

Checklist

Step 1 – Bringing a claim

What is the source of the decision? i.e. is it made by the Commonwealth (i.e. Federal) or the State?

State decision

Common law based JR, supplemented by provisions in the **Supreme Court Act 1970** and the **UCPR**.

NCAT

NSW Civil and Administrative Tribunal (NCAT) for merits review.

NSW Supreme Court

Supreme Court's inherent supervisory jurisdiction for judicial review under **s.69, 69A, 69B, 71 Supreme Court Act 1970**. These provisions replace the old prerogative writ provisions and gives power of Supreme Court to grant any judgment or order as relief. Must establish jurisdictional error.

UCPR r.59 provides procedural framework for JR. Key points to know: must commence proceedings by way of summons.

Supreme Court's power are entrenched by **s.73 Constitution**. **Kirk v Industrial Relations Commission of NSW (2010)** - Supreme Court held state parliaments could not restrict court's advisory relief for jurisdictional error as the Supreme Court's supervisory jurisdiction is entrenched.

Commonwealth (i.e. federal) decision

The High Court has original jurisdiction in all matters (confirmed in **s.30 Judiciary Act 1903 (Cth)**): in which the Commonwealth is a party (**s.75(iii)**); between states, or between residents or different states (**s.75(iv)**); in which a writ of mandamus or prohibition or an injunction is sought against an officer of the Commonwealth (**s.75(v)**). (**Plaintiff S157/2002**).

s.39B Judiciary Act 1903 (Cth) - expands the jurisdiction of the Federal Court to match the High Court's original jurisdiction under **s.75(v) Constitution**. Although, the jurisdiction here is not as extensive as the High Court under **s.75(iii)**. Use this route for constitutional writs.

s.39B(1A) expands the jurisdiction to include all constitutional issues arising under Commonwealth legislation and also for non-public law purposes of conferring jurisdiction on the Federal Court in civil matters concurrent to that exercised by state and territory courts.

- E.g. **s.39B(1A)(c)** enables the court to review the validity of subordinate legislation which isn't permitted under the ADJR as it is not of 'administrative character'.

The **ADJR Act** is the principal template for federal judicial review and most actions (other than immigration litigation) are commenced under that Act.

Administrative Review Tribunal (ART)

- For merits review.

Federal Court of Australia:

	- Primarily deals with cases arising under federal legislation, including administrative law matters involving JR under ADJR Act. - It has original jurisdiction to review decisions made by federal bodies and tribunals and is the main avenue for JR against decisions made by federal government. - The Federal Court was given a comparable and concurrent jurisdiction with the High Court in most matters arising under s.75(v) of the Constitution by way of s.39B of the Judiciary Act 1903. - Associated jurisdiction (s.32 Federal Court of Australia Act 1976) provides that jurisdiction is conferred on the Court in respect of matters not otherwise within its jurisdiction that are associated with matters that are in their jurisdiction. This is underpinned by s.77(i) of the Constitution. [This provision is less important since introduction of s.39B(1A)(c) Judiciary Act that confers parallel power.] In practice, most applications for JR commenced in the High Court are remitted to the Federal Court for efficiency - s.44 (2A) Judiciary Act. <u>High Court of Australia:</u> - High Court has original jurisdiction in constitutional matters and cases involving disputes between states or between a state and the commonwealth – s.75(v) of the Constitution. - The highest court in Australia and has both original and appellate jurisdiction. - It is the final court of appeal i.e. can review decisions from lower courts including from the Federal Court and state Supreme Courts. - The High Court has power to remit such matters commenced in its original jurisdiction to the Federal Court. <table border="0"> <tr> <td style="text-align: center;"> Commonwealth/Federal Decision ↓ Merits Review = ART ↓ JR = High Court or Federal Court of Australia </td> <td style="text-align: center;"> State Decision ↓ Merits Review = NSW NCAT ↓ JR = NSW Supreme Court </td> </tr> </table>	Commonwealth/Federal Decision ↓ Merits Review = ART ↓ JR = High Court or Federal Court of Australia	State Decision ↓ Merits Review = NSW NCAT ↓ JR = NSW Supreme Court
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Have you been given reasons for decision?	The reasons should explain how and why a decision was reached and can have the indirect effect of leading agencies to identify relevant principles and create standards to guide future decision-making. <i>Re Minister for Immigration and Multicultural and Indigenous Affairs; Ex parte Palme</i> (2003) 216 CLR 212. Statutory basis for reasons: ART Act s.23: “Within 28 days after the Tribunal notifies the decision-maker... the decision-maker must give the Tribunal: (a) a statement of reasons for the decision;		