occur.

10.5 HIGH COURT COMMON LAW JURISDICTION

s 75 Constitution: In all matters:

- (i) arising under any treaty;
- (ii) affecting consuls or other representatives of other countries;
- (iii) in which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party;
- (iv) between States, or between residents of different States, or between a State and a resident of another State;
- (v) in which a writ of Mandamus or prohibition or an injunction is sought against an officer of the Commonwealth;**

the High Court shall have original jurisdiction.