Administerative Law

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Law Extension Committee Course
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Guidebook
Administrative Law

The Little Red Book
Chapters 1, 2, 3, 4, 5
Creyke McMillan and Smyth
Cases & Commentary
Control of Government Action Text
The Blue Book
A Focus on Individual Justice

Judicial and non-Judicial Review Mechanisms

Accountability, Consistency, Rationality, and Legality

- Openness, Fairness, Impartiality, Participation

Developing Values of Administrative Law

An Integral Aspect of the Rule of Law

The Traditional View of Administrative Law as

LEC Course Outline – pp 13-24

Introduction to Administrative Law
are to be administered justly and fairly.

- Government or domestic bodies
  - It is within the arena of public law because it deals with relations between government and citizen.

- In certain circumstances it can also extend to non-government.
  - That Law which controls and supervises the decisions and actions of the executive arm of government.

- What is Administrative Law?
Domestic Trading Pty Ltd v AWB Ltd (2003) 216 CLR 277

What about service corporations and contractors? Neat Council Ltd [2001] NSWCA 162, [34] ff

public powers? Mitchell v Royal New South Wales Cunbine

Other domestic bodies that exercise disciplinary or other

Auditor-General

Ombudsman

Local Councils

Commissions of Inquiry

Tribunals

Ministers

Government departments, agencies

Who are the decision-makers
planning decisions; rule-making processes; public participation & environmental; accountability & property; Royal Commissioners; ICA, human rights agencies, ombudsmen; other mechanisms to enhance; access to information; review of government decisions; includes: Content of Administrative Law
Eeden [2016] FCAFC 28

Minister for Immigration and Border Protection v
Immigration and Citizenship v Li (2013) 249 CLR 332;

lawfulness of decision-making: Minister for
legal reasonableness is an essential element in the
— procedures must be fair
— their power
— Administrators must not act ultra vires ie in excess of
— legality of decisions and actions

Courts

making

Review of government decision—
- maladministration
- Ombudsman
- correct and preferable decisions
- merits & legality
- Review tribunals

Review of government decision (cont)
Provided by: Access to Information
The purpose of administrative law

Two views

- To uphold standards of good administration:
  - To prevent and investigate the abuse of power
  - To protect the interests and individual rights of the individual

Rationality, openness, fairness, accountability, consistency

Green light – facilitate the provision of state services

Red light – stop the state from interfering with privacy

Two theories:
The rise of the administrative state

- 19th/20th C – vast expansion of fields of activity regulated by the state
- Rapid increase in bureaucratic power and discretion
- Use of government policy and ‘soft law’
- Administrators make policy and choices involving value judgments
- Individual justice may be subordinated to policy or other objectives
early 1980s of FOI Act and s39B Judiciary Act
Further suplementary initiatives led to enactment in
Committee Report (1973) led to ADJR, AAT, Ombudsman.
the Blund Committee Reports (1973) & the Ellicot
administrative law - the Kerr Committee Report (1971),
entred the 1970s and the advent of the new
century
75(v) Jurisdiction lay largely unexplored for most of last
unresolved procedural vagaries meant that the scope of s
Duty of the Judiciary to declare and enforce the law
Peremptory writs & injunction
judicial review of Commonwealth administrative action, s 75(v)
the separation of powers
Federation brought constitutional entrenchment of:
The rise of the administrative state
• Query: efficiency vs. effectiveness?
• Legalization problematic
• Different or inconsistent interpretation of
  grounds of judicial review are vague
• Procedures are resource-intensive
• Such review interferes with policy decisions
• Accountability mechanisms impede efficiency
  Administrators’ concerns with external review
Implications for accountability – Blair 1.5.2-7

External private sector providers
require consumers to purchase services from
contracting out (detention centres, prisons)

Outsourcing

Business structure (Aust Post, HIC, CAA)
Imposed on statutory authorities private-sector

(Qantas, Telstra)

Privatisation: sale of some government
functions to the private sector (Ch Bank,

Changes in the way government is delivered
What is the province of administrative law in respect to backing for aspects of their regulatory role – ASE, Law Societies, Racing Clubs have legislative –

But the distinction has been blurring

in the public sphere

Public law remedies are generally only available
decision-makers

public (governmental) and private bodies and

Administrative law rests on a distinction between

The public/private distinction
Governemental nature of the power exercised.

Appeal reasoning in *Dataphin plc* (Blue 2.5.8C) –

High Court has not yet followed the UK Court of

- a functional understanding of „public power“
- sourcing the power to statute?

Does it depend on:

*Domestic Trading P/L v AWB Ltd* (Blue 2.5.12C)

*NSW Trotting Club (Blue Book 2.5.7C); Neat

The reach of judicial review is uncertain – Forbes

Public/Private distinction cont’d
provided for by the rules ensuing.

Often enlivened where the rules of a club have been breached and disciplinary proceedings

– where necessary for the attainment of justice

[34] [39] NSW Canine Council Ltd [2001] NSWCA 162

Royal

the basis for that Jurisdiction; Mitchelli v Royal

albeit that there is no definitive authority as to

at common law to intervene in a limited way

Long recognized that a superior court has power

of a voluntary or private tribunal

discretionary power to intervene in the affairs
the rules of the club, resting on a consensual application in a given case may take shape from but the variable content or scope of its principle is natural justice or procedural fairness.

The derivative or overarching common law

[2012] NSWSC 1190 per Mccallum J at [10].

Tsoukalis v Royal Motor Yacht Club of NSW Ltd: members has its juridical foundation in contract.

But "the authority of such proceedings over

Bases for the extension
Can public participation adequately complement the more structured elements of the administrative state?

How effective are these processes?

Administrative rule making

Directed at ensuring accountability and reasonableness of Services Australia

Notices of proposed rule-making by agencies eg CASA, Air

For such input

Environmental and planning law set out prescribed procedures into decision-making processes

What many regulatory processes make provision for input

Regulation and discretion in the hands of administrators

Rise of the administrative state increased areas of

Public participation
- Participatory, cultural constraints, etc.
- Consistency/progressive, apathy, unequal capacities to
- Relies on active citizen participation - civic duty
- Empirical data or assumptions?
- Values public participation in decision-making? Based on

Citizenship

- Citizens' interests to be accommodated?
- Industry groups may remain. Are broader political
- How are better outcomes assessed? Pressure from powerful
  sufficiently represented and by what means?
- How has participation been facilitated? Are all interests
- Interests; query transparency of process?
- Decisions may result from deals, struck with competing

Interest group pluralism

Theoretical bases of participation
that are not binding policies, guidelines, rulings or other instruments that have the force of statute and are BINDING:

- Concerned here with delegated legislation/rules
- A rule made by an executive body pursuant to an legislation
- They make subordinate legislation, aka delegated 'quasi-law', makers
- Administrators are significant law makers &

LEC Course Outline – pp 25-29
2. Rule Making
usually required to be tabled in Parliament, but
Legislation is not passed by Parliament, but

But unlike primary legislation, delegated
subordinate power

Legislative Instruments (Cth) must be
Legislative Instruments (Cth)

Governor General (in Council) (Cth)
Ordinances made by the Governor (State) or

Regulations, by laws, statutory rules or

Subordinate Legislation includes...
instruments uncertainties

Contrasting policy and less formal, advisory

observed "quasi" form of law-making

instruments not binding but may set out

management plans etc

includes principles, guidelines, schemes

Quasi Legislation
scheme or regulation
needed for the efficacy of the primary legislative
pronouncement of detail or procedural matters
But borne of practical necessity to allow for the
role of law-making and law-enforcing
inconsistency with separation of powers doctrine
Primary legislation made by elected
representatives accountable to parliament
Rule making is accountability
The key elements to the process include an element of sequential process as a feature of the evolving government decision-making through a disciplined or deliberative process - introduced to improve regulatory impact statements - tabled by parliamentary committees if required to be scrutiny in some agencies

Notice of proposed rule making procedures may be in legislation may provide for consultation - no common law duty to consult.

Responsibility (cont)
also included in the EM usually after the RIS.

Statement of Compatibilities with Human Rights. This is

Each piece of legislation must also contain a

but include the RIS number

EMS for Regulations don't necessarily contain the RIS

of legislation.

EMS for each Bill can be found on the Federal Register

Explanatory Memoranda for Bills.

When needed they are included as part of the

Regulation (OBRP)

exemption is granted by the Office of Best Practice

A RIS is required for all Bills and Regulations unless an

Regulatory Impact Statement
- Here's a very good link from the OBPR which contains lots of RIS.


- An example is the Narcotic Drugs Act 1967 to ensure that any therapeutic product, including medicinal cannabis, meets Australia's strict standards.

- Bring up the EM for the Bill, which will include the RIS as well.

To find a RIS
Legislation declared it to be a statutory rule or otherwise and open to disallowance within further 15 days if its enabling Tabling in each House of Parliament within 15 days of being made

• Void if made in contravention of these requirements
• Cannot prejudice existing rights
• Take effect from date of notification unless otherwise specified
• Notified in Gazette

Requirements of Part XI Acts Interpretation Act 1901 – Regulations/Statutory rules were subject to procedural

– Relevant sponsoring Minister’s department
– Department (OLD) on the instructions of officers from the
– Drafted by Office of Legislative Drafting within AG’s

Historically

Commonwealth delegated legislation
Making by Commonwealth Agencies

Problems exposed in ARCC Report 1992 "Rule

have access
to fail complaining with laws to which they did not

The result: People could be held responsible for

published or subject to parliamentary scrutiny

Significant body of law developed that was not

from the 1970s onwards

Many new types of instruments began to emerge

procedures

Not all rules subject to these formal
Legislative Instruments

- But not all Instruments made under Law are

Instruments

- Established the Federal Register of Legislative
extended operation to all Legislative Instruments
- Substantially re-enacted Pt XI of the AILA Act and
Legislative Instruments Regulations 2003
and Legislative Instruments Act 2003

To be read with Legislative Instruments Act 2003
material
publication and review of Legislation and related
comprehensive regime for the making,
Legislation Act 2003 - established a

First sea change - 2003
Legislative instruments

- Particular characteristics relate to the effect they have on rights and entitlements
- S 5 LIA definition

If it has the direct/indirect effect of affecting a privilege or interest, imposing an obligation, creating a right or varying or removing an obligation/right and law rather than applying it in a particular case.
parliamentary scrutiny of LEG instruments
Instrument to improve public access and facilitate
required the online publication of every type of
what was known as 'backcapture'
lodged for registration before 1 January 2008, under
repealed any older legislative instrument that was not
instruments made on or after 1 January 2005
required the registration of all new legislative
what an instrument did rather than what is was called
created a concept of legislative instrument based on

LIA ACT 2003
where no longer serving intended purpose – mechanisms to ensure periodic review and repeal

clarity and intelligibility – higher standards of drafting for legal effectiveness,

Instruments – greater consultation before making legislative

identified need for

Review of LIA in 2008/9

Second sea change – 2008 - 2016
- Renamed LIA as the Legislation Act 2003 (the LIA) repeals Acts Publication Act 1905)
- Incorporates the requirement for publishing into the Register of Legislation
- Commonwealth Acts and Instruments: Federal publishing and management of all
- Provides a single framework for registration
- Reform (Act 2015) Enter – the Acts and Instruments (Framework

Recent changes
Instruments (e.g. disallowance and sunsetting).

the development and scrutiny of legislative
— does not change existing requirements relating to

interest;

not legislative but still of long-term public
instrument „for notices of a legal nature that are
establishes a new category of „notifiable

Act

— extends to Commonwealth Acts, the publication

Legislation Act 2003
prescribed under the LA (iii) declared in enabling law
be are not legislative in nature ie not subject to

What you need to know
of any subordinate legislation made under it. Legislation to see if it affects the meaning or operation of the enacting Act always go to the primary or enabling Act.

- Allows for retrospective operation only in beneficial circumstances or where express provision is made in the enabling Act.
- Does not mean invalidity or unenforceability and 'reasonably practicable' but failure to consult made - the rule maker decides what is appropriate.

What you need to know (cont)
Parliamentary scrutiny

disallowed by either House – unless an exemption applies, they may be
be tabled in each House of Parliament – all legislative instruments that are registered must

disallowance of legislative instruments regime for parliamentary scrutiny and
established with some exceptions, a single

Parliamentary scrutiny
This requires an assessment whether it has "the same effect" as an earlier instrument. Perrett v Attorney-General of the Commonwealth of Australia 2015 [FCA 834]

- cannot be remedied
- that has been disallowed in the last 6 months, generally
- A Legislative Instrument that is open to disallowance, or
- A Legislative Instrument that is open to disallowance, or
- and any amendment or repeal made by it is undone.
- if a Legislative Instrument is disallowed, or is not tabled
- within 6 sitting days of registration, it ceases immediately thereafter
- if notice of motion to disallow is given but is not dealt with
- is automatically disallowed.

Disallowance
parliamentary enactment
- it does not contain matter more appropriate for
  subject to merits or judicial review, and
  dependent on administrative decisions which are not
  it does not make the rights and liberties of citizens unduly
  liberties;
- it does not trespass unduly on personal rights and
  it is in accordance with the enabling statute;
- instrument tabled in the Parliament to ensure that:
  SO 23 - The committee examines each legislative
  standards of parliamentary propriety
  that focus on individual rights and liberties and
  assesses delegated legislation against a set of principles

Regulation and Orniances
Standing Committee on
Senate Standing Committee on
makers
reviewing the decisions of primary decision-makers have an essentially review role.

• dispute-settling,

• some have an adjudicatory function or role.

range of bodies to which the term is applied.

No definition of "tribunal" that in the context

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3. Decision Making in Tribunals
3. Decision making in Tribunals (cont)

Tribunals encompass any official body with power to make decisions affecting the rights of individuals or corporations in accordance with laid-down, prescribed or accepted procedures.

Merits Review & Administrative Tribunals

- Administrative review tribunals are concerned with executive actions of government with the prime function of external merits review
- "Civil" tribunals are concerned with resolving private disputes

Our focus is:
- The AAT as a merits review tribunal.
- The Ombudsman as an investigatory tribunal.

Decision Making in Tribunals

- can only be understood against the constitutional and legislative background to the creation of merits review in administrative tribunals

The Constitution

- Chapter III deals with the Judicature: ss 71 - 80
- Chapter II deals with the Executive Government: ss 61 - 70
- Federal judicial power may only be vested in a Court that is defined as per Chapter III of the Constitution
- A court that is defined in Chapter III cannot be vested with non-judicial powers

Merits Review

- The nature and content of merits review
- Tribunal is looking afresh at the issues that are raised by the applicant's application for review.
- Not engaged in reviewing the reasons for decision of the primary decision-maker or determining whether that decision was a valid or lawful decision.
- Standing 'in the shoes' of the primary decision-maker – some Tribunal members prefer the image of 'sitting behind the desk' of the primary decision-maker
- A 'continuum' of administrative decision-making not in a hierarchical sense and unless there is a statutory restriction on the process, it considers anew the whole matter on the (relevant) material that has been placed before it by the parties.

Merits Review Cont.

- Tribunal must normally observe all applicable procedural and substantive legal – generally statutory – requirements that may govern the process of decision-making

AAT

- The prime role of the AAT is to make the "correct or preferable" administrative decision
- Not a tribunal with a general review jurisdiction; not all decisions by federal government agencies are reviewable
- It is an administrative body with limited authority where its jurisdiction is conferred by express statutory provision: see s 25 AAT Act
- On 1 July 2015, the Migration Review Tribunal, Refugee Review Tribunal and Social Security Appeals Tribunal were merged with the AAT.

AAT Act

- Section 43 encapsulates the essential function of the Tribunal in these words:

  (1) For the purpose of reviewing a decision, the Tribunal may exercise all the powers and discretions that are conferred by any relevant enactment on the person who made the decision and shall make a decision in writing:
  (a) affirming the decision under review;
  (b) varying the decision under review; or
  (c) setting aside the decision under review and:
  (i) making a decision in substitution for the decision so set aside; or
  (ii) remitting the matter for reconsideration in accordance with any directions or recommendations of the Tribunal.

"Correct or preferable" v "correct and preferable"
- not a statutory expression
- historically stems from Becker and Minister for Immigration & Ethnic Affairs (1977) 15 ALR 696 per Brennan J
- decision must be correct and if discretion as to various outcomes, the Tribunal selects the 'preferable' decision on the merits of the case
- Four "distinct but related issues" that the Tribunal had to consider; in that case in the context of review of a Minister's decision to deport

First relates to power:
- Did the Minister – and does the Tribunal now – have the power to make a deportation order?
- **Look at the statute** – in Becker case, the Migration Act as then in force
- What is the Power? Question of statutory construction

Second concerns existence of policy affecting discretion

- Is there a policy which governs or affects the exercise of the Minister's power?
- Is that policy consistent with the Act?
- Where there is a discretionary element the discretion may be exercised "only according to the rules of reason and justice, not according to private opinion"

Third concerns application or adoption of policy

- Is there any cause or reason why policy that the Minister or primary decision-maker has applied should not be adopted or applied?
  - Drake v Minister for Immigration and Ethnic Affairs (1979) 46 FLR 409
  - Re Drake and Minister for Immigration and Ethnic Affairs (No 2) (1979) 2 ALD 634

- It is right to say that the Tribunal, which operates as part of a continuum of administrative decision-making, is not bound by governmental policy (unless commanded or directed by statute to do so: cf, eg, s 64 ADR Act 1997 (NSW)) although it may take such policy into account in the exercise of the statutory power or discretion which is under review: Minister for Immigration, Local Government & Ethnic Affairs v Gray (1994) 50 FCR 189, French and Drummond JJ at 205 – 206

- The merits of a decision include not only the facts of the case but also any policy which has been applied or which ought to be applied in reaching the correct and preferable decision

The fourth issue concerns fact-finding
- standing in the shoes of the primary decision-maker but those shoes may be of a different size or last
- further or different material may be placed before the Tribunal than that which was before the primary decision-maker eg documentary material or evidence now exposed to cross-examination and submissions
- Tribunal must reach the correct or preferable decision by reaching its own conclusions without being constrained by general government policy or the way in which the primary decision-maker approached fact-finding
- Subject to any contrary statutory direction or command, it must decide on the material placed before it, not limited to what was before the primary decision-maker: see Shi v Migration Agents Registration Authority (2008) 235 CLR 286.

Use of ‘soft law’
- decision-making affected by the burgeoning growth of ‘soft law’
  - guidelines, practice manuals, circulars, codes of conduct, voluntary codes, rule books and other documented sources of administrative policy
- think of it as non-statutory rules devised by an administrator to provide guidance in administrative decision-making, esp in the administration of legislation
- designed to ensure uniformity of process and outcome or streamline steps as a matter of efficiency/economy
- may have a more profound affect at the primary decision-making level than review decision-making where greater currency given to ‘individual justice’.
- Sir Anthony Mason’s article in (1989) Fed L Rev: the primary decision-maker may be “inclined to subordinate the claims of justice of the individual to the more general demands of public policy and sometimes to adventitious political and bureaucratic pressures”.
- Essential role of the Tribunal is independent review ON THE MERITS where individual justice will not be subordinated to public policy

Tribunal decision-making and reasons for decisions
- The High Court confirmed that there is no common law obligation on an administrative decision-maker to provide reasons for a decision. Public Service Board of NSW v Osmond (1986) 159 CLR 656

WHY ARE REASONS AND THE AVAILABILITY OF REASONS IMPORTANT?
1. Modern societal expectations relating to government decision-making
   i. Accountability
   ii. Rigor or discipline in decision-making
   iii. Losing party concerned to know that process has been fairly managed
   iv. Feed back into the process of administrative decision-making by the agency across a number of areas
2. To facilitate the full working of the judicial system
   i. Enable or facilitate appeal or judicial review
   ii. A constitutionally entrenched right to judicial review will be undermined if there is no requirement for reasons based on particular factual findings.

Decision-Making Processes involve consideration of:

- The NATURE of the process required to be adopted

- The CONTENT of decisions made by the Tribunal

Our focus is on the AAT as a reviewer of other people's decisions cf maker of original decisions eg ADT/NCAT in some areas.
- Reasons are a rational explanation for the conclusion announced

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The AAT Act

- Sect 43 (2B) Tribunal must set out:
  - Its findings on material questions of fact
  - a reference to the evidence or other material on which those findings were based

- Contrast s 62 Civil and Administrative Tribunal Act 2013 NSW which additionally requires the statement of reasons to include:
  - the Tribunal's understanding of the applicable law, and
  - the reasoning processes that lead the Tribunal to the conclusions it made.

- This does not suggest that the AAT is not required to set out these elements in any statement of reasons it provides – rather it reflects that which can reasonably be expected to be seen in an adequate statement of reasons.

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Material questions of fact

- The question of what constitutes findings on material questions of fact has been canvassed in various court jurisdictions

- Refer to decision of Justice Hill in Copperart Pty Ltd v FCT [93] ATC 4779 at 4781 in an AAT appeal case where his Honour said that the parties are:

  "entitled to know what evidence the Tribunal accepted and what evidence it took into account. Likewise, the parties are entitled to know what evidence the Tribunal rejected. Without this knowledge
the parties will have but an incomplete idea of the Tribunal’s process of reasoning and a lessened respect for the Tribunal’s decision-making process”.

- The cases make clear that when a Tribunal is faced with conflicting evidence it must give its reasons for accepting one version as well as for rejecting the conflicting evidence.

- However, it is a mistake to think that the Tribunal must deal with every piece of evidence placed before it or make factual findings in relation to each such piece of evidence.

- Mahoney J in Soulemezis v Dudley Holdings (1987) 10 NSWLR 247
  As long as the judge “apprises the parties of the broad outline and constituent facts of the reasoning” on which he/she has acted, he/she is not required to “detail the way in which he/she has reasoned step by step to his/her conclusion”.

- In what has tended to be the most oft quoted authority on the obligation to give reasons, Meagher JA in Beale v Government Insurance Office of New South Wales (1997) 48 NSWLR 430 at 443 specified the contents of an adequate statements of reasons as including that a judge is required:
  • to refer to relevant evidence;
  • to set out any material findings of fact and any conclusions or ultimate findings of fact reached;
  • express the reasons for making those relevant findings of fact and conclusions; and
  • provide the reasons for applying the law to the facts found.

- A concise summary of the obligation and need for a court to give reasons – which can apply mutatis mutandis to tribunal decision-making – is found in the recent Victorian Court of Appeal decision of Assad v Eliana Construction & Developing Group Pty Ltd [2015] VSCA 53 [31]-[38] (Redlich, Kyrou and McLeish JJA).

- Another useful summary of the qualities and attributes of the minimum requirements for a tribunal decision are found in South Bucks District Council v Porter [2004] UKHL 33 at [36]

- Applying this to a Tribunal such as the AAT, a member should not write a decision as if he/she is an appeal judge.

- The tribunal member must do more than merely recite the evidence and then state his or her findings. The member must also explain how it is that the evidence in question leads to the findings made.

- In Minister for Immigration and Multicultural Affairs v Yusuf (2001) 206 CLR 323, McHugh, Gummow and Hayne JJ emphasized that:
"A requirement to set out findings and reasons focuses upon the subjective thought processes of the decision-maker. What the Tribunal must do is "set out its findings on those questions of fact which it considered to be material to the decision which it made and to the reasons it had for reaching that decision".

- Similarly, the member cannot limit his or her judgment to a statement of conclusions which address the relevant legislative tests. The reasons must also identify the facts which support those conclusions.

- In some cases, it may be sufficient to expressly state the primary findings of fact, as the inferences arising from those findings will be implicit, or the consequences will speak for themselves.

The concepts of 'primary' findings and 'ultimate' findings of fact.
- After evidence is taken and weighed as to its relevance, accuracy and/or credibility, basic and essential primary facts are found.
- Then 'ultimate' facts are inferred from the basic facts, usually directed to the language of the relevant statute to which the decision relates.
- This is necessary because it is the application of statutory criteria to the facts that leads to the final operative decision.
- The distinction may often be largely one of degree but is particularly important when questions of appeal on a 'question of law' arise or where a Tribunal decision is otherwise amenable to judicial review.
- The process of drawing inferences from primary facts involves a process of reasoning which "permits of greater opportunity for the application of wrong legal principles": see G Flick "Error of Law or Error of Fact" (1987) WALR 193

Drawing this together what can we conclude about the form and structure of reasons for decision?

- Findings must be based on evidence.
- Directed to exposing the truth and relevance of that material.
- Disclosing a rational explanation for the conclusion arrived at.

Structure of Written Reasons for Decision

- no template but well structured decision would likely adopt all or most of the following:
  • Identification of Administrative Decision being reviewed
  • Jurisdiction to review the decision
- Powers on review

- Relevant legislative provisions

- Identification of issue or issues involved – right answer depends on right question

- What is in dispute/ what is not in dispute

  - Not a recitation of the evidence but sufficient reference to explain findings

  - Differentiate between primary facts (eg on 3 Sept 2008 the applicant flew a Robinson R22 from A to B; the applicant is a citizen of the People’s Republic of China etc) and “ultimate” facts (increased load at main rotor blade root fitting decreased the time to fatigue failure; the applicant was treated less favourably than a person of different citizenship would have been in comparable circumstances)

  - Where conflicting evidence there should be some explanation of why one version is preferred

  - Where credibility has played a part make credibility findings

### Arriving at the ‘preferable’ decision

- Identify legal principles and, if appropriate, policy considerations to be taken into account

- For any exercise of discretion identify:

  - Factors taken into account
  - Any factors given particular weight
  - Factors relied upon by a party but not taken into account

- Set out process of reasoning leading to a decision ie how the application of law to the facts as found leads to a result

A simpler approach could be:

- Introduction
- Identify salient issues – not the history of the litigation or administrative process
- Provide a succinct statement of areas agreed and disagreed and facts found with reference to supporting evidence
- Only essential detail
- Refer to terms of relevant statutory provisions - address the question posed by the legislation. In this the Tribunal must correctly approach the task of statutory construction.

A good example of a succinct appreciation of identifying the issues correctly and the applicable legislation appears in the opening paragraphs of the Tribunal’s decision in *The International Fund for Animal Welfare (Australia) Pty Ltd and Ors and Minister for Environment and Heritage and Ors [2005] AATA 1210* per DP Downes and two members:

**Introduction**

1. *Elephants have been held in captivity for more than 4,000 years. They have been used as beasts of burden and in warfare. For more than 200 years, they have been kept in zoological parks. However, community attitudes towards keeping wild animals in captivity have been changing. We must decide whether eight Asian elephants may be imported into Australia by Melbourne and Taronga Zoos.*

2. *Our decision is not at large. We must apply legislation which prescribes the circumstances in which animals such as elephants may be imported. These reasons will address a number of issues prompted by the legislation.*

3. *The critical issues are whether:*

   (i) the elephants are being imported “for the purposes of conservation breeding or propagation”;

   (ii) the zoos are "suitably equipped to manage, confine and care for the animals, including meeting the behavioural and biological needs of the animals";

   (iii) the importation of the elephants will "be detrimental to, or contribute to trade which is detrimental to ... the survival ... or ... recovery in nature of" Asian elephants; and

   (iv) the elephants were "obtained in contravention of, [or] their importation would ... involve the contravention of, any law". The facts of the case included findings that the elephants in question were to be exhibited as well as used for non-commercial breeding purposes. The case required the Tribunal to trace through some complex statutory provisions which, properly construed, meant that where an animal being imported was to be used in a breeding program it would be deemed to be imported for that program. In construing the legislation the Tribunal looked at the "substantial purpose" of the importation of the elephants – finding that that purpose was a breeding one notwithstanding the fact that elephants had not previously been successfully bred in Australia and part of the reasoning of the zoos in seeking to import the elephants was that they would likely attract and increase visitors to the Zoos.

- Read the whole of the Reasons for Decision of the Tribunal in this case
Adequacy of Reasons for Decision

- Decisions of the AAT are final unless set aside by the FC or FCC on appeal under s 44 of the AAT Act which limits the ground and ambit of appeal to "a question of law".

- But reasons of a tribunal are not to be scrutinised with an "eye keenly attuned to the perception of error": Minister for Immigration v Wu Shan Liang (1996) 185 CLR 259

- It is not easy to infer error merely from the absence of 'adequate' reasons: Leslie Gordon Dodds v Comcare Australia [1993] FCA 428; 31 ALD 690 per Burchett J

- Also see: Civil Aviation Safety Authority v Central Aviation Pty Ltd [2009] FCA 49 and [2009] FCAFC 137
  - A failure to state reasons for a decision in those circumstances where a statement of reasons is a requirement of the exercise of the decision-making process constitutes an error of law.

- How a tribunal approaches the fundamental tasks of fact-finding and analysis of evidence are critical to the determination of whether it has fallen into error.

- A global or general announcement by a Tribunal that it has considered all the evidence and reached a conclusion based on that evidence is not an adequate identification of reasons.

- Nor is it adequate for the Tribunal to merely recite every submission made to it without any analysis; it does not have to deal with every submission made but must deal with those submissions which address the salient or determinative questions:
  - See Hoskins v Repatriation Commission (1991) 32 FCR 443 at 448
  - Kandiah v Minister for Immigration [1998] FCA 1145
  - MarshallahKermanioun vComcare [1998] FCA 1529
  - Re Minister for Immigration; ex parte Palme (2003) 216 CLR 212 at 227
  - Also see: ARC reports and guidelines at: http://www.arc.ag.gov.au/Pages/default.aspx

- Administrative Review Best Practice Guide 4 – Decision Making; Reasons
Legislation conferring decision-making power safeguarded by implying the requirement into statutes and codes elsewhere eg. US due process.

Right to a hearing not constitutionally guaranteed.

Concept well recognized in treaties constitutions

Determination of his/her rights and obligations...

Independent and impartial tribunal in the

Everyone is entitled to a fair and public hearing by an

Art 10 UN Universal Declaration of Human Rights

LEC Course Outline - pp 33-37

4. Judicial Review - Procedural Fairness
Procedural Fairness/natural justice

CLR 550 @ 584
and immediate way: Kiko v. West (1985) 159
affect a person's rights or interests in a direct
procedures when making decisions which
encapsulates a duty to observe fair
not just the procedures followed in courts
attendant upon the exercise of public power
because it reflects a focus on all procedures
interchangeable terms but PF preferred.
utility of the safeguard in a given circumstance

The degree of procedural safeguard varies with the contexts

Varies according to the statutory and factual

The subject matter being dealt with

The rules under which the decision-maker is acting

The nature of the inquiry

Varying circumstances of the case: Misch

Chameleon-like concept – adapts to all of the

Variable content
v Pompano Pty Ltd (2013) 87 ALR 458

Directed to avoiding "practical injustice" Condron
requirements of 'fairness' in a procedural sense
flexible in accommodating contemporary
The two standards have proved remarkably
prejudgment
appearance of impartiality and the absence of
Rule against bias – ensure the objective
heard
Hearing rule – notice and opportunity to be
Two rules
provision in legislation

But the duty can be excluded by express interest, status or legitimate expectations,

way likely to affect an individual's rights,

common law whenever power is exercised in a construction or as a derivative aspect of the

The duty is implied as a matter of statutory

depend on express statutory provision

Duty to accord procedural fairness does not

Implication Principle
to a court (maj at [152])
the rules even in relation to their application
But legislation can validly exclude or modify
[2013] 87 ALJR 458 at [177]
the Constitution - per Gageler J in Pompano
(superseding court mandated by Chapter III of
An "immutable characteristic" of every
Proceedings
An essential characteristic of Judicial
The true intention of the legislation is thus ascertainable.

common law will supply the commission of the legislature.

construes the statute on the footing that the justice of the

principles of natural justice be observed, the court

- "When the statute does not expressly require that the

notions of justice and fairness.

Kioa v West - Brennan J explained that all statutes are

regulated the exercise of that power

Regulate the exercise of that power person's rights or interests, principles of natural justice

when a statute confers power to destroy or prejudice a

Annells v McCan - it can now be taken as settled that

Intention of Legislature Governs
of the legislative scheme of common law rights
be heard is usually dependent on the terms
decisions where the right to be consulted (to
Group Justice and Environmental and Planning

An aspect of individual justice rather than

or a class of the public
capacity as a member of the public Generally
Where a decision affects a person in his or her

contexts

If less likely to be implied in some
limits on implication

An individual pursuant to personal circumstances of
where the exercise of power is based on
a duty of an administrator to observe PF than
political considerations are less likely to attract
powers exercised by reference to policy or
[2004] FCA 1707
See McWilliam v Civil Aviation Safety Authority — it may in the circumstances reduce its content.
— Urgency cannot generally be allowed to exclude it.
But circumstances of urgency or emergency: boutique question is of its nature one to be exercised in
the rules may be excluded because the power in
here P may subsist but in truncated form.

Qualifications to implication principle.
FCR 505 – Blue book at pp 703/704

Jaffarine v Director General of Security (2014) 226

and what is 'sufficient' to accord PF

- But generally a question of the statutory context

- May displace a PF obligation

- National Security

Principle

Further qualifications to implication
(2010) 243 CLR 319

CT Plaintiff M61/2010E v Commonwealth

246 CLR 636

S10/2011 v Minister for Immigration (2012)

applicants, no breach of PF – Plaintiff

power in favour of unsuccessful Visa

consider the exercise of that discretionary

discretionary under the Migration Act refuses to

Minister with non-delegable personal

discretionary power

No duty to afford PF re exercise of
The correct approach is to look at “the character of the interests which the power is ‘apt to affect’.

HC has disavowed the concept and it should now be

substantive outcome rather than a procedural path

But the language generated a sense of “entitlement” to a

it will be continued may be endangered

the nature of the benefit or privilege, the expectation that

some undertaking or course of conduct or something about

Has facilitated the extension of PF to interests falling short

Concept of legitimate expectation
advisory report: Ainsworth v. CCC, Blute 687-688

a preliminary stage & an investigatory stage or to an

The variable content of PF may result in PF applying to

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preliminary stage would such injustice result? Red 84-

avoid, practical injustice? If PF is not accorded at a

But the question in every case is what is required to

process, viewed as a whole, accords PF.

Requirements of PF are ordinarily satisfied if the

stages.

Administrative decision-making can take place in

Stages at which PF required
*not exclude PF*
dismiss Dep Com of Police „at any time‟ did statutory provision enabling Governor to Commissioneer of Police (2005) 224 CLR 44 „intendment‟ are required: „arranty procedural fairness: „plain words of necessary disclose a positive, clear intention to exclude The axiomatic principle is that legislation must procedure or rights of appeal
Where statute provides a code of
inc. consistent with power of arrest
statutory power, it will be excluded: eg Pf is
But if Pf would defeat the purpose of the

241 CLR 252
See Saeed v Minister for Immigration (2010)
principles of Pf – Mich
was not sufficient to exclude the common law
(as at 1990) relating to procedural fairness
The concept of a “code” in the Migration Act

Codes
Major aspects of the hearing rule

- Despite notice as to possible adverse findings
- Sufficient time to prepare

Justice

- Giving of notice is a "cardinal principle of" public law
- Power is critically important
- Which an administrator exercises statutory
  framework or basis upon

Again, the statutory framework or basis upon

In a given circumstance?

What is required to avoid "practical injustice"
- The institutional setting or framework
  acting
- The rules under which the decision-maker is
  its subject matter
- The nature of the inquiry
  look at •
- Look at the nature of the inquiry
  procedures must be fashioned having regard •

Hearings rule
hearing be given

circumstances rather than when should a fair

Ask: What constitutes a fair hearing in these

legitimate or relevant considerations

permits/requirements to be taken into account as

the statute seeks to advance/protect or

purposes, whether public or private, which

interests of the individual

Take into account

Hearing Rule
Nature and potential consequences of decision

Subject matter

Legislative framework

Look at procedures

Hearing rule does not provide a standard set of circumstances of this particular case.

Ask is what does PF require in all the rules of PF apply? Rather the relevant question to observed presumption that PF must be
HCA 6

Re Minister for Immigration; Ex parte Lam [2003]

(2004) 211 ALR 660 cf Applicant NAF of 2002 v Minister for Immigration

Migration decision processes

Guide to the content of the contractual duty the rules of procedural fairness may provide a

Unfair departures from tendering processes

will be followed

Decision maker indicates processes that
- Cf Commissions of Inquiry

  a view of sentencing facts or principles
decision may be made – eg sentencing magistrate with
critical issue or factor on which adverse finding or

  Immigration (2005) 222 ALR 411
  Final decision is reached – VEA of 2002 v Minister for
  Must be addressed by the decision-maker BEFORE the
  Credibility or significance must be disclosed

  Not every adverse piece of information regardless of
  affected party – Khoa (subject to terms of legislation)
  Significant to the decision must be disclosed to

  Adverse material that is credible, relevant and

  Information

  Opportunity to respond to adverse
That opportunity be heard not that he/she took best advantage of.

Duty is to ensure party has a fair opportunity to not constitute waiver.

Absence on insistence on procedural rights will.

Minister for Immigration (2006) 230 CLR 486

With knowledge of the rights waived: ZAYW v.

The hearing rule if this is done voluntarily and

A person can waive the right to full observance of

Waiver of PF
Minister for Immigration v Li [2013] HCA 18

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SZEBEL v Minister for Immigration (2006) 231 ALR 653

Barrett v Howard [2000] FCA 190

79 ALR 1581 cf

Jarrett v Commissioner of Police for NSW (2005)

If so, decision will be set aside ensues

Court is looking to see if practical injustice

Rule

Consequence of breaches of hearing
Rule against Bias

preclude PF as a ground of appeal
bias of hearing can never be 'waived', so as to
rendering decision void (but questionable if
Unwaived bias is an error going to Jurisdiction
Flexible/variable content
Implied in the same way as the hearing rule
deicide without bias or the appearance of bias
Obligation to observe PF includes a duty to

Rule against Bias
Concerned with what a reasonable or fair-minded lay observer or informed bystander might perceive

Two questions:
- What is alleged to lead a decision-maker to decide a case otherwise than on the merits and the apprehended deviation from deciding the case fairly

Bias

Johnson v Johnson (2000) 201 CLR 488
Eraser v Official Trustee in Bankruptcy
The test: Webb v The Queen (1994) 181 CLR
At trial bias under the Briggs/chevron sliding scale
Apprehended bias is sufficient
Findings of actual bias are rarely made
Bias
Go to hell on your own bicycle

Give you as much rope as you like to hang your client

Bias toward a party/counsel

Gender bias

Religious bias

Prior association

Financial and non-financial associations

Bias
Look at Commissioner Heydon’s recusal ruling and invite parties’ submissions on any question of bias and invite parties’ submissions on any issue/connection.

Otherwise give notice of any issue/connection and excuse if there is - Self-disqualification.

Assess whether there is a logical connection between the ground and the decision to be made.

Prior to making decision consider if any potential bias for bias.

What should a decision-maker do?
Case to consider

Protocol was arguably more flexible than the Australian protocol.
Protocol issued by the US Federal Aviation Authority (FAA Protocol) but that
protocol addressed by the US Federal Aviation Authority. The protocol was based on an equivalent
trial unaccompanied flying by adopting stringent measures regarding blood
sugar control for T1D pilots, which included in a group deemed suitable to
medical certificate for T1D pilots who were included in a group deemed suitable to
(Protocol's Protocol), which contained specific requirements for the issue of a
medical certificate for T1D pilots. The removal of that condition was refused.
He sought a medical certificate without that condition.

- The CAA imposed a condition on his medical certificate enabling him to fly with a
  blood sugar level.
- He was diagnosed with T1D diabetes in 1986 when he was 22 years old. He had
  experience.
- He held a private pilot's license since 1984. He had more than 425 flying hours of

Since then the CAA issued a Protocol for T1D Diabetics Pilot Applicants.
said he relied on the FAA protocol. Protocol that had been published during the hearing. The lawyer wished to say anything further about the new version of the
The Tribunal member asked XY’s legal representative whether he
have met all criteria of the cohort with diabetes under the protocol.
an insulin pump to be included. It was not clear whether XY would
the Tribunal proceedings. It made some allowance for persons using
A final version of the FAA’s Protocol was issued during the course of
XY sought AAT Review.
him.

him.
to remove the condition. He wanted the FAA policy to be applied to
within the FAA policy when he challenged the CAA decision refusing
considered that he did not come within that policy but did come
XY was not considered suitable by CAA for the protocol Group. XY

Case problem
the safety pilot condition. Protocol but otherwise affirmed the decision to retain inclusion in the cohort of those who should trial the

Recommended that XY be considered favourably for with experts.

has been published followed extensive extensive consultation specific protocol for XY given that the CAA's protocol it would be inappropriate for the Tribunal, to devise a

Found that since the Authority has issued its protocol, XY's application.

accepted as applying in Australia and, therefore, to

Tribunal accepted that the CAA's protocol should be

Tribunal decision

Appeal

See CASA v OVENS – Full Federal Court

Should the Tribunal have adjourned the hearing?

Did the Tribunal have an obligation to draw attention to specific aspects of the policy to be considered?

What element of procedural fairness was implicated here?

XY appealed on a question of law – denial of

to enable XY to consider those aspects?
209 CLR 597

See Minister for Immigration v Bhargwaj (2002)

officio

What if the decision-maker discovers an

inadvertent denial of PF after purporting to

make the decision? Is the decision-maker functus

officio?

continently void? Blue 1072 - 2017

adминистriative decision-maker - invalid or

discovery error?

The effect of a breach of the hearing rule by an

jurisdictional error?

Was the Tribunal's decision infected with

Consequence of breach of PF
See Blue pp 1019 - 1021

Depending upon the particular statute, consequences of the decision, if any, will
all that it shows is that the legal and factual
whateversever
the decision having no consequences
on the part of a decision-maker will lead to
a universal proposition that jurisdictional error
cannot be taken to be authority for

Bhardwaj Implied implications
condition, the parties of holding void every act done in breach of the
matter and objects, and the consequences for the
by reference to the language of the statute, its subject
condition. The existence of the purpose is ascertained
invalidated any act that fails to comply with the
there can be discerned a legislative purpose to
whether it is depends upon whether
exercise of a statutory power is not necessarily invalid
an act done in breach of a condition regulating the
plenary said:
Authority (1998) 194 CLR 355 at 388-389 the
Project Blue Sky Inc v Australian Broadcasting

Consequence of failure to accord
a full hearing on the merits

applications made to the Tribunal proceeded to

Only a relatively small proportion of

management system

an important aspect of the AAT’s case

Alternative dispute resolution processes are

see notes for week 3 above

Overlaps with Decision Making in Tribunals –

LEC Course Outline – pp 38-43

5. Merits Review & Administrative Tribunals
decision in relation to the proceedings.

best endeavours to assist the Tribunal to make its
who made the reviewable decision must use his/her
This is enshrined in s 33(1AA) AAT Act - the person
the correct or preferable administrative decision.
maker must be to assist the Tribunal in its role to make
it follows that the interest of the primary decision-
becomes the operative decision-maker.
As the Tribunal stands "in the shoes" (or "behind the

proceedings

Role of the decision-maker in AAT
formulating the law setting the limits of power
ultimately determinable by the Legislature in
The legitimate scope is fixed but its content is
limited and governed the exercise of a repository’s powers
and enforcement of legal rules which determine the
justified by the role of the judiciary in the declaration
supervisory role
The duty and jurisdiction of the courts to exercise a
against which the Constitution was framed
An aspect of the rule of law which is an assumption

Judicial Review
commenced in the original jurisdiction of the HC may remit a matter that has been extended to the Federal Court by s 39b, Judicial

Act 1903 in terms similar to s 75(v)

the High Court

Executive Government may be reviewed by the Constitution provides that administrative acts of

Constitutional context and constitutional context

Administrative system must be viewed in its legal

Praerogative/Constitutional Writs
Griffith University v Tang (2005) 221 CLR 99

Whether in the exercise of a discretion or not proposed to be made under an enactment – Decisions of an administrative character made or

Statutory regimes – ADR Act

Has its origins in common law

Lawfulness of administrative action

Judicial review concerned with
The Courts provide remedies „to ensure that the courts which govern their exercise“: City of Enfield v Development Assessment Commission (1999) 199 CLR 135 at [56] per Gaudron J.

The law which governs the exercise of executive and administrative powers exercised them only in accordance with those possessed. The courts provide remedies „to ensure that the courts which govern their exercise“: City of Enfield v Development Assessment Commission (1999) 199 CLR 135 at [56] per Gaudron J.

The law which governs the exercise of executive and administrative powers exercised them only in accordance with those possessed. The courts provide remedies „to ensure that the courts which govern their exercise“: City of Enfield v Development Assessment Commission (1999) 199 CLR 135 at [56] per Gaudron J.

Aim of Judicial Review

Not to go beyond „the declaration and enforcing Executive General (NSW) v Quinn (1990) 170 CLR 1 Attorney-General (General) v Quinn (1990) 170 CLR 1 Attorney-General (General) v Quinn (1990) 170 CLR 1 Attorney-General (General) v Quinn (1990) 170 CLR 1 Attorney-General (General) v Quinn (1990) 170 CLR 1 Attorney-General (General) v Quinn (1990) 170 CLR 1 Attorney-General (General) v Quinn (1990) 170 CLR 1 Attorney-General (General) v Quinn (1990) 170 CLR 1 Attorney-General (General) v Quinn (1990) 170 CLR 1 Attorney-General (General) v Quinn (1990) 170 CLR 1 Attorney-General (General) v Quinn (1990) 170 CLR 1 Attorney-General (General) v Quinn (1990) 170 CLR 1
that which is already a nullity

certiorari only available as ancillary relief to clear

where a wrongful failure to exercise jurisdiction;

been a wrongful excess of jurisdiction; mandamus

jurisdictional error: prohibition where there has

Constitutitioal writs available to correct

commission [1969] 2 AC 147 at 171 per Lord Reid

Relected Anisminic v Foreign Compensation

Craig v South Australia (1995) 184 CLR 163

non-jurisdictional error maintained

Distinction between Jurisdictional and
underlying invalidity

granting relief to confirm or recognize that
power being without legal effect with the court
The breach results in a purported exercise of

consistute a condition of its valid exercise
that mark out a repository's power on which
A jurisdictional error is a breach of the legal rules

beyond jurisdiction

An error can be made within jurisdiction or

applied to an administrator

The notion of 'jurisdiction' is a broad one when

Jurisdictional Error
DECISION WHICH REFLECTS IT.

THIS IS JURISDICTIONAL ERROR WHICH WILL INVALIDATE ANY

AFFECTION.

BY WHICH THE TRIBUNAL'S EXERCISE OF POWER IS THEREBY

conclusion

— Makes an erroneous finding or reaches a mistaken

— Ignores relevant material or relies on irrelevant material

— Asks itself a wrong question

— Identifies the wrong issue

When:

Jurisdictional by exceeding its authority or power

An administrative tribunal falls into legal error that is

The Craig formula
terms in which a statutory power is conferred.
principles that require a close analysis of the
judicial review that has determined underlying
It is the focus on jurisdictiordinal error as a basis for
(2000) 204 CLR 82
323, Re Refugee Review Tribunal, Ex parte Ada
Minister for Immigration v Yussif (2001) 206 CLR
the list of which in Craig is not exhaustive:
je embraces a number of different kinds of error.

Jurisdictional Errors
The non-exhaustive list of
It is the formulation of that law which sets the limits and governs the exercise of an administrator’s powers. It is the formulation of that law, not the debate and litigation context that has given rise to much controversy.

Scope of Judicial Review
any Commonwealth statute –

Federal Court jurisdiction in all civil matters arising under

Judiciary Act, s 39B

Enacted in 1983 largely to relieve the High Court of the burden of case load in its original jurisdiction given concurrent jurisdiction with the High Court in most matters arising under

the Constitution (v) Const.

1997 by enactment of s 39B(1A) JA

Federal Court jurisdiction further extended in
otherwise reviewable under ADJR
potential avenue for review of decisions not
Can be wider than under ADJR and major
and the characterisation of the decision-maker
and the jurisdiction is dependent on type of relief sought
jurisdiction is sought against an officer of the Commonwealth
mandamus or prohibition or an injunction is
mandamus or prohibition or an injunction is
respect to a "matter" in which a writ of
The Federal Court has original jurisdiction with

Section 39B 1A
Jurisdiction over administrative action – Blue Judicial Review as a General "supervisory"

The Kerr Committee referred to Federal

Purpose of such a decision (s 6)

Which the Act applies (s 5) and conduct for the Federal Circuit Court to review decisions to

Confers Jurisdiction on the Federal Court and

Statute based system of Judicial Review

ADR Act
- Affect legal rights or obligations
- Authorised by an enactment
- Under an enactment

- Reviewable as they are not decisions of this character
- Subordinate legislation and judicial decisions are not of an administrative character

- Impact on rights/interests or just a step along the way
- Does the outcome of the decision have an adverse
  
  Ultimate or operative decision – ABT v Bond

What constitutes a reviewable decision – ADR Act
and the enactment?

— Is there a sufficient connection between the decision

— Is the decision in effect made under an enactment

— Principles applicable to statutory construction

The characterisation is dependent on the

need not be precisely stated — it may be implied

The power under which the decision is made

the authority of an enactment

If made in pursuance of an enactment or under

Under an enactment
Fairstness: a hearing that involves denial of procedural fairness.

Procedural not substantive & continuance of process has been conducted.

Look at the way in which decision-making reveals a flawed administrative process.

Administrative action preceding a decision.

Reviewable, conduct
Such a person may:

- apply for an order of review (ss 5, 6);
- request a statement of reasons for decision (s 13).

Public may have: Red p 181 beyond that which a general member of the includes someone whose grievance is under the ADR Act, s 5 standing is granted to persons aggrieved.

Person 'aggrieved'
Where a statute specifically excludes ADR review

Where matters of national security

tax assessments, or decisions on specific sensitive
already provides a review or appeal mechanism

— generally those where constant litigation legislation

Decisions listed under Schedule 1

Decisions of the Governor-General

Decisions excluded from ADR review
Grounds of Review

- Otherwise contrary to law
- No evidence
- Fraud
- Error of law
- Improper exercise of power
- Substantive ultra vires
- No jurisdiction
- Procedural ultra vires
- Breach of rules of natural justice (PF)

To some extent codifies common law grounds of...
and enforce the jurisdictional limits of the power.

The courts in granting relief do no more than recognise
legal effect.

A breach of such a law results in a purported exercise of power being without jurisdiction and thus without
improper use of power.

A breach of the limits of that power.

search for and declare the limits of an administrator's power - to
govern the exercise of an administrator's power - to
identify the law which determines the limits and
jurisdiction in courts.

It is for the Legislature to set the limits of any
jurisdiction.

Overview of the JR Framework
decision-maker against whom that relief is sought. The jurisdiction of the Federal Court under s 39B IA enables
character
Commonwealth statutory decisions of an administrative
review, making those grounds applicable to most
with some modifications the traditional grounds of
procedural reform by replicating
that power and the conditions of its valid exercise.
stand as to the limits that govern the exercise of an
The traditional grounds of review are linked by a common

Overview (cont)