

LAW4331
Administrative Law
2021 S2 Exam Notes
SAMPLE

These notes should only complement your own lecture and reading notes, and not be a replacement of them. Please be cautious of any potential changes in the law since the making of these notes.

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Jurisdiction

Jurisdiction under the ADJR Act

Federal court has jurisdiction to hear applications below under s 8 and 9.

s 5(1)

A person aggrieved by a decision to which this Act applies may apply for an order of review...

- Where a person is aggrieved by conduct that a person engaged/is engaging/proposes to engage in for the purpose of making a decision to which this Act applies, see s 6(1).
- Where a person is aggrieved by the failure of a person who had a duty to make a decision to which this Act applies, see s 7(1) (note only one ground is available- unreasonable delay).

Therefore, need a decision, or conduct for the purpose of making a decision (*Bond*).

Decision?

s 3(2)- the making of a decision includes:

- a) making/suspending/revoking/refusing to make an order/award/determination;
- b) giving/suspending/revoking/refusing to give a certificate/direction/approval/consent/permission;
- c) issuing/suspending/revoking/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;

s 3(3)- includes report/recommendation made before a decision is made where there is provision for this in the enactment.

A reviewable decision = a final or operative decision determinative of all issues, and does not include procedural determinations (which is conduct) (*Bond*)

- Cf. *Bond* where the preliminary determination is an essential preliminary to the decision, or that it was so linked to the final license revocation it was a decision)

Decision to which this Act applies?

s 3(1)- a decision of an administrative character made/proposed to be made/required to be made under an enactment (a), but not a decision by the Governor-General (c) or a decision in Schedule 1 (d).

1. Administrative Character (*Toohey; Roche*) = something that isn't judicial or legislative. Applying existing rule to particular cases (administrative), creating a new rule of general application (legislative).

<i>Toohey</i>	Parliament has given the discretion to the Minister to lower import duties for certain goods, and the decision upon the Minister was to decide whether specific goods fell within the general description of the relevant items. Also, it involved the Minister exercising their discretion in certain cases- which is applying the law, not amending the law.
<i>Roche</i>	A decision to amend the Poisons Standard was legislative, not administrative. It involved broad policy considerations, not about an individual. It also required publication in the Gazette- which usually applies to legislative decisions.

2. Made under an enactment (ANU; Tang)

An enactment is just an Act (s 3).

It will be made under an enactment if (*Tang*):

- It is expressly or impliedly required/authorised by the enactment, and
- The Act itself confers/alters or otherwise affects legal rights or obligations.

<i>Burns</i>	B sought reasons for termination of employment from the ANU, argued he was under the ADJR Act. ANU is a creature of statute, so technically, all its decisions are under statute. But look at policy considerations – should not open these flood-gates. The ANU Act did not expressly confer power to dismiss a professor but there was still a general power to do so. Looking at the wording of the statute and contract, the decision to dismiss was made under the employment contract, not statute. Need to show that the rights and duties of the parties to the contract of engagement were derived under the contract, and not under the University Act (just showing the source of power is indeed found in the statute is not enough).
<i>Tang</i>	PHD student T was excluded from the program. There was a finding that there was academic misconduct and this was the appropriate response to it. GU Act held the university council can make statutes which may cover this. HC held T was not entitled to review, because the decision to exclude was not made under the GU Act. There is a private relationship between the university and the student, and the termination of this relationship did not take legal force/effect from the GU Act – ie. they were terminating a private relationship.

Jurisdiction under the Common Law

HC has original jurisdiction under s 75(iii) and s 75(v). Federal Court has s 39B of the Judiciary Act.

It requires a matter in which a writ of Mandamus/prohibition/injunction is sought against an officer of the Commonwealth.

Matter

Matter = a controversy about some immediate right, duty or liability to be established by the determination of the court (ie. *McBain*)

Consider:

- High Status of the Decision-Maker (not determinative- ie. the Crown in *Toohey*, Governor in *Winneke*)
- Source of Power (if prerogative/non-statutory, less likely justiciable)
- Nature of the Power and what's involved in its exercise
 - o If it involves high level policy that applies to many, less likely justiciable (*Peko Wallsend*)
 - o Even if it involves a foreign government, can still be justiciable (*Hicks*)

<i>Toohey</i>	Indigenous persons made a claim for land. The department changed the definition of Darwin to cover the land, preventing the land claim. Government argued it was non-justiciable, as they had crown immunity. Similarly, under ministerial responsibility, they are responsible to Parliament, not the courts. Also, the courts as a matter of policy should not be substituting their view to that of the executive. However held justiciable as there was no reason to give immunity to the crown from judicial review.
<i>Winneke</i>	FAI had been on a list of approved providers for workers but the Government decided not to renew it. Government argued the decision was made by the Governor acting on ministerial advice, hence the issue is not justiciable. Held just because a decision was made by the