

(1) Merits Review

- **Introduction:** (A) could seek merits review (MR) of (DM's) decision to (approve/reject app for license – s12 OR suspend, revoke, vary license – s22, dangerous dog declaration – s25). (A) should seek MR prior to JR as, due to the doctrine of exhaustion, courts may be reluctant to issue remedy if (A) hasn't exhausted other options of appeal

INTERNAL MR

- **Introduction:** Under s31(1) of the DOA, a person affected by a decision made under s12 (decision on an application for a license) OR s22 (suspension, revocation or variation of licenses) may apply for an internal review of decision
- **Can seek:** Here, (A-licensee/org) is affected by (DM's) decision on (approve/reject app for license – s12 OR suspend, revoke, vary license – s22) – apply for internal MR under s31(1) DOA within 21 days of decision made. A senior officer of Commission not involved in original decision must review decision (not DM) (s31(2)). Once (A) received decision under internal MR but still unsatisfied w/decision, they can apply to ART provided reviewable decision falls within ART's jurisdiction (s11, s12(1)). Here, ART only has jurisdiction for s25 decisions- no external MR (s32(1))
- **Cannot seek:** HOWEVER →
 - **Not within sections:** Here, (A) is affected by (DM's) decision on (dangerous dog declaration – s25) – decision DOES NOT fall under the decisions allowed for internal MR (s12, s22 DOA)
 - **Affirmed decision:** Here, senior officer of the Commission (...) has ALREADY made a decision to AFFIRM (DM's) decision - (A) CANNOT bring an application for internal review BUT can bring external MR

EXTERNAL MR

- **Introduction:** (A) may instead seek review of (DM's) decision to (make dangerous dog declaration – s25) by the Administrative Review Tribunal (ART). MR by the ART is more beneficial for (A) as it is cheaper (s9 ART), has flexible procedures (ss49-55) & may entail substitution of a new decision (s105).
- **Jurisdiction:** The ART has no inherent jurisdiction, thus the power to hear matters must be afforded to them by statute (s11, s12(1)). Here, s32(1) of DOA accords ART the power to review decisions made under s25 (dangerous dog declaration), which arguably includes (DM's) decision for (A) so it is reviewable by ART (s12(1)). It is no hindrance to ART's jurisdiction that decision been attended by illegality (JR grounds contravened) (Brian Lawlor)
 - **Delegate:** s25 of DOA says (Commissioner may declare dog dang..) BUT HERE (delegate) made decision- no issue as s34AB AIA deem decision made by person upon whom power conferred on (Comm)- ART can review
- **Standing:** (A) MUST have standing to seek MR (Re Control, s17, s15 ART)
 - **Have standing (licensee):** Here, (A) is a licensee (holds dog owners license under s4 DOA) who seeks review of (DM's) decision (final & conclusive) to (declare dangerous dog) under s25. Thus under s32(1) they have standing to apply to ART for review & not limited by s32(2). The decision affects (A's) interests as (termination of dog owner's license issued w/respect to dog & surrender dog to Commission) under s26 DOA- making them more than mere member of public (s17(1) ART). As (A) likely have standing to seek JR under ADJR Act or CL-(A) also have standing to seek MR. If (A) denied standing- appeal as error of law (s173)
 - **No standing (private complainant/org):**
 - **Private complainant:** Here (A) is private complainant who seek review of (DM's) decision to (no dec dangerous dog) under s25. While s17 ART ordinarily allow any "person whose interests are affected" to apply for review (and A would argue it does as...), s32(2) removes this broad entitlement, limiting review to licensees (s32(1)). (A) has no standing
 - **Public organisation/body:** Here (A) is organisation who seeks review of (DM's) decision to (no dec o dangerous dog) under s25. An organisation prima facie would not have right to standing as their 'interests' not directly affected by decision (s17(1)) but s15 deems them affected if sufficient nexus b/w decision made & organisation's objects. While (A) argue decision of (not declare dangerous dog) relates to object of (...), giving rise to real & genuine connection- s32(2) DOA expressly overrides s17 (incl s15 via Note 2 & since it only expands s17), restricting standing to licensees (s32(1)). Thus (A) not have standing for external MR

- **Reasons:** (A) may request reasons from (DM) which must set out material facts, refer to evidence relied upon & explain reasoning within 28 days (**Part 10**). (A) can apply to ART for order compelling more adequate reasons from (DM) (**s265**) & (DM) must provide ART with this (**s23**). If ART makes own decision – written reasons to (A) (**s111**)
- **Principles & powers:** The ART will hear appeal de novo & is conferred all the powers afforded to (DM) under **s25** of **DOA (ss54-56, Re Greenham)**, striving to make ‘correct or preferable decision’ using material before them (**Drake No 1, Shi**). It will place itself in (DM’s) shoes & will be subject to same constraints (**Drake, Esber**).
 - **Changes circs/new evidence:** ART may have regard to new facts resulting from change of circumstances (**Shi**) OR new evidence than those made at first instance (**Re Greenham**) – specifically (**A’s dog is undergoing training OR new vet report**) & would find (**vet report was credible**) so (**A’s dog NOT dangerous**). This is beneficial for (A)
 - **Not current info:** (DM) relied on old info when made decision even tho access new – error of law (**Brain**)
 - **Gov policy:** ART is not bound to take into acc gov policy, but as (**there is policy of..which DM depended/ignored when making orig**), this is relevant factor for ART to consider. In doing so, ART must exercise independent judgment of policy to allow for greater consistency (**Drake No 2**), show logical process in applying the policy (**Drake 1**) & shouldn’t do so inflexibly (**Drake 2**). Here, (A) argues (DM) (**gave less/more weight to policy, policy unnecessary**) causing (...) – so ART using own judgement find (..)
 - **Nature and conduct of hearing:** (A) will be advised that (...)
 - **Evidence rules:** ART has **broad discretion over its precise procedures** (may be inquisitorial/adversarial) (**ss49**). ART is **NOT bound by rules of evidence (s52(1))** BUT despite flexibility- must still uphold procedural fairness and treat parties fairly (**Pochi, Hayes**)
 - **Burden of proof:** While (A) is not burdened by a formal evidentiary onus, the civil standard is likely to lead to a ‘correct and preferable decision’ being made (**McDonald**), so advised (A) holds onus (BoP) (**Epeabaka**)
 - **No seek info:** There is no duty on the ART to seek additional information or make inquiries, thus it is important (A) raises (**change in circumstances, new evidence**) of (...) with ART during application (**SZGUR**)
- **Remedy: Here...**
 - **Set & substitute decision:** It is highly likely ART find (**gov policy applied inflexibly, new evidence of training, not consider rel consid**) – so (DM) **NOT make ‘correct & preferable decision’ (Greenham, Shi)**. Thus, ART would set aside (DM’s) decision & substitute new decision of (...) (**s105(1)(c)(i)**). This gives final outcome for (A)
 - **Remit matter for reconsideration in accordance with directions:** ART remit for reconsideration (**s105(1)(c)(ii)**)
 - **Affirm the original decision-maker’s decision:** ART will affirm (DM’s) decision of (...) (**s105(1)(a)**)
 - **Vary the decision:** ART will vary (DM’s) decision of (...) (**s105(1)(a)**)
- **Appeal:** If ART’s decision were unfavourable, matter may be referred to Guidance & Appeals Panel (GAP) for second-tier MR if case raises administrative importance (**s110**). (A) may also appeal to Federal Court on **question of law (s172(1))** & Court may affirm, vary, set aside, or remit matter back to ART with directions (**s176**)

(2) ADJR Grounds of Review

- **Introduction:** (A) who is the (**licensee as per s4 of DOA/ org**) must make out at least one ground of review to seek JR of (DM’s) (**decision/conduct**) to (**revoke..**) (**s5/s6**). The grounds will be treated concurrently, with reference to ADJR Act, as it codified the CL with some exceptions.
***one issue → applicable grounds under that** *conduct (s 6) + decision (s 5) ***UNREASONABLENESS** = CATCH ALL
 - **Tips:** *DM is the Commissioner/delegate
 - **Precondition not met:** actions not permitted + procedural condition + no evidence + JF + unreasonable

<ul style="list-style-type: none"> ○ DM's satisfaction: subjective non-compliance + subjective JF + unreasonable + no evidence (s5(3)(a)) ○ Considerations: relevant consideration (express + implied) + irrelevant consideration + IPP ○ Time extension: actions not permitted + breach of procedural condition ○ DM gave reasons for why decision made: irrelevant consideration + actions not permitted – introduce new point + improper purpose + bias rule + <u>hearing rule (any reasons/allegations)</u> ○ DM's interest: bias rule + improper purpose + irrelevant consideration ○ TP's role: acting under dictation + bias rule ○ TP's submission: irrel consideration + improper purpose + hearing rule + unreasonable + dictation ○ New policy: actions not permitted + irrelevant consideration + inflexible application of policy + dictation ● Narrow UV (no power to do): actions not permitted, breach of procedural condition, improper delegation ● Broad UV (misuse power): relevant/ irrelevant consideration, improper purpose, no evidence, inflexible application of policy, dictation 	
Action not permitted (app reqs, new policy, extend time, new consideration) (s5(1)(d), s6(1)(d), CL) *narrow UV	Acting under dictation (TP's policy) (s5(1)(e), s5(2)(e), CL) *broad UV
Breach of essential procedural condition (written notice, time frame, process, applicant eligibility) (s5(1)(b), s6(1)(b), CL) *narrow UV	Inflexible application of policy (DM's own policy) (s5(1)(e), s5(2)(f), CL) *broad UV
Improper delegation (express delegation, busy so agent, report) (s5(1)(c), s6(1)(c), CL) *narrow UV	Hearing rule (TP allegations, adverse material, not respond, interview, reasons given) (s5(1)(a)/s6(1)(a), CL)
Relevant consideration (act says 'factors', express OR implied factors - report) (s5(1)(e), s5(2)(b)) *broad UV	Bias rule (TP, personal interest, prior experience/knowledge) (s5(1)(a)/s6(1)(a) CL)
Irrelevant consideration (new policy, submission, TP submissions) (s5(1)(e), s5(2)(a), CL) *broad UV *SEE IPP	No evidence (s5(1)(h)) - s5(3)(a) – lack of evidence to satisfy condition (obj) - s5(3)(b) – decision based on fact NOT EXIST
Improper purpose (personal benefit, TP benefit) (s5(1)(e), s5(2)(c), CL) *broad UV	Jurisdictional error (CL) (NO authority)
Unreasonableness (punish A for error, no justification, wrong interpretation, TP report) (s5(1)(e), s5(2)(g), CL)	No evidence (CL) (factual pre condition + no evidence)
	Jurisdictional fact (CL) (precondition unmet – obj/subj)

*s5(3)(1)(a) = fact exists + must be satisfied, s5(3)(1)(b) = fact DOES NOT exist

<p>Absence of power – narrow UV:</p> <ul style="list-style-type: none"> • Actions not permitted by statute (s 5(1)(d) + CL) • Disregard of express procedural requirements (s 5(1)(b) + CL) • Improper delegation: action by the wrong person or body (s 5(1)(c) + CL) <p>Abuse of Power – broad UV:</p> <ul style="list-style-type: none"> • Relevant and irrelevant considerations (s 5(2)(a) + s 5(2)(b) + CL) • Bad faith and improper purpose (s 5(2)(c) + CL) • Unreasonableness (s 5(2)(g) + CL) <p>Failure to exercise discretion – broad UV:</p> <ul style="list-style-type: none"> • Inflexible application of policy (s 5(2)(f) + CL) • Acting under dictation (s 5(2)(e) + CL) <p>Fact finding errors – broad UV:</p> <ul style="list-style-type: none"> • No evidence (s5(1)(h) + s5(3)(a) + s5(3)(b) + CL) • The jurisdictional fact concept (CL) <p>Procedural Fairness:</p> <ul style="list-style-type: none"> • Hearing Rule • Bias Rule
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(a) Actions not permitted

Introduction: (A) argue (DM) (extend statutory limit time, outdated app, created new policy, approve application relating to 3 vessels EVEN THO only 1 vessel, approve license for 5 yrs EVEN THOUGH only 4, new consideration) – thus (DM's) decision to (revoke license..) exceeded the scope of that which the DOA allows (s5(1)(d) / s6(1)(d)). An act must be within statutory provision that confers power to be valid (Entick, Foley, Shanahan) ***application reqs**

- **Identify conflicts:** Here (...) ***should do something but did something else**

- **Objective non-compliance (“must/within”)**: Here, (section X) of **DOA** mandates (DM) to (consider dog owners license applications which are not subject to disqualification order) **BUT** (DM) (failed to do this/ instead **made decision even though** disqualification order) - failed to meet this **mandatory** objectively ascertainable precondition. Thus is **NOT** authorised by enactment so (DM) has acted ultra vires (**Entick**) ***NEED CONDITIONS**
 - **New change**: Here, there was change of (renewals). Thus, (application for renewal must’ve been made 6 weeks before expiry of new license) – but (DM did not realise change) & instead (renewed within 4 weeks). So (renewed faulty license) which NOT empowered to do - objective non-compliance w/ **DOA**

s 11(2): Application for Dog Owners Licence: An application for a dog owner’s licence must: (a) be in the approved form; (b) include the prescribed fee; (c) identify the dog in respect of which the licence is to be issued; (d) include such information and documents as required by the regulations.

s 12(1): Decision on an Application for a Licence: (1) The Commissioner must decide an application for a dog owner’s licence by: (a) issuing an unconditional licence; (b) issuing a licence subject to conditions; (c) refusing to issue a licence.

s 13(1)(a)-(b): Eligibility for Dog owners Licence: To be eligible for dog owner’s licence, the applicant must: (a) be at least 18 years of age; (b) not be subject to a disqualification order under any State or Territory animal welfare legislation;

s 14: Timeframe for Decision of Application for Dog Owners Licence: The Commissioner must make a decision within 7 days of receiving a complete application.

s 15: Notice of Decision of Application of Licence: A decision made under section 12 must be advised to applicant in writing.

s 22(1): Suspension, revocation or variation of licences (1) Upon receipt of a compliant made under section 20, the Commissioner must review the licensee’s ongoing eligibility to hold a licence and must either: (a) affirm the licence; (b) revoke the licence; or (c) vary the conditions to which the licence is subject.

s 23: Timeframe for Decision of Suspension, Revocation or Variation of licences: The Commissioner must make a decision within 60 days of receiving a complaint.

s 24: Notice of Decision of Suspension, Revocation or Variation of licences: A decision made under section 22 must be in writing and served on both the licensee and the complainant.

s 27: Service of Dangerous Dog Declaration: A dangerous dog declaration must be served on the licensee of that dog within 24 hours of the declaration being made.

- **Subjective non-compliance (“satisfaction”)**: Here, (section X) of **DOA** requires (DM) **ONLY** (grant dog owner’s license IF **SATISFIED** A has capacity to control the dog **AND** adequate facilities for housing the dog). While this grants (DM) discretion, the language of ‘satisfaction’ is to be interpreted with reasonableness read into the provision (**Foley**). The matters listed in (subsection X - ‘have regard to’) can help determine what constitutes satisfaction. Thus, here (DM) (did not consider factors under section X, had no evidence, relied on TP’s assurance – non expert), so satisfaction is likely to be **unreasonable** & (DM) acted ultra vires (**Foley**)
 - **Argue**: (DM) argues existence of an opinion, not its correctness, satisfies this threshold (**Foley**) & so they (were satisfied that A....) which was their opinion even if wrong. **BUT** arguably unreasonable so fail

s 13(1)(c): Eligibility for Dog owners Licence: To be eligible for dog owner’s licence, the applicant must: (c) demonstrate, to the satisfaction of the Commissioner: (i) capacity to control the dog; and (ii) adequate facilities for housing the dog.

s 13(2): Factors for Eligibility for Dog Owners Licence: When assessing an applicant’s eligibility, the Commissioner must have regard to: (a) the applicant’s experience with dogs; (b) the applicant’s property and containment facilities; (c) any complaints or warnings previously issued; and (d) in the case of a prescribed breed, any special precautions or facilities that may be required to ensure community safety.

- **Regulations/subordinate regulation (regulation)**: Here, (section X) of **DOA** (empowers Commissioner to make regulations for...) **BUT** regulation created (**prohibits** activity Y/**confers new discretionary power** on (DM) not in **DOA**) – as regulation (not same characteristics) - regulation supplements rather than complements **DOA** & so goes beyond the power of scope of it, hence the decision is ultra vires (**Shanahan, Foley**). This is like **Shanahan** – s 43 allowed regs “necessary/expedient” for egg control. Reg 44 banned *all* eggs – **absolute prohibition**
 - **Argue**: (DM) argues (regulation) is still related to **DOA’s** subject matter of (regulating licensing & responsible ownership of dogs & for related purposes..) (**Shanahan**) & intention under **s3 (Hird)** so valid. Like **Foley**: by-law banning giving anything to passer-by was upheld as terms were read narrowly (‘passer-by’ = stranger, ‘giving-out’ = repetitive). **Paul**: reg banning all open fires upheld (3:2) as within purpose of preventing emissions, even though wording differed from enabling section & **Hird**: ASADA + AFL joint investigation upheld as legislation envisaged cooperation & consistent with text, context & purpose
- **Conclusion**: On balance, (DM) attempt to extend beyond scope of **DOA**- breach of this ground
 - (b) **Breach of essential procedural condition**
- **Introduction**: (A) argues (DM) failed to comply with (section X) of **DOA** as (not give correct notice, not follow **timeframe**, approve application not in approved form) – disregard of an essential procedural requirement “**in connection**” with making the decision (**s5(1)(b) / s6(1)(b))** ***procedure before AND AFTER decision**

s 11(2): Application for Dog Owners Licence: An application for a dog owner's licence **must**: (a) be in the **approved form**; (b) include the **prescribed fee**; (c) **identify the dog** in respect of which the licence is to be issued; (d) **include such information** and documents as required by the regulations.

s 14: Timeframe for Decision of Application of License: The Commissioner must **make a decision within 7 days** of receiving a complete application

s 15: Notice of Decision of Application of License: A decision made under section 12 **must be** advised to applicant in writing.

s 20: Public Complaint of Decision of Suspend/Revoke/Vary license: Complaint must be made **in writing**

s 23: Timeframe for Decision of Suspend/Revoke/Vary license: The Commissioner must make a decision within **60 days** of **receiving a complaint**.

s 24: Notice of Decision of Suspend/Revoke/Vary license: A decision made under section 22 must be in **writing** and **served on both the licensee and the complainant**.

s 27: Service of Dangerous Dog Declaration: A dangerous dog declaration **must be served** on the licensee of that dog **within 24 hours** of the declaration being made.

- **Is there a breach:** Not all breaches of procedure will render (**decision/conduct**) ultra-vires, so court must ascertain whether Parliament intended failure of compliance w/procedure would render decision invalid w/ reference to language of **DOA**, purpose of it, subject matter of provision & consequences of invalidity (**PBS**).
 - **Points to breach:** (A) argues (...)
 - **Mandatory lang:** (section X) uses mandatory lang of ('**must**') - suggests Parliament intended failure to adhere to condition would render decision as invalid. **BUT NOT solely determinative** of breach (**SZIZO,PBS**)
 - **Precise wording:** procedure has a 'rule-like' quality as it outlines (**type of service + time frame**) – points to essentiality (unlike vague reference in **PBS**- "ABA comply with Australia's international obligations")
 - **Meets purpose:** following procedural req of (**giving service of declaration**) will ensure (**dangerous dogs will be removed from comm**) so **meet s3 DOA's objects** of (**promote responsible dog ownership, ensure safety of public & animal welfare, establish transparent & fair licensing regime**)- transparency & clarification
 - **Written notice:** (**s15 – dog license app, s24 – suspend/revoke/vary**) requires decision (..) be communicated via writing – ensures transparency & clarification on why decision made so fair for (A). This aligns w/**DOA's** objects of establishing a transparent & fair licensing regime (**s3(c)**)- so individuals exercise rights as dog-owners in responsible manner, while ensuring protection of public safety (**s3(b)**)- more likely procedural condition. Like **SAAP** – although no consequences, applicant informed orally & not by written form- invalid
 - ✓ **Other provisions:** (ss 15, 24) of **DOA** for other decisions (...) **ALSO** require written notice – interpretation is consistent w/general aim of DOA to create transparent & fair licensing regime (**s3(c)**)
 - **Surrounding sections:** (section Y and Z) confer the power to (**give service of declaration**) – thus the context provides for mandatory construction - procedural requirement should be followed (**Redmore**)
 - **Important location in Act:** (section X) falls within (**Part 4**) – extremely important to **DOA** as a whole as (**link to licensing regime & aid objects**) (**Redmore**). Unlike **PBS** - international obligation provision at back of Act
 - **Pre-decision timing:** procedure **MUST** be considered **BEFORE** decision-likely essential procedural condition
 - **Minor consequences:** invalidating decision of (...) cause minimal disruption/ injustice to (A) & public as (...) – intend strict compliance. Like **SZIZO**-notice sent to wrong person, but applicants still attend- no injustice
 - **Points away from breach:** (DM) counterargues (...)
 - **Severe consequences:** invalidating decision of (**dangerous dog declaration...**) cause disruption to (A) & third parties – unlikely procedure strictly complied with. Like **SAAP**- failing to give written notice of adverse material during hearing led to any injustice & unlike **SZIZO** (notice sent to wrong person but still came)
 - **Relaxed location in Act:** procedure located in (**Part 4/back section**) – less significant part of **DOA** – points against essentiality. Like **PBS**- international obligation buried in s 160(d), not central to scheme
 - **Post-decision timing:** procedure **MUST** be considered **AFTER** decision-away essential procedural condition
- **Conclusion:** On balance, per **PBS** factors & **SAAP & SZIZO**, fail to follow procedure renders decision invalid – breach