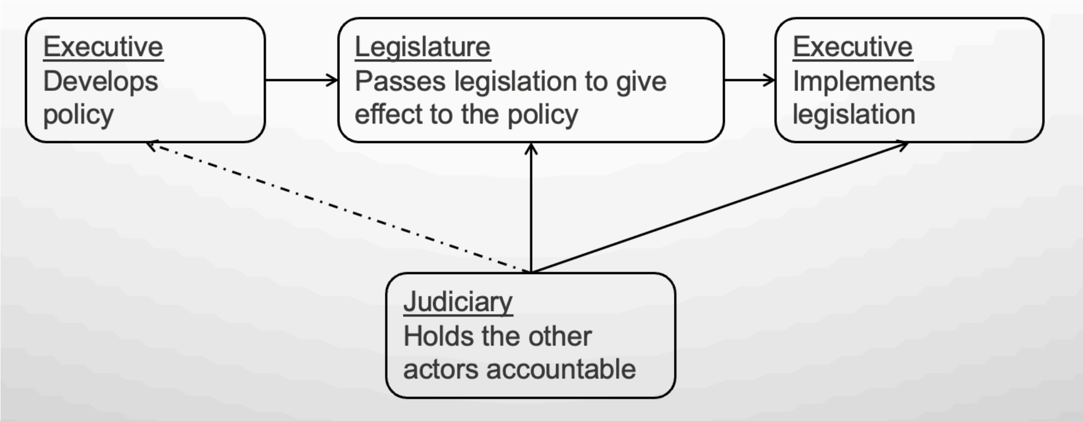
TOPIC 1 - INTRODUCTION, OVERVIEW AND THE ROLE OF STATUTORY INTERPRETATION

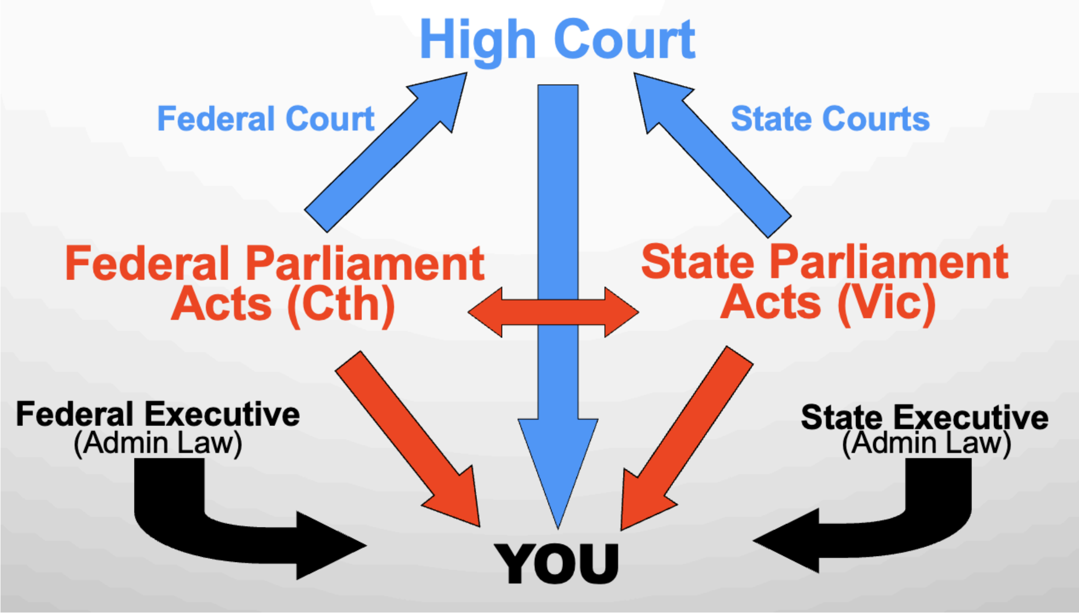
1.1 -WHAT IS ADMINISTRATIVE LAW

BRANCH OF PUBLIC LAW
- It controls and regulates the exercise of administrative power by the Executive arm of government. Ensures the Government is accountable for decisions it makes.
- provides the legal mechanisms which individuals can use:
  - to challenge such decisions or conduct; or
  - to hold the Executive to account for such decisions or conduct.
- Linked to constitutional law.

<u>EXECUTIVE ARM OF GOVERNMENT</u>



<u>ADMINISTRATIVE LAW IS ABOUT POWER</u>

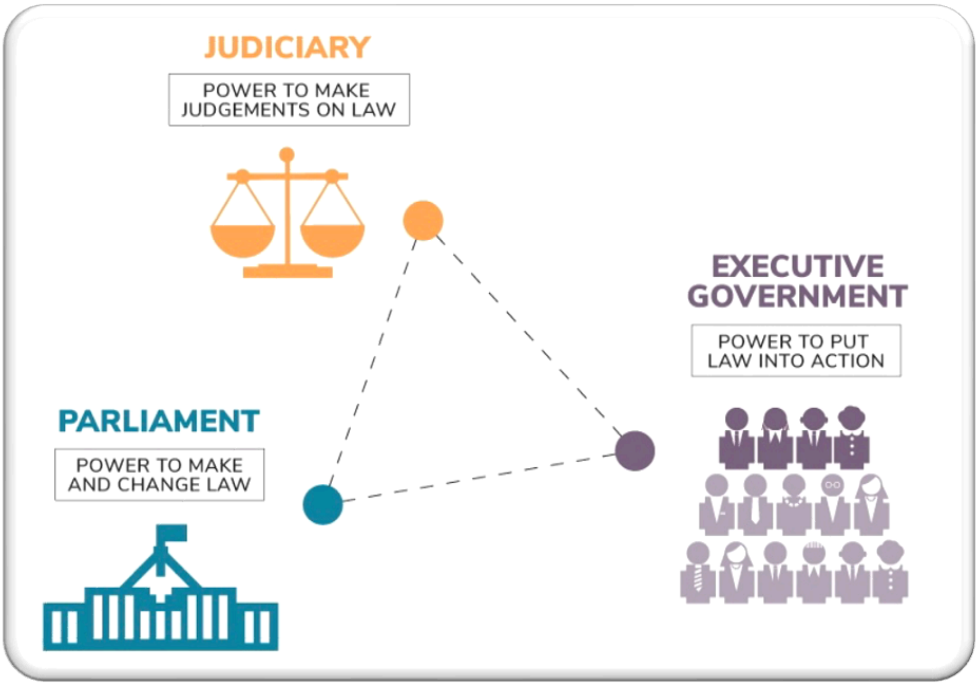


RESPONSIBLE GOVERNMENT AND MINISTERIAL RESPONSIBILITY

- Ministers are individually responsible for the activities of their department
- Public servants responsible to Minister
- Minister responsible to Parliament
- Accountability cycle. Is this adequate?

SEPARATION OF POWERS

- Parliament makes the law
- Executive applies the law
- Judiciary interprets the law
- Implied in the Constitution (Ch I, II, III)
- Crucial to the legality/ merits distinction



HOW DOES THE EXECUTIVE MAKE DECISIONS?

1. Decision trigger
2. Evidence gathering
3. Evidence collated
4. Options generated
5. Options assessed
6. Decision made

Administrative power is discretionary…

Dixon J in Swan Hill Corporation v Bradbury (1937) 56 CLR 746, 757

- *'In the course of the modern attempt by provisions of a legislative nature to reconcile . . . the enjoyment of . . . private rights with . . . the pursuit of the common good, it has often been thought necessary to arm some public authority with a discretionary power to allow or disallow the action of the individual, notwithstanding that it has been found impossible to lay down . . . any definite rule for the exercise of the discretion.'*
- *'The reason for leaving the ambit of the discretion undefined may be that legislative foresight cannot . . . formulate in advance standards that will prove apt and sufficient in all the infinite variety of facts which may present themselves. [Or] it may be because no general principles or policy for governing the particular matter it is desired to control are discoverable, or, if discovered, command general agreement.'*

(Broad Ultra Virres)	1. Relevant and irrelevant considerations 2. Improper purpose/bad faith 3. Unreasonableness/irrationality
(C) Fact finding errors (Broad Ultra Vires)	**(BROAD UV)** 4. No evidence
(D) Failure to exercise discretion (Broad Ultra Vires)	**(BROAD UV)** 5. Inflexible application of policy 6. Acting under dictation

TOPIC 6 - Procedural Fairness (Natural Justice)	
The duty to hear (the hearing rule)	The rule against bias (the bias rule)

TOPIC 5 - ACTING BEYOND POWER (ULTRA VIRES)

A – ABSENCE OF POWER/AUTHORITY TO MAKE DECISION

There are 3 ways in which a decision maker can act ultra vires in the absence of having any power:

1. Action not permitted by Statute
2. Disregard of procedural requirements
3. Improper delegation: action by wrong person or body

A/1 - ADMINISTRATIVE ACTION NOT PERMITTED BY STATUTE (ADMINISTRATIVE ACT BEYOND SCOPE OF THAT PERMITTED BY LEGISLATION)

- Section 5(1)(d) ADJR Act states that a person may seek judicial review of a decision on the ground "that the decision was not authorised by the enactment in pursuance of which it was purported to be made"
- Provisions in s 5 are replicated in s 6 (conduct cf. a decision)
- The basic principle is that governments and their officers cannot do anything that they are not authorised by law to do.
- An early example of this longstanding rule is Entick v Carrington (1765) 19 St Tr 1030. An administrative official cannot perform acts or make decisions that go beyond what is permitted by the statute that is the source of his or her power.
- Authority might be provided by the Constitution, a statute or the common law. Most administrative decisions are made under statutory power.
- If an official cannot act without statutory authority, it is always important to read the statute and consider 'what does this statute allow?'
- If a decision or action does not seem to be allowed by the statute, then it may be ultra vires. This is why statutory interpretation is vital to administrative law

Shanahan v Scott (1957) 96 CLR 245

Held:

- Yes (4:1), power to make regulations was limited by the purpose of legislation to control Victorian eggs with a view to marketing them; regulation making power could not go beyond this and regulate cold storage of eggs outside of the Board's control.

Hird v Chief Executive Officer of the Australian Sports Anti-Doping Authority [2015]

- This was an appeal from a judgment of a judge of the Federal Court, dismissing applications for judicial review by Mr James Hird, the Senior Coach of the Essendon Football Club in respect of a decision by the CEO of the Australian Sports Anti-Doping Authority (ASADA) to issue notices under cl 4.07A of the National Anti-Doping Scheme (NAD Scheme) to 34 current and former players for Essendon. Essendon did not appeal.

- The notices were issued by the CEO as part of an investigation by ASADA, in cooperation with AFL, into a supplements program employed by Essendon in 2011 and 2012. Under cl 4.07A, the notices were required to inform each of the 34 players of a 'possible non-presence anti-doping rule violation.' Mr Hird challenged the Federal Court's decision on a number of grounds.
- First, he contended that the 'joint' or cooperative investigation conducted by ASADA with the AFL was not authorised by the Australian Sports Anti-Doping Authority Act 2006 (Cth) (ASADA Act).
- Also contended, that the CEO acted unlawfully in:
    (1) disclosing certain personal (NAD Scheme personal information) to the AFL during the interviews of Essendon players and personnel, and
    (2) facilitating the abrogation of the interviewees' common law rights against self-incrimination and exposure to civil penalties.
- Mr Hird also argued that the notices issued to the 34 players were invalid as the evidence or information from the investigation on which the notices were based was unlawfully obtained.

Court dismissed Application for Judicial Review
- The Full Court rejected Mr Hird's contention that the primary judge's decision involved any element of mischaracterisation.
- It further rejected Mr Hird's challenge essentially because it held that the investigation conducted by ASADA, in cooperation with the AFL, was authorised by the ASADA Act, the Australian Sports Anti-Doping Authority Regulations 2006 (Cth) and the NAD Scheme.
- This legislative scheme envisaged that there would be close cooperation between ASADA and sporting administration bodies, like the AFL, in anti-doping investigations. The legislative scheme enabled ASADA to benefit lawfully from the AFL's use of its compulsory contractual powers, including by requiring Essendon players and personnel to attend interviews at which both AFL and ASADA representatives were present and to answer questions.
- The Full Court agreed with the primary judge, who found that, upon becoming a player or official, Mr Hird and the 34 Players voluntarily accepted the obligations under the AFL's Player Rules and Anti-Doping Code to attend interviews and answer questions fully and truthfully, or face possible sanction by the AFL.
- Mr Hird and the 34 Players were all legally represented at their interviews. They and their lawyers were on notice before and at the interviews that the AFL and ASADA proposed to conduct the interviews together and they could have been in no doubt about the purposes of the interviews.
- They also knew that the AFL was invoking the compulsory powers conferred by its Player Rules and its Anti-Doping Code when it required answers to the interview questions. The primary judge found, and Mr Hird did not dispute, that neither he nor any of the 34 Players objected to the presence of either the AFL or ASADA at their interviews. **Appeal dismissed.**

<u>POWER TO MAKE REGULATIONS/PROHIBIT</u>
- In some instances, legislation will confer power onto administrative officials to make regulations
- Because regulations are made in the exercise of a statutory power, those regulations must be made within the scope of that statutory power
- Persons aggrieved are able to challenge a regulation as well as decisions made under it
- A power to 'regulate' and a power to 'prohibit' each allow different things.
- The question is whether prohibition is, in some instances, consistent with a power to regulate, or whether it falls outside the scope of the power, and is therefore ultra vires.
- Issues can arise when a person is granted a power to regulate, but seeks to prohibit an activity
- Administrative officials often use such powers to make regulations, by-laws or other legislative instruments but such an instrument is not valid simply because an administrator thinks it is necessary or convenient.
- Their validity depends on whether the regulations/instrument are necessary and convenient in the sense expressed by the power.

The question is always whether the regulation or other instrument falls within the intended scope of the power created by Parliament.
You should never assume a regulation, by-law or other legislative instrument is valid. Instead, you should always ask ***'does the statute appear to provide authority for this particular regulation, by-law or instrument?'***

NARROW ULTRA VIRES

Three ways in which a decision-maker can act ultra vires in the narrow sense:

1. Administrative act beyond scope of what is permitted by legislation
2. Decision-maker does not comply with essential procedural condition
3. The power is exercised by someone other than the person upon whom it is conferred.

(NARROW UV)

1 – ADMINISTRATIVE ACT BEYOND SCOPE OF WHAT IS PERMITTED BY LEGISLATION

Foley v Padley

Facts:

- Section 11(1)(a) of the Rundle Street Mall Act 1975 conferred power onto the Adelaide City Council to make by-laws 'regulating or controlling or prohibiting any activity in the mall… that is, in the opinion of the council, likely to affect the use or enjoyment of the Mall'
- The Council created by-law no 8, which stated that 'no person shall give out or distribute anything in the mall.. To any bystander or passer-by without the permission of the council'
- Foley was a Hare Krishna, who would march through Rundle Mall, play drums and make noise while handing out flyers to passers-by. He did not have a permit to do so
- He was charged under by-law no 8

Issue: was the by-law ultra vires?

Held:

Gibbs CJ – response to argument 1

- The words "bystander or passer-by" indicate that to fall within the by-law the goods had to be given to a stranger.
- Therefore, the by-law would not prohibit someone giving something to someone she knew.
- The distribution of things to strangers could affect the use or enjoyment of the mall.

Gibbs CJ – response to argument 2

- a power to make a by-law to prohibit an activity will enable the making of a by-law to subject to activity to any condition.
- interpreted the power to make a by-law to prohibit an activity expansively. Such a power will enable the making of a by-law which will prohibit the activity either absolutely or subject to any condition
- Where power to prohibit based on opinion of council, this must be a reasonable opinion (to be implied by examining intention of by-law)
- Where language in by-law broad, examine the intention of the by-law to limit its scope

Paull v Munday

- Health Act 1935 (SA) s 94(1)(c)- the governor could make regulations 'for… regulating, controlling or prohibiting the emission of air impurities from… any air impurity source'
- Clean Air Regulations, reg 7 '[N]o person shall… light, maintain or permit to burn any open fire… without the written approval of the Local Board of Health.

The court held:

- The regulation was ultra vires
- Regulating, controlling or prohibiting the emission of air impurities was a different thing from prohibiting the source of those impurities
- It did not matter that the general purpose of s 94C was the same as the purpose of the regulations
- 'Where a statute allows certain means to be adopted [to achieve a particular end], it does not permit the adoption of different means which happen to lead to the same end…'

A/2 – DISREGARD OF PROCEDURAL REQUIREMENTS

- Section 5(1)(b) ADJR Act states that judicial review may be sought of a decision on the ground 'that procedures that were required by law to be observed in connection with the making of the decision were not observed'
  - Breach of essential procedural condition
- Note section 6(1)(b) for conduct cf. a decision

OLD APPROACH: MANDATORY AND DIRECTORY RULES

- **Mandatory rule:** a procedure in the legislation which is required to be followed prior to the making of a decision. A rule that must be followed.
- **Directory rule:** a procedure in the legislation which is not strictly necessary to follow.
- Distinction between mandatory and directory rule abolished by High Court in Project Blue Sky v Australian Broadcasting Authority. The High Court eventually held that this distinction was not an appropriate means of determining the effect of a failure to follow procedural requirements

Test: is the purpose of the legislation such that an act done in breach of the procedural requirement should be invalid?

(NARROW UV)

2 – DECISION-MAKER DOES NOT COMPLY WITH ESSENTIAL PROCEDURAL CONDITION

Breach of essential procedural condition

- Section 5(1)(b) ADJR Act states that judicial review may be sought of a decision on the ground 'that procedures that were required by law to be observed in connection with the making of the decision were not observed'

Project Blue Sky v Australian Broadcasting Authority

Facts:

- Decision to make an Australian Content Standard by the Australian Broadcasting Authority, under s 122(2)(b) of the Broadcasting Services Act 1992 (Cth)
- Cl 9 of Standard: Australian programs were required to comprise 55% of all broadcasts between 6am and midnight
- Section 160(d) of the Act imposed a requirement on the ABA to perform its functions in a manner consistent with Australia's international obligations
- Trade agreement between Australia and NZ, which stated that both countries would offer equal access and treatment to persons and services of the other country
- Project Blue Sky argued standard contrary to Australian obligations under trade agreement. As procedure in s 160 was not complied with, the standard was invalid

Breach of essential procedural condition

- **The court held**: Broadcasting Services Act s 122 - ABA required to determine standards to be observed by commercial television stations in relation to the Australian content of programs.
- s160(d) – ABA required to perform its functions in a manner consistent with Australia's international obligations.
- **Issue**: did the failure to comply with the procedure under s 160(d) render the standard invalid?
- 4:1 majority held that the standard was in breach of s 160(d) and that the minimum content requirements were in violation of the Act as they are inconsistent with the Agreement
- However, it did not follow that because there was a breach of the procedure under the Act, this invalidated the Standard.
- It was not a purpose of the Act that a breach of the international obligations requirement would invalidate the decision
- An act done in breach of a procedure regulating the exercise of statutory power is not necessarily invalid
- Is it a purpose of the legislation that an act done in breach of the procedure should be invalid?
- In order to ascertain whether the legislation has that purpose, the court must consider "the language of the relevant provision and the scope and object of the whole statute"
- Here it was not a purpose of the legislation that an activity done in breach of s 160(d) be invalid

Section 10 ADJR

(1) The rights conferred by sections 5, 6 and 7 on a person to make an application the Federal Court or the Federal Circuit and Family Court of Australia (Division 2) in respect of a decision, in respect of conduct engaged in for the purpose of making a decision or in respect of a failure to make a decision:
    (a) are in addition to, and not in derogation of, any other rights that the person has to seek a review, whether by the court, by another court, or by another tribunal, authority or person, of that decision, conduct or failure

TOPIC 10 - MERITS REVIEW AND TRIBUNALS

10.1 - MERITS REVIEW VS JUDICIAL REVIEW

- Judicial review is focused on the process which is adopted in making a decision and the legality of that decision
- Merits review is focused on the **merits of a particular decision**
- Merits review tribunals do not exercise judicial power, as they form part of the executive arm of government.
- Two forms of merits review tribunals:
    1. Internal merits review
    2. External merits review (ie. ART)

MERITS REVIEW

- Merits review is concerned with the review of the substantive results of a decision
- In merits review you can get a new decision
- Merits review is conducted by the executive, not the judiciary
- **Mains forms of merits review:**
    - Internal Merits Review
    - External Merits Review:
        - to a specialist tribunal
        - to a generalist tribunal

INTERNAL MERITS REVIEW

Work Health and Safety Act 2011 (Cth); Part 12 - Review of decisions

Section 224 → Application for internal review

(1) An eligible person in relation to a reviewable decision … may apply to the regulator for review (an internal review) of the decision within:
    (a) the prescribed time after the day on which the decision first came to the eligible person's notice; or such longer period as the regulator allows.

Section 225 → Internal reviewer

(1) The regulator may appoint a person or body to review decisions on applications under this Division.
(2) The person who made the decision cannot be an internal reviewer in relation to that decision.

EXTERNAL MERITS REVIEW → SPECIALIST TRIBUNAL

Work Health and Safety Act 2011 (Cth); Part 12 - Review of decisions

Section 229 → Application for external review

(1) An eligible person may apply to Fair Work Australia for review (an external review) of:
    (a) a reviewable decision made by the regulator; or
    (b) a decision made, or taken to have been made, on an internal review.

EXTERNAL MERITS REVIEW → GENERALIST TRIBUNAL

Safety, Rehabilitation and Compensation Act 1988 (Cth); Part VI – Reconsideration and Review of Determinations

Section 64 → Applications to the Administrative Review Tribunal

(1) Application to the Administrative Review Tribunal for review of a reviewable decision may be made by:
   (a) the claimant; or
   (b) if the decision affects the Commonwealth--the Commonwealth; or
   (c) if the decision affects a Commonwealth authority--the Commonwealth authority; or
   (d) if the decision affects a corporation that holds a licence under Part VIII--the licensed corporation.

COMMON FEATURES OF TRIBUNALS

- Legal and non-legal members (members with specialist, technical expertise)
- Independent and impartial
- Hearings in public
- Obligation to give reasons
- Less formal than a court

10.2 - LEGALITY AND MERITS DISTINCTION

- Tribunals often act and look very much like courts but, strictly speaking, they are quite different.
- In administrative law the main difference between courts and tribunals is the role that they perform. Courts can review only the legality or lawfulness of a decision, in applications for judicial review. Applications for judicial review involve a challenge to a decision under established grounds of judicial review (Topics 4-6).
- Tribunals normally review the merits of a decision. The defining feature of merits review is the power of the review body to substitute its own decision for that of the original decision-maker.
- This usually happens in the form of a de novo appeal, which is when the review body reconsiders the matter afresh, so all of the evidence (and any new evidence) is re-heard and a new decision is made

MERITS REVIEW ADVANTAGES

- Can challenge the substantive decision as opposed to challenging the decision indirectly by questioning the legal process
- Saves time and money
- Less formal than judicial review
- Increased opportunity for challenge (can subsequently seek judicial review of a decision)
- Doctrine of exhaustion may apply to attempting to seek judicial review at first instance

THE TRANSITION FROM THE AAT TO THE ART

- *Commonwealth Administrative Appeals Tribunal (AAT)* (created by the Administrative Appeals Tribunal Act 1975 (Cth))
- *Victorian Administrative Appeals Tribunal* (created by the Administrative Appeals Tribunal Act 1984 (Vic)), since replaced by the *Victorian Civil and Administrative Tribunal (VCAT)* (created by the Victorian Civil and Administrative Tribunal Act 1998 (Vic))
- December 2022 the Commonwealth government announced that it would abolish the AAT and replace it with a new Administrative Review Tribunal (ART).
- The principal Act, the Administrative Review Tribunal Act 2024 ('ART Act') has been passed by both houses of Parliament and received Royal Assent on 3 June 2024.
- The reforms to the Commonwealth administrative tribunal system are primarily concerned with:
  - the process of appointing members, the consistency and streamlining application and review; and
  - providing for greater supports for applicants (litigation supporters and interpreters).
- The basic mechanics of administrative review remain unchanged; however, the design and structure of the Act are much clearer and easy to understand.
- The ART commenced on 14 October 2024. Prior to that date and overlapping it (in relation to active and pending matters currently before the AAT), the AAT will continue to hear and consider applications for review of decisions under its original legislation.

DIFFERENCES BETWEEN AAT AND ART

Remaining the same	**Different**
Providing an independent mechanism of merits review that: • is fair and just; • ensures applications are resolved quickly, and with as little formality and expense, as a proper consideration of the matters permits; • is accessible and responsive; • improves the transparency and quality of government decision-making; and • promotes public trust and confidence in the Tribunal. Administrative Review Tribunal Act, s 9	• A streamlined structure with jurisdictional areas instead of rigid divisions • A transparent, merit-based appointments process for members • A dedicated Guidance and Appeals Panel (GAP) for issues of significance • Enhanced powers for the President to manage members • Process and procedural and process improvements to reduce delays • Increased and sustainable funding arrangements

WHAT THE AAT DOES
It hears a range of applications, for example
- Freedom of information
- Migration and refugee (most common)
- National Disability Insurance Scheme
- Security
- Small Business Transaction
- Social Services and Child Support
- Taxation and Commerical
- Veteran's Appeals

MEETING DEMAND REQUIRES REFORM
Administrative Review Tribunal and Other Legislation Amendment Bill 2025
- **Goal**: Strengthen the Tribunal's powers and procedures to help it meet its objective of resolving cases "as quickly, and with as little expense" as possible.
- Balancing ensuring applicants have a "meaningful opportunity to present their case" with managing the Tribunal's "increasing and evolving caseload" requires a more proportionate review system
- What does a more proportionate merits review system look like?
- Giving the Tribunal greater flexibility to decide cases "on the papers" – i.e., without the need for an oral hearing

JURISDICTION TO CONDUCT MERITS REVIEW
- Tribunals are creatures of statute
- do not possess any inherent jurisdiction.
- Any powers or jurisdiction possessed by a tribunal must be conferred by statute.
- In the absence of such a provision, a tribunal has no jurisdiction to review decisions.
- At the federal level, the Administrative Review Council ('ARC') advises the Attorney- General whether decisions to be made under the Bill should be subject to merits review.
- The ARC has published those guidelines, to explain how such decisions are made

10.3 - ADMINISTRATIVE REVIEW TRIBUNAL (ART)

Section 2A Administrative Appeals Tribunal Act
"in carrying out its functions, the Tribunal must pursue the objective of providing a mechanism of review that
(a) Is accessible;
(b) Is fair, just, economical, informal and quick…

ADMIN LAW POLICY QUESTION DRAFTING
SUMMARY TABLE
FOUNDATIONS OF ADMINISTRATIVE LAW
How does administrative law reconcile the need for effective executive action with the rule of law's requirement of accountability?
To what extent does the principle of separation of powers constrain judicial review of administrative action in Australia?
Critically assess the significance of the 'principle of legality' in Australian administrative law. Does it adequately protect individual rights against executive power?
JURISDICTION AND JUSTICABILITY
How does s 75(v) of the Constitution safeguard judicial review, and how has the High Court interpreted its relationship with statutory review under the ADJR Act?
Critically assess the doctrine of justiciability. Should Australian courts ever decline to review administrative decisions on political or policy grounds?
Does the ADJR Act's codification of review grounds make common law judicial review redundant?
To what extent has the High Court's jurisprudence on jurisdictional error blurred the distinction between errors of law and errors of fact?
STANDING AND ACCESS TO REVIEW
Trace the evolution of standing in Australian administrative law. Has the test become more unified or more uncertain over time?
Should Australia adopt broader public interest standing to enhance governmental accountability?
Compare the 'special interest' test at common law with the 'person aggrieved' test under the ADJR Act. Are they functionally equivalent?
REASONS FOR DECISION AND ACCOUNTABILITY
Should there be a general common law duty to provide reasons for administrative decisions in Australia?
Compare the treatment of reasons for decision in Osmond, Wingfoot, and Wu Shan Liang. How do these cases illustrate the balance between transparency and administrative efficiency?
How does the statutory duty to provide reasons under s 13 of the ADJR Act enhance administrative accountability, and what are its limitations?
GROUNDS FOR JUDICIAL REVIEW
How has the doctrine of ultra vires evolved from a narrow to a broad conception of administrative illegality?
Critically evaluate the modern approach to unreasonableness as a ground of judicial review. How did Minister for Immigration v Li change the law?

Explain the significance of procedural fairness as a ground of review and its relationship to jurisdictional error.
Critically assess whether the ADJR Act's 'decision made under an enactment' requirement continues to serve a useful purpose.
Discuss whether procedural fairness should apply to purely policy-based administrative decisions.
PRIVATIVE CLAUSES, REMEDIES AND MERITS REVIEW
How do privative clauses attempt to limit judicial review, and what constitutional limits constrain their effectiveness?
Evaluate the effectiveness of prerogative writs and statutory remedies in enforcing administrative accountability.
Compare judicial review and merits review. How does Australia's system of tribunals complement the courts' supervisory role?
THEMES OF CHANGE AND REFORM
How has the concept of standing evolved to reflect modern public interest litigation?
Has the expansion of statutory review mechanisms (ADJR Act, FOI, Ombudsman, ART) reduced the need for common law judicial review?
What does the replacement of the AAT with the Administrative Review Tribunal (ART) reveal about the trajectory of administrative accountability in Australia?
Should the grounds of judicial review under the ADJR Act be reformed to include proportionality?
How effectively does administrative law ensure executive accountability in an era of privatisation and contracting out of public functions?
Critically analyse whether Australia should adopt a codified statement of administrative law principles.

ADMIN LAW POLICY QUESTION DRAFTING	
QUESTION	**RESPONSE**
FOUNDATIONS OF ADMINISTRATIVE LAW	
How does administrative law reconcile the need for effective executive action with the rule of law's requirement of accountability?	Administrative law mediates the tension between efficient governance and legality. It ensures that public power—though broad and discretionary—is exercised within lawful limits consistent with the rule of law. As Dicey articulated, no person or body is above the law, and the same legal standards bind the Executive. Yet modern governance demands flexibility, necessitating mechanisms that control but do not paralyse administrative discretion. The rule of law underpins all administrative review. It ensures that executive decisions are made according to law, not arbitrary will. This idea is entrenched constitutionally through Chapter III of the Australian Constitution and s 75(v), which grants the High Court original jurisdiction to issue mandamus, prohibition, and injunction against Commonwealth officers. As affirmed in Plaintiff S157/2002 v Commonwealth (2003), this section entrenches judicial review as a constitutional safeguard—ensuring legality even where Parliament attempts to oust review through privative clauses.

	At the same time, Parliamentary sovereignty empowers legislatures to delegate decision-making authority to the Executive. Modern administration relies on discretionary powers, as noted by Dixon J in Swan Hill Corporation v Bradbury (1937)—legislative foresight cannot anticipate every factual variation, necessitating administrative discretion. The courts have thus recognised that discretion involves an “active intellectual process,” requiring genuine consideration of relevant factors (Carrascalao v Minister for Immigration). The merits–legality distinction further exemplifies this reconciliation. Judicial review focuses on legality—ensuring decisions comply with statutory limits—while tribunals (like the AAT, soon replaced by the Administrative Review Tribunal 2024) handle merits review. This structural separation respects the separation of powers, maintaining judicial independence while enabling efficient administration. Statutory interpretation plays a key mediating role. Through the principle of legality, courts presume that Parliament does not intend to abrogate fundamental rights without clear language (Coco v The Queen). The High Court’s approach in Project Blue Sky Inc v Australian Broadcasting Authority (1998)—“text, context, and purpose”—demonstrates how interpretation safeguards legislative intent while ensuring administrative legality. Ultimately, administrative law’s design achieves equilibrium. It grants officials the capacity to act effectively but subjects them to legal principles ensuring fairness, reasonableness, and transparency. Mechanisms like the ADJR Act 1977 (Cth), FOI Act 1982, and Ombudsman system institutionalise this accountability without impeding decisiveness. As Chief Justice Mason observed, “the courts are not concerned with the merits of decisions but with whether power has been exercised according to law.” Thus, administrative law reconciles competing imperatives by embedding accountability within flexibility. Through doctrines of ultra vires, procedural fairness, and statutory interpretation, it transforms the rule of law from a theoretical ideal into a practical framework for responsible governance.
To what extent does the principle of separation of powers constrain judicial review of administrative action in Australia?	The separation of powers serves as a cornerstone of Australia’s constitutional framework, delineating the legislative, executive, and judicial functions. In the administrative law context, it both enables and constrains judicial review. Courts must ensure that the Executive acts within legal bounds, yet they cannot themselves intrude into the realm of merits-based decision-making—a distinction central to the rule of law and institutional integrity. Under the Constitution, judicial power resides exclusively in Chapter III courts. Administrative bodies such as the AAT perform functions characteristic of the Executive, even though they adopt quasi-judicial procedures. The High Court in Brandy v Human Rights and Equal Opportunity Commission (1995) confirmed that only Chapter III courts can issue binding and enforceable determinations of rights and liabilities. This reflects the structural boundary that preserves the judiciary’s independence and prevents administrative bodies from exercising judicial power. Judicial review, grounded in s 75(v) of the Constitution and s 39B of the Judiciary Act 1903 (Cth), enforces legality, not correctness. In Attorney-General (NSW) v Quin (1990), Brennan J warned that judicial intervention must not “usurp the functions of the Executive” or transform legality review into a reconsideration of merits. Courts assess how a decision was made—procedural fairness, relevant considerations, jurisdictional limits—rather than whether it was a good decision. This approach respects the Executive’s policy discretion while ensuring legality.

	The separation of powers also informs the merits–legality dichotomy that defines Australia's system of administrative accountability. Merits review (by tribunals like the AAT) allows reconsideration on factual and policy grounds, while judicial review ensures decisions comply with law. This dichotomy ensures that courts remain within their constitutional remit. However, the boundary has occasionally blurred. In Minister for Immigration v Li (2013), the High Court recognised that unreasonableness may arise from a lack of "intelligible justification," hinting at a more substantive standard that verges on merits. Yet, the Court carefully framed its reasoning within legality—confirming that such intervention is justified only when a decision exceeds statutory authority. Ultimately, the separation of powers constrains judicial review by requiring judicial restraint: courts enforce the law, but they do not govern. The integrity of the administrative state depends on this balance—robust legality control without executive paralysis. Through doctrines like ultra vires, procedural fairness, and jurisdictional error, the courts preserve legality within constitutional limits, reaffirming the separation of powers as both a shield for judicial independence and a framework for accountable governance.
Critically assess the significance of the 'principle of legality' in Australian administrative law. Does it adequately protect individual rights against executive power?	The principle of legality is a vital interpretive presumption that Parliament does not intend to abrogate or curtail fundamental rights and freedoms without clear and unambiguous language. In administrative law, it serves as an interpretive safeguard against executive overreach, ensuring that the exercise of discretionary power respects individual rights and the rule of law. The principle's modern expression derives from Coco v The Queen (1994), where the High Court held that "clear words" are required before statutes will be construed as authorising the infringement of fundamental rights. It functions as a common law bill of rights, especially given Australia's lack of a comprehensive statutory or constitutional rights charter at the federal level. Courts use it to interpret administrative statutes narrowly where broad powers would otherwise permit interference with personal liberty, property, or procedural fairness. The principle of legality influences how discretionary powers are interpreted and applied by administrative decision-makers. It requires that executive action be grounded in statutory purpose, and that decision-makers avoid interpretations that unnecessarily infringe individual rights. In Plaintiff S157/2002 v Commonwealth (2003), the High Court reaffirmed the principle's constitutional dimension—holding that even privative clauses cannot oust judicial review for jurisdictional error, since this would undermine the rule of law itself. Yet, critics argue the principle's protection is formalistic and limited by parliamentary sovereignty. Parliament can still override the presumption through express words, as in the Migration Act 1958 (Cth), where successive amendments have curtailed rights of appeal, procedural fairness, and access to judicial review. The courts' interpretive restraint reflects their constitutional role: they interpret law but cannot rewrite it. Comparatively, jurisdictions like the UK have supplemented the principle with statutory human rights protections under the Human Rights Act 1998 (UK). Australia's reliance on the principle of legality thus leaves rights protection largely dependent on judicial interpretation rather than enforceable entitlements. Nonetheless, its flexibility allows adaptation to new contexts—privacy, procedural fairness, and freedom of expression among them. In sum, while the principle of legality cannot guarantee substantive rights protection, it performs a crucial constitutional and interpretive function: preserving parliamentary intent while maintaining fidelity to the rule of law. It stands as a doctrinal compromise between legislative supremacy and individual protection, operating as a subtle but powerful constraint on executive discretion in Australia's administrative state.

JURISDICTION AND JUSTICABILITY	
How does s 75(v) of the Constitution safeguard judicial review, and how has the High Court interpreted its relationship with statutory review under the ADJR Act?	Section 75(v) of the Australian Constitution guarantees the High Court's original jurisdiction in all matters "in which a writ of mandamus or prohibition or an injunction is sought against an officer of the Commonwealth." It functions as a constitutional safeguard of judicial review, ensuring that courts can always supervise executive legality. In Plaintiff S157/2002 v Commonwealth (2003), the High Court held that s 75(v) "secures a basic element of the rule of law" by entrenching judicial review for jurisdictional error. Any legislative attempt to exclude that supervision—such as through privative clauses—is constitutionally invalid. This principle was reaffirmed in Kirk v Industrial Court of NSW (2010), where the Court extended similar protection to state courts exercising supervisory jurisdiction. The ADJR Act 1977 (Cth), by contrast, provides a statutory framework for judicial review. It codifies grounds of review, simplifies standing ("person aggrieved," s 3(4)), and requires reasons (s 13). However, it does not displace the Constitution's guarantee. Section 10(2)(b) of the ADJR Act expressly preserves other avenues of review, including s 75(v) and s 39B of the Judiciary Act 1903 (Cth). The High Court has confirmed the complementary nature of these regimes. In Plaintiff M61/2010E v Commonwealth and Graham v Minister for Immigration (2017), s 75(v) provided a constitutional backstop when the ADJR Act was unavailable (e.g., in "non-statutory" or excluded migration decisions). Thus, while the ADJR Act offers procedural efficiency, s 75(v) ensures irreducible minimum legality. Together, they form a two-tiered system: statutory review for accessibility and uniformity, constitutional review for entrenchment and finality. The coexistence of both reflects Australia's commitment to legality as a constitutional imperative—beyond legislative whim or administrative convenience.
Critically assess the doctrine of justiciability. Should Australian courts ever decline to review administrative decisions on political or policy grounds?	The doctrine of justiciability limits judicial review to matters appropriate for judicial determination. It recognises that some questions—especially those involving high policy, foreign affairs, or national security—are not amenable to judicial standards. However, the line between political and legal issues is blurred. In FAI Insurances Ltd v Winneke (1982), the High Court confirmed that even ministerial discretion may attract procedural fairness. Conversely, in Minister for Arts, Heritage and Environment v Peko-Wallsend Ltd (1987), Mason J recognised that decisions involving policy balancing may limit the scope of review to questions of legality, not correctness. The courts have occasionally refused review on political questions. In Council of Civil Service Unions v Minister for the Civil Service (the GCHQ case, UK), the House of Lords found that national security considerations rendered a decision non-justiciable, even though it was otherwise reviewable in principle. Australian courts adopt similar caution, as seen in Hicks v Ruddock (2007), where executive decisions concerning foreign affairs were deemed unsuitable for judicial assessment of "reasonableness." Yet the High Court has resisted broad non-justiciability doctrines. In Plaintiff M68/2015 v Minister for Immigration, the Court reviewed Australia's offshore detention arrangements despite their political context. Similarly, in Banerji v Commonwealth (2019), constitutional principles outweighed deference to executive discretion. Thus, justiciability does not bar review merely because a decision is politically charged. Courts