

Topic 1 Introduction

1.1 The Source of Power in Administrative law

Administrative law is a branch of public law which controls and regulates the exercise of administrative power by the executive arm of government. It provides the legal mechanisms which individuals can use to challenge such decisions or conduct or to hold the executive accountable for such.

Two forms:

1. Judicial review
 - a. Conducted by the Courts
 - b. Comprises principles that reflect limitations that courts imply into the powers exercised by administrative officials
 - c. Influenced by statutes which administrative officials draw their power from
2. Merits review
 - a. Conducted by tribunals
 - b. Tribunals remake a decision with one that is correct/preferable
 - c. Tribunals can exercise the same powers as the administrative official who made the original decision
 - d. Requires understanding of what the relevant statute allows

Values of Administrative law

- Fairness
- Legality
- Rationality
- Impartiality
- Transparency

1.2 Development of Admin Law

The courts developed a range of prerogative writs as a means to question and control the exercise of official power:

1. Mandamus
 - a. Court orders a public official to perform a specific act that is required by law which they have refused or neglected.
2. Prohibition
 - a. Orders a lower court to stop proceedings that is outside its jurisdiction
3. Certiorari
 - a. Orders a lower court to review its decision to review any errors of law.
4. The equitable remedies of injunction and declaration

Statutory interpretation is the basis:

- Responsible government is a doctrine that means ministers are accountable for their actions to Parliament.
- The text of the legislation should be the starting point in interpretation in their ordinary and natural meaning.
- In Australia Parliament supremacy is limited by the Constitution

- The sources of executive power include; delegated legislation, royal prerogative, common law powers, and primary legislation
- The executive involves departments, agencies, statutory officers, ministers, and governors.
- The Constitution confers legislative power on Parliament.

What is **Government**?

Professional bodies, clubs, and voluntary associations where any profession imposes penalties can exercise public functions and are required by the principle of natural justice and procedural fairness - extension of Admin law.

Ways to challenge power

1. Sources of legal power: legislative and non-statutory
 - a. Delegated legislation
 - i. Must be read consistently with primary legislation
 - b. Quasi legislation
2. Accountability: constitutional doctrines
 - a. Rule of law
 - b. Separation of power
 - c. Responsible government
 - d. Parliamentary sovereignty

Limits to challenge

Judicial review is not concerned with something was done correctly, it is concerned with whether something is done lawfully.

Procedural focus in Australia

Standing and remedies

- Who can commence judicial review
- Tension between remedies the courts can give and what the applicant wants

Scope of Judicial review

Differing jurisdiction of courts

Scope differs between ADJR, Judiciary Act, and inherent judicial review powers of courts

Jurisdiction differs depending on the source of power (statute v executive power)

Scope of reviewable decisions

Public powers exercised by non-executive

- I.e, AFCA

Non-justiciable decisions

Exam structure

1. Who will hear the challenge
 - a. A question of jurisdiction
2. Who can bring the challenge
 - a. Person must have standing and reasons for decision
3. How can decisions be challenged
 - a. Merits through merits review or grounds of judicial review
4. What remedies are available

- a. Merits review can substitute decisions unlike judicial review
5. Which form is best

Robo Debt timeline

The Robo Debt scheme was an unlawful method of automated debt assessment and recovery as part of the Centrelink payment compliance program.

470K wrongly issued debts were made.

May 2015

- DHS was funded to detect and investigate welfare fraud and non-compliance in the 2015 budget.

July 2016

- DHS launched OCI to raise and recover debts.
- It was an automated data-matching system that compared Centrelink records with averaged income data from the ATO.

December 2016

- Estimated 4 billion incorrectly paid to welfare recipients
- Media reported that the scheme is prone to errors

March-Sep 2017

- AAT decisions made on Robo Debt being unenforceable

April 2017

- Ombudsman said it lacked transparency and poor service delivery

June 2017

- A Senate committee releases reports stating that there are procedural fairness flaws to be addressed.

November 2019

- DHS discontinues using the averaged ATO income data to raise debts
- Federal Court raised that debt against Deanna Amato was unlawful

June 2021

- Federal Court judge issues 1.8 billion settlement for class action

May 2022

- A second senate inquiry raises accountability and justice by way of a Royal Commission
- Raised emotional and psychological harm

August 2022

- Albanese announces royal commission

October-Nov 2022

- Hearings start

Week 2

Jurisdiction

2.1 Common Law jurisdiction to conduct judicial review

2.4 Supreme Court of Victoria jurisdiction

The Common Law jurisdiction

- a. Established with the settlement of Victoria and its Constitution
- b. **Kirk** highlights that the supervisory role of the Supreme Courts exercised through the grant of prohibition, certiorari and mandamus are defining characteristics enforcing the limits on the exercise of State executive and judicial power by persons and bodies other than the Court

The AL Act

Enables statutory applications for judicial review to be made of the decisions of tribunals

- a. Introduces reforms:
 - i. A right to a statement of reasons (s8)
 - ii. Incorporation of those reasons in the record of a tribunal (s10)
 - iii. More liberal standing rules (s11)
 - iv. Displacement of privative clauses (s12)

Textbook

Constitutional foundations:

1. The entrenched minimum provision of judicial review of Cth decisions under s75(v)
2. The requirement that in each state there be a body fitting the description of the Supreme Court of a State under s73
 - a. Significant in the distinction between jurisdictional and non-jurisdictional error
3. The separation of powers established by ChIII
 - a. Twin pillars of judicial review of administrative action in Australia:
 - i. Courts exercising judicial review must not intrude into the merits of administrative or executive decision-making
 - ii. It is for the courts and not the executive to interpret and apply the law

Considerations:

1. Procedural fairness
2. Error of law
3. Unauthorised purpose
4. Relevant and irrelevant considerations
5. Unreasonableness
6. Inflexible application of policy

Statute

ADJR Act is an all-inclusive framework for judicial review to replace technical prerogative remedies with a simpler form of application

Common law concepts adopted per *Council of Civil Service Unions*:

1. Illegality