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TOPIC 2: THE NATURE AND PROCESS OF JUDICIAL REVIEW

2.1 THE NATURE OF JR

What is JR?

- JR comprises the remedies developed by courts to control public officials in the exercise of their powers

Constitution and legality v merits distinction:

- The doctrine of separation of powers, expressly enshrined in respect of judicial power at the ***federal level*** in ***Ch III of the Constitution***, is the principal legitimating factor for the role of courts in JR – it serves to both define and limit their role in reviewing the exercise of official power – summed up in *Hamblin v Duffy*:
    - *JR by the court does not enable it to substitute its own decision for that of the person / body who is challenged. The question for the court generally is **whether the action is lawful in the sense that it is within the power conferred on the relevant Minister, official or stat body**; or that the prescribed procedures have been followed; or that the general rules of law, including adherence to the principles of natural justice, have been observed.*
- To enliven the court's jurisdiction in JR, there must be an ***error of law*** in the decision under JR (*MIEA v Wu Shan Liang*)
- Fundamental difference between JR and merits review eg. AAT stands in the shows of the original decision-maker with the capacity to substitute a different decision

What kinds of decisions / conduct are judicially reviewable?

- **Intro:** JR is confined to situations where a government body or official is exercising ***public powers or duties***, eg. makes a decision in the exercise of a ***statutory power***
    - JR is ***not available*** to enforce rights existing purely under ***private law*** (eg. rights of one party against another which arise from the terms of a contract mutually agreed to – need to pursue civil remedy)
- **Statutory powers:** most of the actions/decisions of public bodies and officials consist of the exercise of a ***statutory decision-making power***
    - *R v Toohey*: the HC made it reasonably clear that the old rule as to vice-regal officials no longer applied re statutory powers; courts now willing to review discretionary decisions of the Crown
    - All statutory powers must be exercised according to law; the status of the repository power is largely irrelevant (*Toohey*)
    - **NB.** Decisions made in the exercise of stat powers by the Gov-Gen are excluded from review under the ADJR Act.
    - *P M61/2010 v Cth*: Gov thought its assessment process was non-statutory and unreviewable; the court found it was statutory and hence subject to JR

Non-statutory prerogative powers: power which has no statutory origin; historically courts were reluctant to JR exercises of prerogative power, however this is no longer the case (

- Today, whether courts will review the exercise of prerogative power depends not on the classification of the source of the power (though still relevant to reviewability), or the status of the decision maker, but on the ***subject matter or nature of the power exercised*** (*Ex parte Lain; Civil Services Union (**CSU**)*). There are ***two relevant issues*:**

    1. Whether the decision itself is ***justiciable*** regarding the 1st test by Lord Diplock in *CSU* and accepted in Aus (*Peko-Wallsend; Century Metals*), that the decision must affect rights or obligations enforceable in private law (*CSU*; *Peko-Wallsend*)
        - **Cabinet decisions that might be justiciable:** where Cabinet is called upon to make decisions involving justice to a particular individual (*O'Shea*)
            - However, Cabinet decisions involving political, social and economic concerns are generally unreviewable (*O'Shea*)
    2. Whether there are special features of the decision which make JR inappropriate (*Peko-Wallsend*)
        - **Politics:** Features generally related to the political nature of the decision, eg. where it involves complex policy questions and not simply matters affecting private interests
        - **Decision of the AG:** off limits (*Toohey*)
        - **Exec Gov's discretion to enter or modify treaties:** off limits (*Blackburn* reaffirmed in *JH Raynor* and *Ex parte Rees Mogg*)

- **Public law component:** Conventionally, decisions made by private bodies are not amenable to JR, however recent gov corporatisation, deregulation and outsourcing raise new difficulties eg.
    - **GBEs:** incorporated under *Corporations Act*; generally accountable in a broad sense to parliament through the shareholding Minister, but are not usually subject to any direct control from gov re their day to day activities
        - Application of JR is uncertain
    - **Outsourcing:** the delivery of gov services to the private sector
    - **Self-regulation:** where govs forgo direct statutory schemes of regulation and allow a particular industry or business etc to regulate itself
        - *Datafin*: a body established by an industry as its self-regulatory mechanism was amenable to JR at the best of a person aggrieved by its decision ***even though*** the Panel was ***not established by gov***, was not attached to the exec and was not exercising statutory prerogative (or even contractual powers), but because

- ***a body should be subject to JR if it exercises public law functions*** or where its actions have ***public law consequences*** (*Datafin*)

- *Neat*: held that the body's (created by statute, but incorporated) power derived essentially from its existence as an inc company so its actions were not amenable to JR – but specifically said the conclusions arrived at not to be taken as implying any response to wider issues

Peko-Wallsend:

Facts: federal gov decision whether to nominate an area of land for heritage listing, which would make mining operations in the area unlawful. P-W had mining interests in the relevant area and made submissions, then commenced proceedings to restrain Cabinet from taking further steps to nominate the area

Held: on appeal:

- that P-W had been given an adequate opportunity to present its case and therefore had not been denied natural justice;
- the court also considered whether or not a Cabinet decision of this nature was within the realm of JR; following *CSU*, the decision was not unreviewable simply because it was an exercise of prerogative power; however, the court (differing reasons) considered a Cabinet decision of this nature was not reviewable, 2 judges emphasising that it involved matters of high level policy of national importance and international relations

O'Shea:

Facts: parole board had leg power to recommend prisoners' release which could be accepted or rejected by Gov-In Council, board recommended release of a particular prisoner but the Gov-in-Council declined

Issue: was the decision reviewable on the basis it was subject to a duty to act fairly

Held: the prisoner was ***not*** entitled to a further hearing before the Gov-in-Council; argued Gov-in-Council's decision was the formal manifestation of a cabinet decision and involved an element of policy or political judgment making it unsuitable for JR; some Cabinet decisions involving political, social and economic concerns are generally unreviewable

Datafin:

Held: a body established by an industry as its self-regulatory mechanism was amenable to JR at the best of a person aggrieved by its decision even though the Panel was not established by gov, was not attached to the exec and was not exercising statutory prerogative (or even contractual powers), but because a body should be subject to JR if it exercises public law functions or where its actions have public law consequences

This was partly because the Panel's existence was interwoven into a broader scheme of regulation, some of which involved ***direct government measures*** – so the Panel's activities could be viewed as being partly ***devolved from government***

The source of the power is not necessarily the sole test for determining reviewability, and in this respect the decision epitomises a dunctional as opposed to institutional approach to the question of reviewability – focusing on the nature and consequences of the power exercised, rather than its source.

Neat v AWB:

Facts: leg established a marketing scheme for the sale of Aus wheat, designed to limit the number of exporters – a body created by the statute was given legislative authority to issue permits to other exporters, but this was subject to approval by a trading company incorporated under the Corps Law of Victoria (AWB). The appellant made a number of requests for permission to export the wheat but was rejected.

Issue: Were AWB's refusals to approve the exports amenable to JR?

Held: arrangement described as "private corp given a role in scheme of public regulation", appears on that to be argument that comp's power derived from stat scheme establishing its role. ***However***, court held that the power of its veto derived essentially from its existence as an inc company so its actions were ***not amenable to JR***

Court noted that the conclusions were confined to the arrangement before them and were not to be taken as implying any response to the wider issues.

2.2 THE PROCESS OF JR

- The common law system of JR
- The statutory system of JR – ADJRA; JRA

The common law system of JR

- The origins lie in the establishment of the Supreme Courts, invested with the jurisdiction of superior courts at Westminster to issue prerogative writs (*Certiorari, Prohibition* and *Mandamus*)
    - **Certiorari:** quashes / annuls a decision
    - **Prohibition:** stops / prohibits decision-maker from proceeding to make a decision (not available if decision has already been made)
    - **Mandamus:** compels public officials to perform their duties

The High Court:

- Established by Ch III of the Constitution
- Its JR jurisdiction is conferred by s 75(v) – "*in all matters in which a writ of mandamus or prohibition or an injunction is sought against an officer of the Cth*"
- **Constitutional writs:** the s 75(v) writs
    - These writs correct jurisdictional error (see later)

The Federal Court:

- Established by the *Federal Court Act 1976* (Cth)
- **Common law jurisdiction:** conferred by *Judiciary Act 1901* (Cth) s 39B
- **Statutory JR jurisdiction:** conferred by the *Administrative Decisions (JR) Act 1977* (Cth) – later

The Federal Mags Court:

- Established by the *Federal Magistrates Act 1999* (Cth)
- Such JR jurisdiction as is conferred by statute, especially migration law matters

The State/Territory Supreme Courts:

- **Federal juris:** State SCs may exercise federal JR jurisdiction ***however*** this is confined by the ADJRA and *Jurisdiction of Courts (Cross-Vesting) Act 1987* (Cth)

The statutory system of JR (ADJRA)

- A reformed statutory system of JR, first established at the federal level by the ADJRA, then later adopted by the states (ie. Qld – JRA)
    - Where ADJRA/JRA don't work, applicant may have to try and seek review under the CL, which is why both still exist and both are important – and Parliament can

repeal statutes, whereas cannot remove common law (can't take away HC authorities!)

- Streamlines & simplifies the ***procedure*** for instituting judicial review of admin. decisions
- 'Codifies' the ***grounds*** of judicial review recognised under common law (dealt with later):
    - Decision-maker had no juris to make decision
    - Breach of rules of natural justice
    - Decision not authorised by enactment

Which courts exercise stat JR jurisdiction?

- At the federal level – the Federal Court
- At the state / territory level – the Supreme Court

2.3 THE 'JURISDICTIONAL PRE-REQUISITES' FOR STATUTORY JR

- The Acts provides a specific formula for determining whether or not an action is amenable to review (s 5, 6 ADJRA; s 20, 21 JRA):
    - "*A person aggrieved by **a decision to which this Act applies** may seek an order to review…"* or
    - *"A person aggrieved by **conduct engaged in for the purpose of making a decision to which this Act applies** may seek an order to review…"*
- **NB.** "*a person aggrieved"* is dealt with in Topic 3 - Standing

1. *"a decision to which this Act applies"*

- Defined as (s 3 ADJRA; s 4 JRA):

"*a decision of an **administrative character** made / proposed / required:*

*a) **Under an enactment*** [different in JRA]

other than:

a) A decision by the G-G [not included in JRA]*; or*

b) A decision included in Sch 1"

Elements:

- Decision or conduct;
- of administrative character;
- under an enactment

What is a "decision"?

- Inclusive definitions (s 3(2) ADJRA; s 5 JRA):

Making a decision includes:

(a) making, suspending, revoking or refusing to make an order, award or determination;

(b) giving, suspending, revoking or refusing to give a certificate, direction, approval, consent or permission;

(c) issuing, suspending, revoking or refusing to issue a licence, authority or other instrument;

(d) imposing a condition or restriction;

(e) making a declaration, demand or requirement;

(f) retaining, or refusing to deliver up, an article; or

(g) doing or refusing to do any other act or thing;

and a reference to a failure to make a decision shall be construed accordingly.

- ***Does "decision" include interim or preliminary decisions?*** Initially, only included ultimate or operative determinations (*Evans v Friemann; Riordan*), but this approach was disproved by the Federal Court in *Lamb v Moss*, but resolved in *ABT v Bond* which returned to the narrow interpretation.
    - **SO:** A decision will only be reviewable if it is final / operative, but, if the statute provides for the making of a finding, so that an intermediate decision might be described as a decision under an enactment, it will be reviewable (*ABT v Bond*)

ADJRA, s 5 allows for attacking of decision, s 6 for attacking

- ***A report or recommendation may constitute a decision:*** where provision is made by enactment for the "making of a report… before a decision is made", the making of such is a decision (s 3(3) ADJRA; s 6 JRA), provided the statute (or another law) provides for the making of the (final) decision.
    - Will exist only where the enactment also ***expressly provides*** that the report is a ***condition precedent*** to the making of the final decision (*Ross v Costigan*), although it is unclear whether this requirement applies to Qld (*Noosa Shire Council; St George v Wyvill* – no ref made to requirement, although probably satisfied in these cases anyway)

2. *"conduct engaged in for the purpose of making a decision"* (s 6 ADJRA; ss 21 JRA)

- Inclusive definition (s 3(5) ADJRA; s 8 JRA) -- includes the taking of evidence or the holding of an inquiry or investigation
    - Failure to take evidence, failure to make investigations was JR (*Courtney v Peters*)
- "conduct" concerns the ***procedural***, rather than substantive, aspects of reaching a decision (***not*** interim steps) (*ABT v Bond*)
- There is no need for the person engaged in the ***conduct*** to be the same person who makes the ***decision*** (*Chan v MIEA cf Gourgand v Lawton*); this is specifically provided for in the JRA (s 21)
- After the decision is made, the conduct is not reviewable (*NSW ALC v ATSIC*)
- Parts of an investigation which have an effect and are not merely a step in the process are JR (*Salerno v National Crime Authority*)

3. *"of an administrative character"* [decision must be…]

- Not expressly defined, essentially decisions of gov bodies/officials exercising statutory powers in pursuit of the exec function of gov will be decisions of an administrative character

Administrative v legislative

- Decisions which are ***legislative*** in character (such as the exercise of a ***statutory power*** to make by-laws) are not administrative (*Paradise Projects*)
    - When it's ***making*** a law, rather than ***applying*** a law, will be legislative (*Paradise Projects; MIC v Tooheys*)
    - However, a decision is not legislative in character ***just because*** the statue describes the power as one to make by-laws (*MIC v Tooheys*)
- **Commercial nature:** The fact that a decision is of a commercial nature does not mean that it loses its administrative character, provided it is made ***in the discharge of a statutory function*** (*James Richardson v FAC; FAC v Aerolines*)
    - *FAC v Aerolines*: FAC established a fee for service for commercial operations, however just because a decision is commercial does not means it loses its admin character
- **Indicia for admin v leg characterisation:** (*Central Qld Aboriginal Corp v AG*):
    - Leg determine content of rules (cf admin ***apply*** rules)
    - Parliamentary control of the decision suggests legislative (not definitive)
    - Requirement of public consultation suggests legislative
    - Provision made for review on merits, eg, by AAT, suggest administrative
    - Decision has binding legal effect, suggests legislative

Application of indicators:

- *Qld Medical Lab v Blewett*: Power was legislative in character because the effect of the decision was to create a new rule to govern future cases (where leg conferred a power to make a determination substituting a new pathology services table of allowable fees in a Sch)
- *FAC v Aerolines*: the exercise of a stat power vested in the FAC to make a determination fixing / varying aero charges was administrative – due to the fact that an exercise of the power was based on relevant commercial considerations (cf this power with one allowing the FAC to make by-laws which would undoubtedly result in legislative decisions)

Administrative v judicial

- Decisions made by courts in the exercise of their formal adjudicative powers are not reviewable (as they are judicial, not administrative)
- **Decisions of admin review tribunals:** established by statute are generally administrative, eg decision of AAT is reviewable under the ADJRA
    - **State level:** may be harder to asset admin tribunals do not exercise judicial power, regarding the lack of a marked separation of judicial power (= to that resulting from Ch III of the Constitution at the federal level – *Kirk??*)
- **Decisions of lower courts:** eg. a decision by a magistrate in the exercise of the court's summary juris is an exercise of judicial power, not reviewable

- **However**, when conducting criminal committal proceedings, ***magistrates perform an administrative function*** in determining where or not sufficient evidence exists to establish prima facie case to commit a person to trial (*Lamb v Moss*)

- **Close association with exercise of judicial power:**
  - *Legal Aid v Edwards*: a refusal by registrar of Family Court to accept a notice disputing a bill of costs ***was administrative***
  - *Letts v Cth*: decision by registrar to seek a direction from a judge whether lodgement of docs = abuse of court's process, ***not administrative*** because the reg was exercising the juris of the HC to control frivolous / vexatious applications

4. *"made under an enactment"*

Enactment

- Refers to Acts and other instruments including rules, regulations or by-laws made under an Act (r s 3 ADJRA; s 3 JRA; s 36 AIA 1954 (Qld); ss 6, 7 S IA 1992 (Qld) – note JRA additionally provides for JR of decisions made under non-stat "scheme or program")
  - **NB.** Under JRA means Qld Acts / statutes
  - **NB.** Under ADJRA means principally fed statutes, limited range of State Acts under which decisions have been made by Cth officers (S 2, Sch 3 ADJRA)
- The instrument itself must have been made under the authority of or in pursuance of an Act (*Chittick v Ackland*)
  - *Chittick v Ackland*: app sought JR of a decision by the Health Insurances Commission to dismiss her in reliance upon provisions contained in the T&Cs of her employment; the relevant leg gave Comm specific power to unilaterally create the T&Cs so the T&Cs doc itself was an instrument made under an enactment.
    - **Cf:** general policies and guidelines often generated within gov agencies as a guide to decision-making – won't qualify as instruments made under enactment unless there is specific stat authorisation for their making (*Schokker*)
    - **Cf:** if leg gives power to appoint/dismiss and then authority draws up contract and in contract discusses termination, employee's termination will be based solely on contract – person won't be able to rely on general power that says authority may appoint/dismiss – must be more specific! (*ANU v Burns; Schokker*)
- **Qld:**
  - *Blizzard v O'Sullivan*: Dep Police Comm's contract not an instrument (because it was negotiated, not imposed by the statute)
  - *Concord Data*: state purchasing policy not an instrument, not made pursuant to a statutory power to make it
- **Key features of instrument:** its capacity to authorise decisions of an admin character and to affect legal rights and obligations (*Chittick v Ackland*), need not necessarily be an instrument of a legislative character (though must derive from an enabling statute)

Made under

- The ***source of the power must come from statute*** (*Glasson v Parkes;*
    - Can be express or implied (*MIEA v Mayer*)
    - Ie. Irrelevant that DM body created by statute, it's whether its DM powers have a statutory source
    - *Glasson v Pakes*: Cth statute created scheme which required each state to enact mirror leg to give it affect, the decision in question demanding repayment of overpaid subsidy; company sought to challenge decision under ADJRA, but actual decision making power was in STATE LEG, that set up scheme (Cth set up skeleton)
- **Current Test (*Griffith Uni v Tang*):**
    1. ***Decision must be expressly or impliedly authorised by the enactment;***
    2. ***Decision must itself affect legal rights and obligations, and must derive from the enactment***
    - **NB.** ***Guss v DCT***: was a step taken by the Comm in issuing the notice of intention to recover a penalty reviewable under the ADJRA as an act made under an enactment
        - Re 2nd limb of Tang Test: was it a decision affecting legal rights, or merely a step to inform the directors of the Comm's intention to recover an amount due
        - Full Fed Court: the step involved did ***not*** affect legal rights because it:
            - a) removed a barrier to the taking of the recovery action – just a procedural step (Edmonds J)
            - b) the issuing of the notice did not involve any operative determination based on a process of reasoning from particular facts (Greenwood J)
        - In dissent (Gyles J) – the step in giving notice was a decision made under an enactment because the giving of the notice did affect the legal rights of both the Comm and the recipient because:
            - It was a step expressly authorised by the enactment;
            - The giving of the notice was a statutory precondition to recovering the penalty; and
            - Giving the notice rendered the recipient liable to recover action

Decisions NOT made under an enactment

- **Where source of power does not derive from statute:**
    - An exercise of a prerogative power (*Hawker Pacific v Freeland*)
    - Not an exercise of 'public power' (*Neat v AWB*)
    - An exercise of power conferred by a private agreement (contract) (*ANU v Burns; Post Office AA v APC*)
        - *ANU v Burns*: if leg gives power to appoint/dismiss and then authority draws up contract and in contract discusses termination, employee's termination will be based solely on contract – person won't be able to rely on general power that says authority may appoint/dismiss – must be more specific! (would have to resort to CL JR)
- **Express exclusions:**
    - Decisions of the Gov-Gen (s 3 ADJRA)
        - **NB.** Decisions of the State Gov are ***not excluded*** from review in the JRA
    - Decisions listed in Sch 1 of the ADJRA
        - Eg. Decisions made by ASIO, can't attack in Federal Court
        - Eg. Sensitive political decisions
    - Decisions referred to in s 18 and Sch 1 of the JRA

5. "*a non-statutory scheme or program"*

- JRA extends to decisions made under "***a non-statutory scheme or program***" (s 4(b) JRA)
    - The section has been given a very narrow interpretation though
- ***What is a non-statutory scheme or program?***
    - The inclusion of two separate words, "scheme" and "program" are intended to cover single one-off projects and continuous things (*Anghel*)
        - *Anghel*: app sought JR of decision made by a Minister to approve construction of a rail link, jointly funded by the Cth and Qld Govs, it was clear the decision was not made under an enactment and the project was funded in part by moneys appropriated by the Qld Parliament – was it a scheme or program? Yes, but ultimately the app couldn't make out any ground of review
    - *Bituminous*: concerned a roads implementation program established under an Act, the applicant's product was on an approved list but then removed, app faced an initial difficulty in that the scheme was non-statutory because the program was provided for in the Act
        - **Held:** the manual and product list itself ***did not*** constitute a scheme or program but imply the development of criteria to be applied to a program

Statutory JR provides a right to statement of reasons

- There is no general common law right to reasons

- Right contained in s 13 ADJRA, Pt 4 JRA, AIA
- It is a separate independent right; JR proceedings don't have to be started before a request for reasons can be made (provided it was something you could seek JR for)
- **Benefits:**
    - Enables potential applicants to assess their chances
    - Improves administrative decision-making
- **Obligations on DMs**
    - Must record *the* ***law relied on*** + ***facts relied on*** + ***the decision-maker's reasoning***
    - The obligation only relates to the facts ***relied on by DM*** – not ***all*** facts which ***might*** be relevant (*Yusuf*)

Griffith Uni v Tang:

Facts:

- Tang sought review under the JRA of a decision made to exclude her from PHD, on the basis she had engaged in academic misconduct
- The GU Act was typical, conferred usual functions associated with providing tertiary education and research etc. Re the conferral of powers, the statute gave the uni the general power to delegate functions to committee
- The decision to exclude Tang was made by a committee, acting on delegated authority and in reliance on a uni policy which established a set of procedures for dealing with allegations of academic misconduct
- The policy was ***not*** a stat instrument, it was by another committee to guide re academic dishonesty

At first instance:

- The relevant provisions conferring power on the uni were in very general terms, nevertheless Mackenzie J ruled the decision was made under an enactment; in his view the task of deciding whether a decision is made under enactment involves determining whether the enactment gives the operational or substantial source of power to make the decision or whether properly categorised as deriving from an incidental source of power, in his view it was made under an enactment because of the tightly structured nature of the devolution of authority by delegation.

Held, on appeal:

- The force of the argument against the statute being the source of power to make the decision is considerable less where, as here, there could be no other possible source of the power (such as a contractual r/ship between parties). Even though the provisions of the Act relied on as the source were very general, "it is relevant to consider how central the decision is to the role of the DM and to trace the stat source of authority for any decision"
- The decision was made in relation to a central or core function of the uni, it was a substantive an final decision made in the exercise of a stat power vested in the uni to execute its functions

REVERSED BY THE HC

- Gummow, Callinan and Heydon: two-part test for determining when a decision is "made under" an enactment, both requirements must be met:
    1. the decision must be expressly or impliedly required or authorised by the enactment; and
    2. the decision itself must confer, alter or otherwise affect legal rights and obligations and in that sense must derive from the enactment
- The decision in question was ***not made under an enactment*** because it did not affect Tang's legal rights and obligations; the r/ship between Tang and the uni re her PHD was a purely consensual one; the Act empowered the uni to formulate the T&Cs of her candidature, it did not give legal force or effect to the decision to end the r/ship

ABT v Bond:

Facts: relevant leg established a licencing regime for tv broadcasting, under which inc entities could hold commercial tv licences; the tribunal had a discretionary power to suspend / revoke a licence, provided it was ***first of all satisfied as the existence of one of more specified matters*** – in this case, being that the existing licensee was no longer a fit and proper person to hold a licence

The statute established a two-stage decision-making process:

1. tribunal had to make a finding as to whether or not licensee was fit and property;
2. if such a finding was made, tribunal could decide whether or not to suspend / revoke the licence

Bond (and other apps) commenced proceedings under the ADJRA at the conclusion of the ***first stage***, after the tribunal found licensees no longer fit and proper, and they also sought to review a number of antecedent preliminary findings, including that on the available evidence Bond had acted improperly and would not be a fit and proper person to hold a licence if he had been eligible to do so

Issue: which of the so-called decisions challenged were decisions amenable to review under the ADJRA? Depended on whether broad or narrow approach to be preferred

Held: While the ADJRA was remedial in nature, the ***narrow approach should be preferred***, passed on an analysis of the stat definitions and on broader policy considerations; and

- JR is confined to errors of law, not fact-finding and the factual conclusions reached in stages of making a decision are not reviewable unless the process involved gives rise to a recognised basis for jud intervention
- For a decision to be reviewable, it must be a final or operative decision
- However, an interim step may constitute a reviewable decision if the statute expressly provides for that step.
- Also, must be a substantive determination

Here: the tribunal's decision to revoke / suspend a licence ***was a reviewable decision*** because, it was the final, ultimate or operative determination AND the determination that the licensee not fit and proper ***would ALSO qualify***, as it was a conclusion reached as a step, but the statute provided for the making of a finding on that point, so was a decision under an enactment, although an intermediate decision

However, the antecedent findings ***not reviewable***, incl finding that as an individual Bond not a fit and proper person, as not a final decision, not did the statute expressly provide for them to be made as interim decisions