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Note: In Qld, s 4(b) extends this to certain non-statutory schemes, creating a key structural difference from the federal regime.

3.1 CONSTITUENT ELEMENT 1: "DECISION" AND "CONDUCT"

The statutory scheme distinguishes reviewable **decisions** (s 20 Qld JR Act / s 5 ADJR Act) from preparatory **conduct** (s 21 Qld JR Act / s 6 ADJR Act).

Australian Broadcasting Tribunal v Bond

Facts: The ABT inquired whether to suspend/condition broadcasting licences held by Bond-controlled companies, based on allegations Bond (1) caused settlement of a defamation claim by the Qld Premier for \$400,000 (against an alleged real liability of ~\$50,000) and tried to conceal this, and (2) threatened an AMP executive with damaging media coverage. The statute required the Tribunal to determine if the licensee companies were "fit and proper persons"; the Tribunal reasoned: Bond not fit and proper → Bond controlled the companies → companies not fit and proper → (ultimate decision on licences, not yet made). Bond sought ADJR Act review of the Tribunal's finding that he personally was not a fit and proper person.

Held: The determination that Mr Bond was not a fit and proper person was NOT a reviewable "decision" – it was merely a step along the way to the (not yet made) ultimate decision about the companies' licences. By contrast, the determination that the companies were not fit and proper persons WAS a reviewable decision, because the Broadcasting Act specifically provided for that determination.

Principle / Rule: Mason CJ's approach: (1) "decision" is not confined to a final decision resolving the whole controversy (the ADJR Act is remedial, doesn't say "final", and declaratory relief can extend beyond ultimate decisions) – BUT (2) it must still have "the character or quality of finality" – a determination effectively resolving an actual, substantive issue (quoting Deane J in Director-General of Social Services v Chaney (1980) 47 FLR 80, 100). Support for a limiting construction: s 6-equivalent (deeming reports/recommendations to be decisions) would be otiose unless "decision" itself imported some finality; and s 8-equivalent ("conduct") would be otiose if any preparatory step were reviewable as a "decision". (3) Two competing policies: convenient/effective redress for aggrieved persons vs protecting the efficient administration of government – an overly generous reading of "decision" risks fragmenting and frustrating administrative processes. (4) Formula: a reviewable decision must be "provided for by or under a statute" and will generally (not always) be final/operative and determinative, at least practically, of the issue for consideration; "[a] conclusion reached as a step along the way" is not ordinarily a reviewable decision unless the statute itself provides for a ruling on that intermediate point. A reviewable decision must also be a substantive determination (contrasted with procedural determinations, e.g. granting/refusing an adjournment). (5) "Conduct" is procedural, not substantive – an attack on conduct challenges proceedings before the decision, not the decisions made as part of that process (except to the extent procedural decisions precede the challenged conduct).

Underlying rationale: avoid applicants fragmenting/frustrating administrative decision-making by challenging intermediate substantive steps in the reasoning process via judicial review. A general discretion to dismiss premature proceedings exists (s 14 JR Act in Qld) but the High Court in Bond evidently thought this discretion, alone, was not a sufficient safeguard.

The Substantive vs. Procedural Boundary:

1. **The Meaning of "Decision":** A reviewable "decision" must be **final, operative, and determinative** of the issue of fact, at least in a practical sense. It must be a **substantive determination** that effectively resolves an actual substantive issue, rather than a mere procedural ruling (such as granting or refusing an adjournment).
2. **Intermediate Steps:** A conclusion reached as an intermediate step along the course of reasoning leading to an ultimate decision is **not** a reviewable decision *unless* the statute itself expressly or impliedly provides for the making of a specific interim finding/ruling on that point (rendering it a "decision under an enactment").
3. **The Meaning of "Conduct":** "Conduct" is strictly **procedural** in character and refers to the action or proceedings engaged in *before and for the purpose of* making the reviewable decision. It points to action taken (the process), not intermediate substantive conclusions.

- The Federal Court and Federal Circuit and Family Court do the reviewing (ss 8, 3 ADJR Act); State courts cannot review Commonwealth power (s 9 ADJR Act, subject to s 3/Sch 3).

A.3 Relationship with Other Modes of Review

The ADJR Act does NOT abolish the common law/equitable remedies (s 10 ADJR Act). The Federal Court retains jurisdiction to grant prerogative writs, declarations and injunctions via s 39B Judiciary Act 1903, s 32(1) Federal Court Act 1976, and its accrued jurisdiction (R v Cook; ex parte Twigg (1980) 147 CLR 15, 25-26, 32-34; cf R v Brown; ex parte Federated Clerks' Union (1984) 154 CLR 207, 211). Where there is doubt about the ADJR Act's applicability, applicants are advised to plead both the ADJR Act and s 39B in the alternative (Federal Court Rules r 31.01). Since the mid-2000s (linked to migration review changes), s 39B applications have significantly increased relative to ADJR Act applications, and are now often pleaded cumulatively with an ADJR Act claim.

The 2012 Administrative Review Council Report (No 50) did not recommend repealing the ADJR Act but recommended significant amendments, notably incorporating s 75(v)-style review into the Act (not yet implemented).

A.4 Right to Reasons – s 13 ADJR Act

At common law there is no general right to reasons for administrative decisions. Under s 13 ADJR Act, a person who fits within its terms (and whose decision was made under a Commonwealth enactment) has an enforceable right to a statement of reasons and the material on which the decision was based – complemented by ss 24, 27 Administrative Review Tribunal Act 2024 and the Freedom of Information Act 1982 (Cth).

B. The Queensland Judicial Review Act 1991

The JR Act (in force 1992) responded to concerns similar to those behind the ADJR Act, catalysed by the Fitzgerald Royal Commission (1989), which found existing judicial mechanisms for challenging administrative decisions "quite limited" and reliant on "extremely cumbersome" procedures, and recommended establishing the Electoral and Administrative Review Commission (EARC). EARC's 1990 report recommended Queensland adopt legislation modelled closely on the ADJR Act; the Queensland Parliament did so via Parts 3 (grounds/procedure) and 4 (right to reasons) of the JR Act.

B.1 Three Additional Points about the JR Act

- It only authorises legality review, not merits review (Qld Attorney-General, Hansard 26 Nov 1991; Hoffman v Queensland Local Government Superannuation Board [1994] 1 QdR 369, 370).
- It reviews State government power (or spending State/local government money) – s 4, s 3 ("enactment"), s 14E Acts Interpretation Act 1954 (Qld).
- The Supreme Court of Queensland does the reviewing (s 19; "Court" defined in s 3). Guidance can be drawn from ADJR Act case law (EARC Report, 42); s 16(1)-(2) and Sch 3 JR Act provide that differently worded but equivalent provisions should not be read as expressing different ideas merely because of different drafting.

B.2 Key Structural Difference: Common Law Remedies

Unlike the ADJR Act (which leaves prerogative writs/declarations in place, s 10), the JR Act draws the historical remedies into its own Part 5 ("Application for Review", s 43) alongside Part 3 ("Statutory Order of Review", s 3). The two types of application can be combined (Uniform Civil Procedure Rules r 568) – coordination is arguably more transparent in Queensland than federally, where s 39B does not specifically mention certiorari and the scope of "officer of the Commonwealth" has generated its own case law (Vietnam Veterans' Association of Australia NSW Branch Inc v Cohen (1996) 70 FCR 419, 431-433; SAAP v Minister for Immigration (2005) 228 CLR 294; Plaintiff M61/2010E v Commonwealth (2010) 243 CLR 319, [51], leaving open whether an independent contractor is an "officer of the Commonwealth").

Note also: Part 4 JR Act (right to reasons) is tied to reviewability under s 20 (Part 3) – NOT to Part 5.