

LLB206 Admin Law

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Admin Law Principles

Administrative law is the body of law that regulates executive power, and the relationship between us, as citizens, and the government. The exercise of executive power must have legal authority and be exercised within the law.

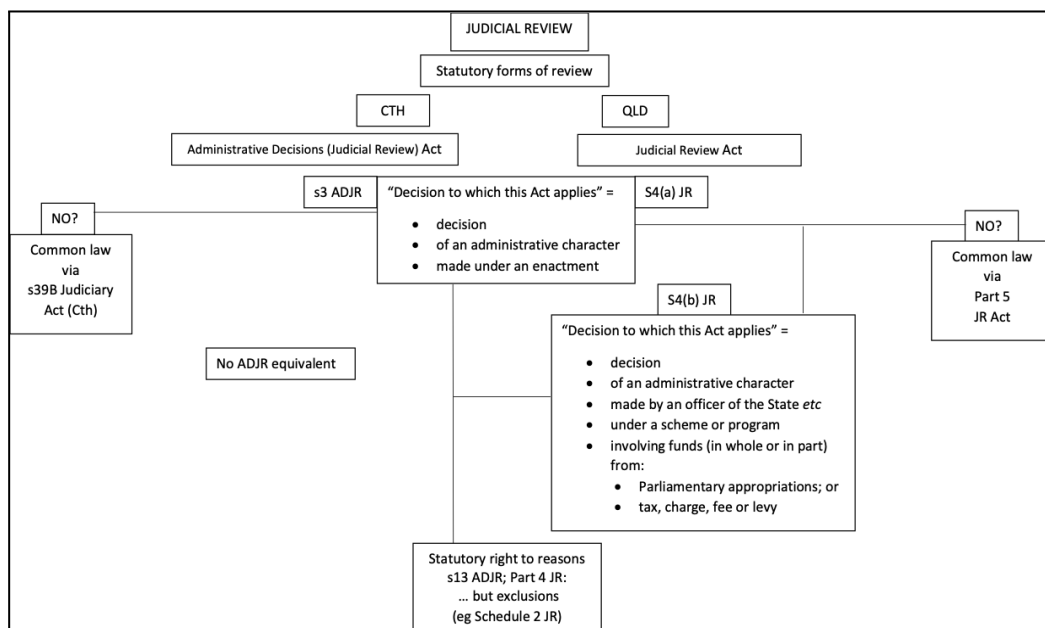
- The aim of administrative law is 'good government according to law' and includes ideals of openness, fairness, participation, accountability, consistency, rationality, accessibility of judicial and non-judicial grievance procedures, **legality** and impartiality
- Under the separation of powers, the role of judicial review is to review an exercise of executive power to determine if it was valid/lawful (not to review the merits of the decision).

Separation of Powers

- The **legislature** creates legislation with powers conferred on the Executive to exercise those powers in the form of decision making (*Constitution s 1*).
- The **executive** administers the law and decisions are made by the executive arm of government including Ministers, departmental public officers, public officials, public and/or statutory bodies (*Constitution s 61*).
- The **judiciary** interprets, applies and enforces the law and reviews executive decisions under *s 75(iv) Const* (*Constitution s 71*).
 - *Constitution s 75(v)* provides that the HC shall have original jurisdiction in all matters 'in which a writ of mandamus or prohibition or an injunction is sought against an officer of the Commonwealth'. This provision 'secures a basic element of the rule of law' (*Plaintiff S157/2022 v Cth*).
 - The HCA jurisdiction has been extended to FCA under *s 39B Judiciary Act*.
 - Courts can set aside the decision if it is unlawful.

Judicial Review ('JR')

JR by the courts is limited to the legality of the decision. If the decision was made unlawfully, the court quashes the decision and remits the decision back to the original decision-maker to remake the decision lawfully (*Constitution s 61, 71*).



Step 1: State or Federal

- The (**apply act from facts**) is a Commonwealth Act. Therefore, it is a Federal matter and the *ADJR Act* will apply.
- The (**apply act from facts**) is a State Act. Therefore, it is a State matter and the *JR Act* will apply.

Step 2: CL or Statutory Avenue of JR

- **CL JR** is available where there is a privative clause or a decision made under prerogative power.
 - CL JR to the HCA is constitutionally entrenched by *s 75(v) Const*. This also extends to State supreme courts for State matters (*Kirk*).
- **Statutory JR** is available where there is legislation, sections and no privative clause.
 - It is the preferable avenue as remedy is at the direction of the court, you have a right to request reasons and do not have to seek a writ (*s 13 ADJR Act* or *s 32 JR Act*).

Merits Review (ART)	
Merits review is the process whereby an administrative decision of the government is reviewed 'on the merits' where the facts, law and policy aspects of the original decision are all considered afresh and a new decision is made (affirming, varying or setting aside the original decision). - Merits review is characterised by the 'capacity for substitution of the decision....for that of the original decision maker' (ARC (Report No. 39)). - Effective merits review is an essential part of the legal framework that protects the rights and interests of individuals; it also promotes government accountability and plays a broader important role in improving the quality and consistency of government decisions' (Robodebt Royal Commission Report 2022).	
Nature of Jurisdiction	
A decision is a reviewable decision if the statute provides for the review of that decision to be by merits review by the ART (s 12 ART Act). - The ART's review jurisdiction is limited to 'legally valid decisions' (Brian Lawlor). Brian Lawlor concerned a decision to revoke the warehouse licence of Brian. The AAT found the collector had no authority to revoke this licence. - The term 'decision' should not be interpreted narrowly. It means 'a decision in fact made, regardless of whether or not it is a legally effective decision'. - If not, the ART review jurisdiction would be rendered useless.	
ART jurisdiction requires a 'primary' decision but it does not need to be 'lawful'. - Decisions purportedly made by individuals who do not have authority to make those decisions are reviewable (s 12(2) ART Act; Minister for Home Affairs v CSH18). - The ART Act explicitly provides for review of purported decisions, maintains review rights for applicants, and ensures that such decisions can be reviewed in the Tribunal. - ART is not a primary decision-maker, only jurisdiction to review – there must be a primary decision before the ART can engage in its merits review jurisdiction (Re Tradigrain). - Reasons for the original decision are required to be provided to the ART (s 23 ART Act), otherwise an error of law.	
Standing	
ART Standing requires 'affected interests' - ART may determine who is a person 'whose interests are affected' by a decision (s 173 ART Act). - Consider statutory context - subject matter, scope and purpose (Allan). 'Affected interest' implies something less than 'special interest', but requires more than a mere belief or emotional concern (Re Control Investments P/L). - ATT may determine who is a person 'whose interests are affected' by a decision, but no equivalent provision in ART Act, provides for appeal to FCA on ART decision re standing (s 173 ART Act).	
ART Standing for 'special interest' groups - Where the decision relates to a matter included in the objects or purposes of an organization, the organisation is considered to be a person whose interests are affected by that decision (s 15 ART Act). - Applies whether or not the organisation is incorporated under s 15 ART Act. - Organisations are deemed to have their interests affected as long as the matter under review remains relevant to their objects or purposes; s 15 ART Act is a deeming provision	
AAT Hearing Procedures	
9 Objective The Tribunal must pursue the objective of providing an independent mechanism of review that: - is fair and just; and - ensures that applications to the Tribunal are resolved as quickly, and with as little formality and expense, as a proper consideration of the matters before the Tribunal permits; and - is accessible and responsive to the diverse needs of parties to proceedings; and - improves the transparency and quality of government decision-making; and - promotes public trust and confidence in the Tribunal. - Fairness and justice go to the outcome of the view...whereas economy, informality and speed relate principally to the process (p 428 EM).	
Evidence	The procedure of the tribunal is within the discretion of the Tribunal (s 49 ART Act): - The Tribunal is not bound by the rules of evidence, but may inform itself on any matter in such manner as it considers appropriate (s 52 ART Act). - ie, based on the 'inquisitorial model' of fact-finding - In a proceeding, the Tribunal must act with as little formality and technicality as a proper consideration of the matters before the Tribunal permits (s 50 ART Act)