

### **Administrative Law Introduction**

- The primary objectives of administrative law are lawfulness, fairness and rationality in the exercise of government power.
- The plaintiff in an administrative law case is a person who has been affected by a government decision.

### **Administrative Law as a Young Body**

- Developed recently, as had no need of one in the past (HoL in Ridge v Baldwin).
- As executive government expands power with no Parliamentary checks, courts step in (Moorgate Mercantile Co v Twitchings).
- Expansion of executive power from:
  - emergence of cabinet system;
  - erosion of the doctrine of ministerial responsibility;
  - conferment of broad discretionary powers on public service.
- There is no strict separation of powers in Australia, and therefore one body can carry out powers of another.

### **Delegated Legislation**

- Delegated legislation arises when the legislature confers its law-making power to the executive.
- The executive exercises that power and makes statutory rules having the force of law.
- These rules may be disallowed by the legislature or declared invalid by courts.

### **Justiciability**

- A 'justiciable decision' is one fit for judicial review; a 'non-justiciable decision' is not.
- Primary consideration: Whether, having regard to the nature and subject matter, the decision should be subject to judicial review.
  - Primary emphasis on decision, not decision maker.

### **Red Light and Green Light Approaches**

- Red Light Theorist: Advocates for more interventionist approach by courts to review administrative behaviour.
  - Preference for a minimalist state.
- Green Light Theorist: While acknowledging the need for and importance of judicial review and the rule of law, tends to place more emphasis on non-judicial remedies and procedures.
  - Believes that bureaucrats perform best when not intervened with.
  - Administrative law should simply procedures and enhance efficiency.

### **Purposes of Administrative Law**

1. Purpose is to safeguard rights and interests of individuals and corporations in their dealings with government agencies (Creyke, McMilan).
2. Promote openness, fairness, participation, accountability, consistency, rationality, accessibility of judicial and non-judicial grievance procedures, legality and impartiality (Aronson, Dyer and Groves).
3. Traditional View: bolster the rule of law and ensure the accountability of the executive government to the will of the Parliament and the people.

### **Judicial Review**

- The court has a role to prevent the executive from exceeding its powers and functions assigned to it by law and the interests of the individual are protected accordingly (Brennan J, Church of Scientology v Woodward).
- It is not the role of the court to substitute its own decision for that of the administrator as the legislature vested that power in the administrator. The court is to simply set limits on the exercise of discretion (Peko).

### **Grounds for Judicial Review**

- 'Unfettered discretion' still subject to judicial review (Padfield).
- In Council of Civil Service v Minister (Lord Diplock), grounds for judicial review were:
  - 1. Unfairness;
    - no hearing;
    - bias;
    - no evidence;
    - no reasons/inquiries;
  - 2. Illegality;
    - acting ultra vires;
      - lack of power;
      - abuse of power;
      - failure to exercise power
    - jurisdictional error;
      - lack of jurisdiction;
      - excess of jurisdiction;
      - failure to exercise jurisdiction;
  - 3. Irrationality;
    - manifest unreasonableness
    - no rational basis (no evidence);
    - arbitrary conduct, perversity;
  - 4. Lack of Proportionality;
    - irrationality (manifest unreasonableness).
- In Australia, they are simply: procedural fairness (natural justice, ultra vires, jurisdictional error (including error of law on the face of the record).
- Australians more conservative: merits/law.