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261 Powers of Regulatory Authority
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262 Delegations
(1) The RA may in writing delegate any of their functions/powers under this Act (other than this power of delegation
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Merits Review

Relevant sections in exam legislation
133 Reviewable decision—external review
A reviewable decision for external review is—
(a) a decision of the Regulatory Authority under this Act—
- (i) to suspend a provider approval under **section 18**; or
- (ii) to suspend a provider approval under **section 19**; or
- (iii) to cancel a provider approval under **section 23**.

134 Application for review of decision of the Regulatory Authority
(1) A person who is the subject of a reviewable decision for external review may apply to the Administrative Review Tribunal for a review of the decision.
(2) An application must be made **within 30 days** after the day on which the applicant is notified of the decision that is to be reviewed.
(3) After hearing the matter, the relevant tribunal or court may—
(a) **affirm** the decision of the Regulatory Authority; or
(b) **vary** the decision of the Regulatory Authority; or
(c) **substitute** another decision for the decision of the Regulatory Authority.

135 Relationship with Administrative Review Tribunal Act 2024 (Cth)
This Part applies despite any provision to the contrary in Administrative Review Tribunal Act 2024 of the Commonwealth but does not otherwise limit that Act.

Administrative Review Tribunal Act 2024 (Cth)

SECT 9 Objective

The Tribunal must pursue the objective of providing an independent mechanism of review that:

(a) is fair and just; and

(b) 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

(c) is accessible and responsive to the diverse needs of parties to proceedings; and

(d) improves the transparency and quality of government decision - making; and

(e) promotes public trust and confidence in the Tribunal.

SECT 12 Reviewable decisions

(1) A decision is a reviewable decision if an Act or a legislative instrument provides for an application to be made to the Tribunal for review of the decision.

- Note: To find out whether a decision is a reviewable decision, start by looking at the Act or legislative instrument under which the decision is made.

(2) In addition, if an Act or a legislative instrument provides for an application to be made to the Tribunal for review of a decision of a person under a power, a decision under the power is a reviewable decision , whether or not it is made by the person.

- Note: Under subsection (2), the decision is a reviewable decision even if made by a person who is not authorised to make the decision.

SECT 15 Organisation or association whose interests are affected by a decision

An organisation or association of persons, whether incorporated or not, is taken to be a person whose interests are affected by a decision if:

(a) the decision relates to a matter included in the objects or purposes of the organisation or association at the time the decision is made; and

(b) the matter has not been removed from the objects or purposes of the organisation or association.

SECT 17 Who can apply

(1) A person whose interests are affected by a reviewable decision may apply to the Tribunal for review of the decision.

(2) To avoid doubt, a person may apply even if the person is the Commonwealth or an authority, tribunal or other body (whether incorporated or not) that is established by an Act or an instrument made under an Act.

SECT 22 Parties to proceeding for review

(1) Each of the following are parties to a proceeding for review by the Tribunal of a decision:

(a) the applicant for the review;

(b) the decision - maker;

(c) any other person, if:

(i) the person applies to the Tribunal to become a party to the proceeding; and

(ii) the Tribunal is satisfied that the person's interests are affected by the decision; and

(iii) the Tribunal considers it appropriate that the person become a party to the proceeding.

(2) This section is subject to sections 65 (certain parties may seek to withdraw from being a party) and 83 (Tribunal may remove party from proceeding if party fails to appear or does not comply).

Notice to other parties

(3) If a person becomes a party to a proceeding under paragraph (1)(c), the Tribunal must give written notice to the other parties to the proceeding.

Division 5 - Tribunal procedure

Subdivision A - General principles

49 Tribunal has discretion in relation to procedure

50 Tribunal is to act informally etc.
51 Tribunal to be accessible
52 Tribunal is not bound by rules of evidence
53 Tribunal controls scope of review of decision
54 Tribunal can exercise powers of decision-maker
55 Right to present case
56 Parties and their representatives to assist Tribunal
57 Sittings of Tribunal
58 Resolving disagreements between Tribunal members
Subdivision B - Parties and representation
66 Representation before Tribunal
67 Tribunal may appoint litigation supporter
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Cases to consider

Re Drake

- Must not solely consider government policies in guiding decision - must consider merits of the case

Shi v Migration Agents Registration Authority (2008) 235 CLR 286

- Nelson Shi was registered as a migration agent in 1995. In July 2003, the Migration Agents Registration Authority found that Mr Shi had breached the Code of Conduct multiple times, including by failing to keep adequate office and financial records, failing to keep clients informed, failing to supervise his staff, and failing to maintain his knowledge of migration law. The Authority cancelled his registration, acting under ss 303(1)(f) and (h) of the Migration Act 1958 (Cth). Mr Shit sought to appeal this decision to the AAT for a review

Outcome of Mr Shi's appeal [AAT]

- The tribunal found that Mr Shi had committed some, but not all, of the breaches of the Code of Conduct that the Authority had identified

Issue

- Was the AAT able to take into account evidence post-dating the original decision?

Held

- The AAT is allowed to take into account evidence post-dating the original decision
- Circumstances may change between an initial decision of the authority and a subsequent decision of the tribunal (at 48)
- When making a decision, administrative decision-makers are generally obliged to have regard to the best and most current information available... When, therefore, the tribunal elects to make [a substitute decision] it would be surprising in the extreme if the substituted decision did not have to conform to such a standard

Merits review

Merits review is a process where a new decision-maker, like a tribunal or a review panel, re-examines a government decision on its merits, considering all relevant facts, policies, and law. It's distinct from judicial review, which focuses on whether the original decision was legally sound. Merits review aims to determine **what the correct or preferable decision** is (*Drake*).

- *Drake*: 'The question for the determination of the Tribunal is not whether the decision which the decision maker made was the correct or preferable one on the material before him. The question for the determination of the Tribunal is whether that decision was the correct or preferable one on the material before the Tribunal'

Jurisdiction

Jurisdiction

- Which court/s have jurisdiction to review the decision (Federal Court AND High Court)

"A would be able to apply for a JR under the ADJR Act to the Federal Court. It is advised they also apply through s39B(1) Judiciary Act in the alternative. It is noted HCA may also be applied to however as the HCA takes limited matters on its original jurisdiction, the FC applications are more advisable."

Federal Court

Judiciary Act

Judiciary Act s39B (extension of HC's capacity to JR to FC)
(1)....the original jurisdiction of the Federal Court of Australia includes jurisdiction with respect to any matter in which a writ of mandamus or prohibition or an injunction is sought against an officer/s of the Commonwealth.
(1A) The original jurisdiction of the FCA also includes jurisdiction in any matter:

(a) In which the Commonwealth is seeking an injunction or a declaration.
(b) Arising under the Constitution or involving its interpretation or
(c) Arising under any laws made by the Parliament, other than a matter in respect of which a criminal prosecution is instituted or any other criminal matter.

Step one: Is the action a 'matter'?

- The matter must be justiciable controversy capable of resolution by courts. Not hypothetical (ie. has some effect on parties rights/duties/obligations)
- Not a test case (*Re McBain*)

Step two: Is one of the remedies being sought?

- Mandamus or Prohibition or Injunction **(which one exactly?)**

Step three: Against an officer of the Commonwealth?

- Officer of commonwealth (*Aala*) = Officer of commonwealth (*Aala*) = *'Regulatory Authority is the Secretary of the Commonwealth DoE'*

AD(JR) Act

Preliminary: is it a decision or conduct?

Decisions
Preliminary: Define decision (and why it is a decision)
A reviewable decision?

S 3 AD(JR) Act
Decision to which this Act applies means a decision of an administrative character made, proposed to be made, or required to be made (whether in the exercise of a discretion or not and whether before or after the commencement of this definition):

a) Under an enactment referred to in paragraph (a), (b), c), or (d) of the definition of enactment; or
b) By a Commonwealth authority or an officer of the Commonwealth under an enactment referred to in paragraph (ca) or (cb) of the definition of enactment;

Other than:

c) A decision by the Governor-General; or
d) A decision included in any of the classes of decisions set out in Schedule 1