

Grounds of Review

- 1) Misconceiving the Nature of Scope of the Power
- 2) Procedural Error
- 3) Fact Finding Errors
- 4) Improper Delegation
- 5) Procedural Fairness — Hearing Rule
- 6) Procedural Fairness — Rule Against Bias
- 7) Improper Purposes
- 8) Mandatory/Prohibited Considerations
- 9) Fettering Discretion and Policies
- 10) Unreasonableness

AD(JR)

Section 5 — Application for Review of Decisions

(1) An eligible person may apply to the Supreme Court for an order of review in relation to a decision to which this Act applies on 1 or more of the following grounds—

- (a) breach of the rules of natural justice happened in relation to the making of the decision;
- (b) procedures that were required by law to be observed in relation to the making of the decision were not observed;
- (c) person who purported to make the decision did not have jurisdiction to make the decision*;
- (d) decision was not authorised by the enactment under which it was purported to be made*;
- (e) making of the decision was an improper exercise of the power given by the enactment under which it was purported to be made;
- (f) decision involved an error of law, whether or not the error appears on the record of the decision;
- (g) decision was induced or affected by fraud;
- (h) no evidence or other material to justify the making of the decision;
- (i) decision was otherwise contrary to law*

Note: * = 'catch all' provisions, grounds not explicitly listed in AD(JR) Act

(2) The making of the decision was an improper exercise of the power conferred by the enactment in pursuance of which it was purported to be made — Includes:

- (a) taking an irrelevant consideration into account in the exercise of a power; and
- (b) failing to take a relevant consideration into account in the exercise of a power; and
- (c) an exercise of a power for a purpose other than a purpose for which the power is given; and
- (d) an exercise of a discretionary power in bad faith; and
- (e) an exercise of a personal discretionary power at the direction or behest of another person; and
- (f) an exercise of a discretionary power in accordance with a rule or policy without regard to the merits of the particular case; and
- (g) an exercise of a power that is so unreasonable that no reasonable person could have so exercised the power; and
- (h) an exercise of a power in such a way that the result of the exercise of the power is uncertain; and
- (i) any other exercise of a power in a way that constitutes abuse of the power

(3) The ground specified in paragraph (1)(h) shall not be taken to be made out unless—

- (a) the person who made the decision was required by law to reach that decision only if a particular matter was established, and there was no evidence or other material (including facts of which the person was entitled to take notice) from which the person could reasonably be satisfied that the matter was established; or
- (b) the person who made the decision based the decision on the existence of a particular fact, and that fact did not exist

Section 6 — Application for Review of Conduct Related to Making Decision

(1) If a person has engaged, is engaging, or proposes to engage, in conduct for the purpose of making a decision to which this Act applies, an eligible person may apply to the Supreme Court for an order of review in relation to the conduct on any 1 or more of the following grounds

- (a) that a breach of the rules of natural justice has happened, is happening, or is likely to happen, in relation to the conduct;

- (b) that procedures that are required by law to be observed in relation to the conduct have not been, are not being, or are likely not to be, observed;
- (c) that the person who has engaged, is engaging, or proposes to engage, in the conduct does not have jurisdiction to make the proposed decision
- (d) that the enactment under which the decision is proposed to be made does not authorise the making of the proposed decision
- (e) that the making of the proposed decision would be an improper exercise of the power given by the enactment under which the decision is proposed to be made
- (f) that an error of law—
 - (i) has been, is being, or is likely to be, committed in the course of the conduct in the making of the proposed decision; or
 - (ii) is likely to be committed in the making of the proposed decision
- (g) that fraud has taken place, is taking place, or is likely to take place, in the course of the conduct;
- (h) that there is no evidence or other material to justify the making of the proposed decision
- (i) that the making of the proposed decision would be otherwise contrary to law

(2) Reference in subsection (1)(e) to an improper exercise of a power includes a reference to—

- (a) taking an irrelevant consideration into account in the exercise of a power; and
- (b) failing to take a relevant consideration into account in the exercise of a power; and
- (c) an exercise of a power for a purpose other than a purpose for which the power is given; and
- (d) an exercise of a discretionary power in bad faith; and
- (e) an exercise of a personal discretionary power at the direction or behest of another person; and
- (f) an exercise of a discretionary power in accordance with a rule or policy without regard to the merits of the particular case; and
- (g) an exercise of a power that is so unreasonable that no reasonable person could have so exercised the power; and
- (h) an exercise of a power in such a way that the result of the exercise of the power is uncertain; and
- (i) any other exercise of a power in a way that is abuse of the power

(3) The ground mentioned in subsection (1) (h) is not taken to be made out unless—

- (a) the person who proposes to make the decision is required by law to reach that decision only if a particular matter is established, and there is no evidence or other material (including facts of which the person was entitled to take notice) from which the person can reasonably be satisfied that the matter is established; or
- (b) the person proposed to make the decision on the basis of the existence of a particular fact, and that fact does not exist

Misconceiving the Nature or Scope of Power

Ground arises when a decision-maker purports to make a decision that is of a **different kind than the decision they are given the power to make**

- *AD(JR) s 5(1)(d)* — Decision not authorised by the enactment
- *AD(JR) s 5(1)(f)* — Review for error of law
- If Common Law — Plead ground of error or misinterpretation in case law (*Hill Corporation, Norrie*)

TEST — Has the statute conferred a power, but the decision-maker has exercised a different power under that provision, because of an incorrect statutory interpretation?

- 1) What does the provision that the decision-maker acted upon say? (particular words)
- 2) How has the decision-maker interpreted that provision?
 - *Swan Hill Corporation v Bradbury* — A power to ‘regulate’ and ‘restrain’ the erection of buildings **did not give the DM power to prohibit the erection of buildings altogether**
 - *Haneef v Minister for Immigration and Citizenship* — ‘Association’ on true construction it referred **only to associations that were ‘such as to have some bearing upon the person’s character**, not association of any kind
- 3) Is that interpretation correct, taking into account the context/purpose of the act? (statutory interpretation)
 - In the context of character test, it should be read in a way as to have had a real bearing on character (*Haneef*)