

# ADMINISTRATION LAW

## OLD/NEW ADMINISTRATIVE LAW

### OLD ADMINISTRATIVE LAW (JUDICIAL REVIEW)

- Does the judicial arm of government exercise control
- Only concerned with the legality of a decision and usually depends on statutory interpretation
- Not concerned with merits

### NEW ADMINISTRATIVE LAW (NON-JUDICIAL REVIEW)

- Control exercised from bodies created within the executive
- Includes – Ombudsman, integrity commissions, freedom of information, and merits review tribunals
- Judicial review: review by a court of the legality of a decision;
- Merits review: review by a tribunal on the merits of a case;
- Internal review: review by the decision-maker, as required by statute;
- Ombudsman: investigation and reporting by an independent third-party; and
- Freedom of information: right to access government documents.

## NON-JUDICIAL FORMS OF CONTROLLING EXECUTIVE ACTIONS

- Integrity bodies (Ombudsman, CCC, Auditor General etc) all provide a means for either members of the public or the greater government to investigate administrative action/inaction

## THE OMBUDSMAN

- Created in 1970s to reduce demand on access to government information
  - To meet demands for more general access to information held by official agencies and for wider opportunities for review of government actions, beyond the courts and the tribunals
- Part of New Admin Law
- Concerned with remedying maladministration
- Can initiate inquiries, combine inquiries, receive government-referred inquiries
- Ombudsman is a public office designed to investigate complaints against government departments
- The Ombudsman's capacity to investigate differs from judicial and merits review because it does not require a final decision or an error of law. As such, it can investigate the manner of the decision including factors like delay, rudeness, and refusal to listen
- However, the Ombudsman can only conduct an investigation and make a report with recommendations. It does not have any determinative power to affect legal right

### JURISDICTION

- Section 5 of the *Ombudsman Act 1976* (Cth)
- Limited jurisdiction – it can only be in regards to action or lack of action of administrative nature only, and limited to:
  - Investigation of an action
  - which relates to a matter of administration
  - Taken by a department or prescribed authority
  - Received as a complaint or initiated by the Ombudsman

### ***'Investigation of an action'***

- s 3(7) Action includes:
  - The making of or refusal or failure to make a decision and the formulation of a proposal

### ***'Must be a matter of administration/of administrative action'***

- Must be “a matter of administration” (s 5 *Ombudsman Act* (Cth))
- Actions that have an institutional aspect are likely to be administrative: *Booth v Dillon (No 1)*
- *Glenister v Dillon*
  - Matter of Administration – Any subject arising in the performance of executive arm of government (as opposed to judicial arm which was problem in this case)
  - This case regarded State Solicitor’s delay in bringing two people to trial – Ombudsman had no jurisdiction to investigate complaints about this as it was a judicial issue

***‘Must be an activity of a department, prescribed authority or agency’***

- Must be activity by:
  - a ‘department’ or ‘prescribed authority’ – Ombudsman Act s 5
- E.g. Centrelink, ATO, Child Support Agency,

**SCOPE OF POWER**

- Discretion to refuse investigation – s 6
  - Trivial
  - Frivolous, vexatious or in bad faith
  - Does not have a sufficient direct interest in the action complained of
  - Has not exhausted appeal options and would be reasonably expected to do so
  - Has exhausted appeal options and continuing investigation would not be justified
  - No need for further investigation
- Exclusions – s 5(2)
  - Actions which the ombudsman is not authorised to investigate includes:
    - Actions taken by a minister, a judge, or in relation to proceedings in parliament or employment in the public service