

Administrative Law Study and Exam Notes

LAW5014 Principles of Administrative Law

Contents

[1 Introduction and overview](#)

[2 Jurisdiction to conduct judicial review](#)

[3 Standing](#)

[4 Reasons for decisions](#)

[5 Grounds of review acting beyond power](#)

[6 Grounds of review procedural fairness](#)

[7 Jurisdictional error](#)

[8 Remedies](#)

[9 Restrictions on judicial review privative clauses](#)

[10 Tribunals and merits review](#)

[11 Revision and exam method](#)

[Appendix A ADJR grounds and issue triggers](#)

[Appendix B Rapid test locator](#)

[Appendix C Legislation map and glossary](#)

[Appendix D Case locator](#)

[Sources and authority links](#)

Use the Navigation Pane for detailed subtopics. The Rapid Test Locator is in Appendix B.

1 Introduction and overview

1.1 Administrative law and its purpose

STATE: Administrative law regulates the exercise of public power and provides mechanisms for challenging administrative decisions that affect individuals' rights or interests. Judicial review asks whether the decision-maker acted within legal authority. Merits review, where legislation permits it, reconsiders the decision and seeks the correct or preferable outcome (*Attorney-General (NSW) v Quin*; *Drake v Minister for Immigration and Ethnic Affairs*).

Administrative law is a branch of public law. It concerns the relationship between the state and the people subject to its power. Constitutional law determines the structure and limits of government power. Administrative law commonly addresses how an executive official uses a particular power. Contract and tort law can also regulate government conduct, but they do not replace public law analysis.

The executive includes Ministers, departments, statutory agencies and administrative tribunals. At Commonwealth level, distinguish the Federal Executive Council, which performs formal constitutional functions, from Cabinet, which develops and coordinates government policy. Cabinet membership does not itself supply statutory authority to make a particular administrative decision.

The **repository of power** is the person or body to whom the law assigns the power. Identify that repository before asking whether a staff member, delegate, superior or committee could lawfully make the decision. A job title or senior position alone does not confer every power within a department.

1.2 Sources and limits of administrative power

STATE: The existence and scope of a statutory administrative power depend on the statute construed in its text, context and purpose. An official must identify lawful authority for coercive interference with a person's rights or property (*Entick v Carrington*). A broad discretion remains subject to the statute and applicable common law constraints.

Sources include Acts, delegated legislation such as regulations, statutory directions and other instruments, and applicable executive or common law powers. A policy or guideline is usually an aid to discretion. It is legally binding only if legislation gives it that force. Do not treat all documents called a direction, determination or policy as having the same legal status.

Power analysis checklist:

- Identify the precise decision, conduct or failure and the affected person.
- Locate the provision conferring the power and identify its repository.
- Check preconditions, subject matter, territorial limits, time limits and available outcomes.
- Identify procedures, required considerations, authorised purposes and any binding direction.
- Check delegation, review rights, reasons duties and restrictions on review.
- Read definitions and related provisions before deciding what the power permits.

Case summary: *Entick v Carrington* (1765) 19 State Tr 1029. Government messengers entered Entick's property and seized papers under a Secretary of State's warrant. The officials could not justify that intrusion by lawful authority. **Impact:** executive status does not give a general licence to interfere with property. Use it to introduce the need to find the source of power, rather than to assert that every routine government act needs express statutory authorisation.

1.3 Legality and merits

STATE: Judicial review enforces the legal limits of administrative power. It does not authorise a court to substitute the outcome it considers fairer or better merely because it disagrees with the administrator (Quin). The court may nevertheless scrutinise facts and reasoning where the statute makes them conditions of lawful authority, or where a recognised ground such as legal unreasonableness arises.

The **merits** include the preferable factual assessment, policy choice and exercise of discretion within lawful boundaries. **Legality** includes the correct legal meaning of the statute, compliance with limits and procedures, procedural fairness, and the legal standards governing discretion.

The distinction is not a rule that courts must ignore all facts. A court may determine an objective jurisdictional fact, consider whether there was any evidentiary foundation for a necessary conclusion, or evaluate whether reasoning crossed the threshold of irrationality. It must identify the legal standard that makes that scrutiny permissible.

Case summary: *Attorney-General (NSW) v Quin (1990) 170 CLR 1*. A former magistrate challenged an appointment policy that required him to compete for reappointment. **Impact:** judicial review protects legality, not substantive expectations of a favourable appointment or the court's view of administrative fairness. The law did not require the government to retain its previous policy.

Case summary: *Drake v Minister for Immigration and Ethnic Affairs (1979) 2 ALD 60*. A deportation decision reached the AAT under a statutory merits review jurisdiction. **Impact:** the tribunal must independently determine the correct or preferable decision on the material before it. It cannot simply ask whether the original decision was defensible.

1.4 Constitutional and accountability principles

The **rule of law** requires officials to exercise power within legal limits. **Separation of powers** explains why a court controls legality while the executive ordinarily chooses among lawful administrative outcomes. Commonwealth judicial power belongs within the Chapter III framework. An administrative tribunal exercises executive, rather than federal judicial, power when it conducts merits review.

Parliamentary supremacy is constitutionally limited in Australia. Parliament can change substantive powers and statutory review rights, but cannot remove the High Court's entrenched s 75(v) jurisdiction. State legislation cannot remove the State Supreme Court's constitutionally protected supervision for jurisdictional error (Plaintiff S157/2002; Kirk).

Ministerial responsibility provides political accountability for administration, including decisions made within departments. It does not automatically authorise a Minister to direct an independent statutory decision-maker to decide a particular case.

The course's underpinning values are openness, fairness, participation, accountability, consistency, rationality, accessibility and legality. These values help explain doctrines and evaluate reform. They are not freestanding grounds that invalidate any decision that seems unfair or inconsistent.

1.5 Choosing a review mechanism

Mechanism	What it examines	What it can ordinarily achieve
Internal review	Facts, law and policy within the agency, as the governing scheme permits	Reconsideration or replacement by an authorised official

Mechanism	What it examines	What it can ordinarily achieve
External merits review	Correct or preferable administrative outcome under statutory jurisdiction	Affirm, vary, substitute or remit
Judicial review	Lawfulness of decision, conduct or failure	Set aside, restrain, compel lawful performance or declare legal position
Ombudsman complaint	Administrative conduct, maladministration and fairness within the statutory remit	Investigation, findings and recommendations, ordinarily without binding substitution
FOI request	Access to held documents, subject to the Act and exemptions	Documents that may assist a challenge, not a new administrative outcome
Privacy or integrity complaint	Compliance within the relevant regulator's jurisdiction	Investigation and any remedies authorised by that separate scheme

The Commonwealth reforms represented in the decks include the Ombudsman Act 1976, ADJR Act 1977, AAT Act 1975, FOI Act 1982 and Privacy Act 1988. The ART Act 2024 now supplies the tribunal framework. These are separate mechanisms with different gateways. Do not assume a complaint or FOI request pauses a court deadline.

APPLY: “[Applicant] wants [the licence granted / the refusal set aside / the threatened action stopped]. Merits review would permit reconsideration of [disputed facts or discretion] if [enabling section] makes this decision reviewable. Judicial review instead requires an identified legal defect and ordinarily results in lawful reconsideration, rather than a court granting the desired benefit.”