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Topic 6: Illegality, Unreasonableness and Breach of Human Rights

1. Illegality: Improper Exercises of Power – Overview

Simple ultra vires (also called narrow ultra vires) is a legal doctrine meaning "beyond the powers". It occurs when a public body, government official, or corporation acts completely outside the scope of the legal authority granted to them by statute or its governing documents. Actions exceeding this granted authority are considered unlawful and void.

Under the *Administrative Decisions (Judicial Review) Act 1977* (Cth) (**ADJR Act**), **s 5(1)(e)** and **s 6(1)(e)** establish that a decision can be reviewed on the ground that it was an "improper exercise of the power conferred by the enactment." This is expanded in **s 5(2)**, which codifies several discrete common law grounds of review. This section focuses on the three most heavily litigated grounds:

- **s 5(2)(c)**: Exercise of power for an unauthorized/improper purpose.
- **s 5(2)(a)**: Taking an *IRRELEVANT CONSIDERATION* into account.
- **s 5(2)(b)**: *FAILING TO TAKE A RELEVANT CONSIDERATION* into account.

1.1 The s 5(2) ADJR Act List

Principle / Rule: Legislation was interpreted as permitting administrative detention of non-citizens in limited circumstances — illustrating that Parliament CAN, through sufficiently clear express language, override fundamental rights such as freedom from arbitrary detention, notwithstanding the principle of legality.

NZYQ v Minister for Immigration, Citizenship and Multicultural Affairs (2023) 97 ALJR 1005

Principle / Rule: A unanimous High Court applied *Chu Kheng Lim* to overturn *Al-Kateb v Godwin* (2004) 219 CLR 562, holding indefinite administrative detention (where there is no real prospect of removal becoming practicable) is constitutionally impermissible.

6. The Human Rights Act 2019 (Qld) and Government Accountability

Passed in 2019 (commenced 1 January 2020), the **HRA** makes Queensland the third Australian jurisdiction to adopt human rights legislation.

6.1 The Operational Framework: The Dialogue Model

The HRA utilises the "**Dialogue Model**", which balances human rights protection with **Parliamentary Sovereignty**:

- **Parliament is Sovereign:** The HRA is an ordinary Act of Parliament. Parliament can intentionally pass legislation that is incompatible with human rights.
- **No Invalidation Power:** Courts cannot strike down or invalidate laws that are incompatible with human rights. Instead, they can only issue a **Declaration of Incompatibility (s 53)**, which alerts the Attorney-General and forces a parliamentary response, but does not affect the validity of the law.

6.2 Rights Covered and Who Holds Them

- **Individuals Only:** Human rights belong strictly to **individuals** (natural persons) in Queensland; corporations do not have human rights (s 11).
- **The Rights:** Protects 23 distinct rights (ss 15-37), primarily civil and political (e.g., right to life, freedom of movement, fair hearing, taking part in public life), alongside two socio-economic rights (education and health services).

6.3 Limitations on Rights/Permissible Limitations – s 13 Proportionality Test

Rights are not absolute: s 13(1) permits reasonable limits, prescribed by law, that are demonstrably justifiable in a free and democratic society based on human dignity, equality and freedom. Section 13(2) sets out a proportionality-style checklist:

- (a)-(b): identify the right(s) limited, and the nature/purpose/importance of the limitation;
- (c): is there a rational connection between the limitation and its purpose?
- (d): is the limitation strictly necessary, or is there a less restrictive, reasonably available alternative?
- (g): overall balancing – does the importance of the limiting purpose outweigh the importance of preserving the right, given the nature/extent of the limitation?

6.4 Public Entity Obligations – s 58

One of the most powerful aspects of the HRA is s 58(1), which places a **two-pronged obligation** on all "public entities": (1) act and make decisions compatibly with human rights, and (2) give proper consideration to relevant human rights when making decisions.