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THE SCOPE OF JUDICIAL REVIEW

The readings in this chapter each concern questions connected to the issue of whether particular decisions or decision-makers can be subject to the courts' judicial review jurisdiction. That is, the questions raised relate to the 'scope' or 'reach' of judicial review. These questions cannot be answered without first grasping what it is that judges do when exercising their judicial review function. The first reading, from *Attorney-General (NSW) v Quin*, goes to the heart of judicial review's function as it is conceived within the Australian constitutional framework. In that case, Brennan J made a series of observations about the appropriate scope and function of judicial review that have reached seminal status in Australian administrative law. The issues traversed by Brennan J—in particular his insistence that 'the merits of administrative action, to the extent that they can be distinguished from legality, are for the repository of the relevant power and, subject to political control, for the repository alone' [(1990) 170 CLR 1, 36] —bear directly upon the value judgments involved in asking questions about the proper scope of judicial review.

As explained in *Principles of Administrative Law* (*PAL)* 2.2, judicial review is different from a typical appeal insofar as judges cannot, in general, substitute their own decision for that of the original decision-maker. Further, as the quote from *Quin* emphasises, judges are said to be limited to questions of 'legality' and as such are not entitled to consider the 'merits' of decisions. Although these ideas can only be fully appreciated and evaluated after looking at the more particular grounds on which administrative decisions can be judicially reviewed, the extract from *Quin* helps to put the larger picture in place. Another early and important Australian case, *Green v Daniels* (extracted in Chapter 4), is also especially helpful in illustrating the application of these basic ideas.

The focus of the next three extracts, *Australian Broadcasting Tribunal v Bond, Griffith University v Tang* and *NEAT Domestic Trading*, is on the scope of judicial review under statutory schemes of review, the most important being the Commonwealth *Administrative Decisions (Judicial Review) Act 1977* (Cth). In terms of general impact on the application of the *ADJR Act*, perhaps the most significant case is *Bond*. The foundational interpretive exercise undertaken in that case has in large part set the boundaries of review under the *ADJR Act* through the construction given to the threshold terms 'decision' and 'conduct' in sections 5 and 6 respectively of that Act (for discussion, see *PAL* 2.5.1.1).

The cases of *Tang* and *NEAT* have generated much discussion and controversy, partly because, although directly addressing the threshold criteria for accessing judicial review

under the *ADJR Act*, they may also have implications for the scope of judicial review under the 'constitutional' and 'common law' sources of jurisdictions for judicial review (see *PAL* 2.4 and 2.6.1). Part of the interest in *Tang* and *NEAT* is that they provide interesting examples of judges' thinking about the reach of judicial review in the context of decisions or decision-makers which are arguably not appropriately subjected to administrative (that is, 'public') law norms, but which are nonetheless implicated, often centrally, in governmental activities. As Kirby J put the point in his dissenting judgment in *NEAT* [(2003) 216 CLR 277, 300], the 'question of principle' presented in such cases is whether the decisions and other activities of private entities given functions under legislation are accountable according to the norms and values of public law, or are 'cut adrift from such mechanisms of accountability'.

The final extract, presented under the heading 'Judicial Review and the Public/Private Distinction', is the leading judgment in the famous (for some, notorious) English *Datafin* case. This case demonstrates the willingness of English courts to consider a 'functional' approach to carving out administrative law's territory, namely, a focus on whether the decision-maker exercises a 'public' power or function. The question of whether a function is public thus determines whether it should be subject to the norms of administrative law. *Datafin* is thought by many to symbolise this so-called 'functional turn' in English law, even if it leaves many questions unanswered (see further, *PAL* 2.6.1). But, as explained in *PAL* 2.6.1, no consensus has been reached as to whether the *Datafin* principle represents the common law of Australia. The High Court's original (and constitutionally entrenched) jurisdiction under s 75(v) to engage in judicial review is limited to matters in which particular named remedies are sought against an 'officer of the Commonwealth': the 'institutional' flavour of this language might itself be thought to limit the extent to which the reach of judicial review in Australia will be conceived in functional terms. Still, the approach taken in *Datafin* is frequently raised by Australian courts when faced with the question of whether judicial review jurisdiction should extend to the supervision of non-statutory or otherwise non-state entities whose decisions affect a large section of the population or domain of regulatory activity. Given changes in the administrative state that are reflected in such practices as contracting-out of public service delivery to private actors, or the conduct of other kinds of governmental activity through partnerships between public and private actors, we can only expect this question to become more pressing in the future. Above all, therefore, the extract from *Datafin* is offered as food for thought.

THE MERITS/LEGALITY DISTINCTION

Attorney-General (NSW) v Quin

(1990) 170 CLR 1

High Court of Australia

This extract reproduces statements by Brennan J on the merits/legality distinction, and the scope of judicial review more generally, that have attained seminal status in Australian administrative law.

Attorney-General (NSW) v Quin *continued*

READING QUESTIONS

1 How does Brennan J understand the duty of the courts when exercising their supervisory jurisdiction over administrative action?

2 Why does Brennan J regard limitation of the scope of judicial review to the 'legality' and not 'merits' of administrative action to be so important to the legitimacy of the courts?

3 How important is the authority of Parliament to Brennan J's conception of the proper scope of judicial review?

4 Note that at one point in the extract Brennan J defends the doctrine of '*Wednesbury* unreasonableness' as remaining appropriately within the legality/merits distinction. After studying the 'norm' or 'ground' of judicial review now referred to as 'legal unreasonableness', you might reflect upon the following question: does Brennan J's defence of 'unreasonableness' as properly within the preserve of 'legality' review still hold?

[Following concerns about fitness for office, Mr Quin and four other magistrates were not appointed to a new magistrates court system established under the Local Courts Act 1982 *(NSW). In* Macrae v Attorney-General (NSW) *(1987) 9 NSWLR 268 the magistrates succeeded before the NSW Court of Appeal in arguing that they had been denied procedural fairness in the processes leading up to their non-appointment under the new scheme. Soon after that decision, the Attorney-General announced a policy of appointing magistrates by merit selection, as contrasted with an earlier policy that existing magistrates be reappointed unless considered unfit for judicial office. Mr Quin was not reappointed under the new policy, and successfully sought a declaration from the NSW Court of Appeal that his reappointment be determined in accordance with the earlier policy. The Attorney-General appealed to the High Court, who by majority found allowed the appeal and set aside the declaration.*

The following extract omits discussion of another issue of importance to the case, namely, the operation of the doctrine of 'legitimate expectations' in relation to the duty to afford procedural fairness in the making of administrative decisions. The rise and demise of 'legitimate expectations' is traced in Chapter 4 of this volume [see especially Kioa v West, Minister for Immigration and Border Protection v WZARH, *and* Plaintiff S10*].*

BRENNAN J: [35] … The question can be put quite starkly: when an administrative power is conferred by the legislature on the executive and its lawful exercise is apt to disappoint the expectations of an individual, what is the jurisdiction of the courts to protect that individual's legitimate expectations against adverse exercises of the power? I have no doubt that the answer is: none. Judicial review provides no remedies to protect interests, falling short of enforceable rights, which are apt to be affected by the lawful exercise of executive or administrative power. If it were otherwise, the courts would be asserting a jurisdiction, in protection of individual interests, to override the law by which a power to affect those interests is conferred on the repository.

Judicial review has undoubtedly been invoked, and invoked beneficially, to set aside administrative acts and decisions which are unjust or otherwise inappropriate, but only when the purported exercise of power is excessive or otherwise unlawful. To say that the doctrine

Attorney-General (NSW) v Quin *continued*

of ultra vires defines the scope of judicial review is too restrictive, although Mr Beatson has pointed out that:

> Ultra vires is … both a powerful constitutional justification for judicial control and a useful organizing principle for the creation of a coherent subjectww from what has sometimes appeared to be a 'wilderness of single instances'. ('The Scope of Judicial Review for Error of Law' (1984) 4 *Oxford Journal of Legal Studies*, 22.)

The essential warrant for judicial intervention is the declaration and enforcing of the law affecting the extent and exercise of power: that is the characteristic duty of the judicature as the third branch of government. In *Victoria v. The Commonwealth and Hayden* (1975) 134 CLR 338, at p 380, Gibbs J. said that the duty of the courts extends to pronouncing on the validity of executive action when challenged on the ground that it exceeds constitutional power, but the duty extends to judicial review of administrative action alleged to go beyond the power conferred by statute or by the prerogative or alleged to be otherwise in disconformity with the law. The duty and the jurisdiction of the courts are expressed in the memorable words of Marshall C.J. in *Marbury v. Madison* (1803) 1 Cranch 137, at p 177 (5 US 87, at p 111):

> It is, emphatically, the province and duty of the judicial department to say what the law is.

The duty and jurisdiction of the court to review administrative **[36]** action do not go beyond the declaration and enforcing of the law which determines the limits and governs the exercise of the repository's power. If, in so doing, the court avoids administrative injustice or error, so be it; but the court has no jurisdiction simply to cure administrative injustice or error. The merits of administrative action, to the extent that they can be distinguished from legality, are for the repository of the relevant power and, subject to political control, for the repository alone.

The consequence is that the scope of judicial review must be defined not in terms of the protection of individual interests but in terms of the extent of power and the legality of its exercise. In Australia, the modern development and expansion of the law of judicial review of administrative action have been achieved by an increasingly sophisticated exposition of implied limitations on the extent or the exercise of statutory power, but those limitations are not calculated to secure judicial scrutiny of the merits of a particular case.

There is one limitation, '*Wednesbury* unreasonableness' (the nomenclature comes from *Associated Provincial Picture Houses Ld. v. Wednesbury Corporation* (1948) 1 KB 223), which may appear to open the gate to judicial review of the merits of a decision or action taken within power. Properly applied, *Wednesbury* unreasonableness leaves the merits of a decision or action unaffected unless the decision or action is such as to amount to an abuse of power: *Nottinghamshire County Council v. Secretary of State for the Environment* (1986) AC 240, at p 249. Acting on the implied intention of the legislature that a power be exercised reasonably, the court holds invalid a purported exercise of the power which is so unreasonable that no

Attorney-General (NSW) v Quin *continued*

reasonable repository of the power could have taken the impugned decision or action. The limitation is extremely confined. As Professor Wade explains (Administrative Law, 6th ed (1988), p 407) in a passage cited with approval in *Reg. v. Boundary Commission; Ex parte Foot* (1983) QB 600, at p 626:

> The doctrine that powers must be exercised reasonably has to be reconciled with the no less important doctrine that the court must not usurp the discretion of the public authority which Parliament appointed to take the decision. Within the bounds of legal reasonableness is the area in which the deciding authority has genuinely free discretion. If it passes those bounds, it acts ultra vires. The court must therefore resist the temptation to draw the bounds too tightly, merely according to its own opinion. It must strive to apply an objective standard **[37]** which leaves to the deciding authority the full range of choices which the legislature is presumed to have intended.

If it be right to say that the court's jurisdiction in judicial review goes no further than declaring and enforcing the law prescribing the limits and governing the exercise of power, the next question immediately arises: what is the law? And that question, of course, must be answered by the court itself. In giving its answer, the court needs to remember that the judicature is but one of the three co-ordinate branches of government and that the authority of the judicature is not derived from a superior capacity to balance the interests of the community against the interests of an individual. The repository of administrative power must often balance the interests of the public at large and the interests of minority groups or individuals. The courts are not equipped to evaluate the policy considerations which properly bear on such decisions, nor is the adversary system ideally suited to the doing of administrative justice: interests which are not represented as well as interests which are represented must often be considered. Moreover, if the courts were permitted to review the merits of administrative action whenever interested parties were prepared to risk the costs of litigation, the exercise of administrative power might be skewed in favour of the rich, the powerful, or the simply litigious.

Some advocates of judicial intervention would encourage the courts to expand the scope and purpose of judicial review, especially to provide some check on the Executive Government which nowadays exercises enormous powers beyond the capacity of the Parliament to supervise effectively. Such advocacy is misplaced. If the courts were to assume a jurisdiction to review administrative acts or decisions which are 'unfair' in the opinion of the court—not the product of procedural unfairness, but unfair on the merits—the courts would be assuming a jurisdiction to do the very thing which is to be done by the repository of an administrative power, namely, choosing among the courses of action upon which reasonable minds might differ: see *Secretary of State for Education and Science v. Tameside Metropolitan B.C.* (1977) AC 1014, at p 1064, and *Council of Civil Service Unions v. Minister for the Civil Service* (1985) AC 374, at pp 414-415. The absence of adequate machinery, such as an Administrative

Attorney-General (NSW) v Quin *continued*

Appeals Tribunal, to review the merits of administrative acts and decisions may be lamented in the jurisdictions where the legislature has failed to provide it, but the default cannot be made good by expanding the function of the courts. The courts—above all other institutions of government—have a duty to uphold and apply the law which **[38]** recognizes the autonomy of the three branches of government within their respective spheres of competence and which recognizes the legal effectiveness of the due exercise of power by the Executive Government and other repositories of administrative power. The law of judicial review cannot conflict with recognition of the legal effectiveness of the due exercise of power by the other branches of government.

If judicial review were to trespass on the merits of the exercise of administrative power, it would put its own legitimacy at risk. The risk must be acknowledged for a reason which Frankfurter J. stated in *Trop v. Dulles* (1958) 356 US 86, at p 119:

> All power is, in Madison's phrase, 'of an encroaching nature.' … Judicial power is not immune against this human weakness. It also must be on guard against encroaching beyond its proper bounds, and not the less so since the only restraint upon it is self-restraint.

[…]

CONSTITUTIONAL REVIEW

Plaintiff M68/2015 v Minister for Immigration and Border Protection

[2016] HCA 1

High Court of Australia

This case involved a constitutional challenge to the legality of arrangements between the Australian government and the state of Nauru for the offshore processing of asylum seekers. As part of explaining the nature and scope of executive government under the *Constitution*, Gageler J discussed the relationship between the Executive and the Judiciary reflected in sections 75(iii) and 75(v) of the *Constitution.*

READING QUESTIONS

1 Do sections 75(iii) and 75(v) of the *Constitution* serve similar purposes?

2 What motivated the inclusion of section 75(v) in the *Constitution*? How does Gageler J understand the role given to the High Court under s 75(v)?

[After explaining the relationship between Executive and Legislative power in Chapters I and II of the Constitution, *Gageler J continued:]*

Plaintiff M68/2015 v Minister for Immigration and Border Protection *continued*

GAGELER J: [123] The Executive Government having been so subordinated to the Parliament, the relationship between the Executive Government of the Commonwealth and the federal Judicature was then spelt out in Ch III of the Constitution. Section 75(iii) entrenched original jurisdiction in the High Court in all matters 'in which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party'. Section 75(v) went on in addition to entrench original jurisdiction in the High Court in all matters 'in which a writ of Mandamus or prohibition or an injunction is sought against an officer of the Commonwealth'.

[124] The purpose of s 75(iii), as Dixon J observed, 'was to ensure that the political organization called into existence under the name of the Commonwealth and armed with enumerated powers and authorities, limited by definition, fell in every way within a jurisdiction in which it could be impleaded and which it could invoke' [*Bank of New South Wales v The Commonwealth* (1948) 76 CLR 1 at 363]. The term 'Commonwealth', Dixon J pointed out, while '[i]t is perhaps strictly correct to say that it means the Crown in right of the Commonwealth', has in s 75(iii) the meaning of 'the central Government of the country' understood in accordance with 'the conceptions of ordinary life' [(1948) 76 CLR 1 at 362–3. See also FW Maitland, 'The Crown as Corporation' (1901) 17 *Law Quarterly Review* 131 at 140, 143]. The term was used in s 75(iii) to encompass the totality of what is established by Ch II as the Executive Government of the Commonwealth, and the jurisdiction conferred by s 75(iii) was expressed so as to cover the enforcement of actionable rights and liabilities of officers and agencies in their official and governmental capacity, when in substance they formed part of or represented the Commonwealth [(1948) 76 CLR 1 at 367].

[125] The inclusion of s 75(iii) in the Constitution involved a rejection of any notion, which might otherwise have been drawn from the common law principle then still prevailing in England that the monarch could 'do no wrong', that the Executive Government of the Commonwealth was to enjoy immunity from suit for its own actions or for the actions of its officers or agents [*Werrin v The Commonwealth* (1938) 59 CLR 150 at 167–8; *Bank of New South Wales v The Commonwealth* (1948) 76 CLR 1 at 367; *The Commonwealth v Mewett* (1997) 191 CLR 471 at 549–50]. The inclusion of s 75(iii) had the consequence of exposing the Commonwealth from its inception to common law liability, in contract and in tort, for its own actions and for actions of officers and agents of the Executive Government acting within the scope of their de facto authority [*James v The Commonwealth* (1939) 62 CLR 339 at 359–60; Cf *Little v The Commonwealth* (1947) 75 CLR 94 at 114]. Any exclusion of actions of the Executive Government from common law liability was to result not from the existence of a generalised immunity from jurisdiction but through the operation of such substantive law as might be enacted by the Parliament under s 51(xxxix) [*Werrin v The Commonwealth* (1938) 59 CLR 150 at 165. Eg *Mutual Pools & Staff Pty Ltd v The Commonwealth* (1994) 179 CLR 155] or under another applicable head of Commonwealth legislative power.

[126] The purpose of s 75(v), as Dixon J put it, was 'to make it constitutionally certain that there would be a jurisdiction capable of restraining officers of the Commonwealth

Plaintiff M68/2015 v Minister for Immigration and Border Protection *continued*

from exceeding Federal power' [*Bank of New South Wales v The Commonwealth* (1948) 76 CLR 1 at 363]. It was, in particular, to safeguard against the possibility of s 75(iii) being read down by reference to United States case law so as to exclude a matter in which a writ of mandamus was sought against an officer of the Executive Government [*Ah Yick v Lehmert* (1905) 2 CLR 593 at 608–9. See also *Re Refugee Review Tribunal; Ex parte Aala* (2000) 204 CLR 82 at 92]. The purpose was to supplement s 75(iii) so as to ensure that any officer of the Commonwealth acted, and acted only, within the scope of the authority conferred on that officer by the Constitution or by legislation. Its effect was also to ensure that an officer of the Commonwealth could be restrained by injunction from acting inconsistently with any applicable legal constraint even when acting within the scope of the authority conferred on that officer by the Constitution or by legislation [*Church of Scientology v Woodward* (1982) 154 CLR 25 at 57, 64–5].

[127] The conception of an officer of the Commonwealth was held at an early stage not to be confined to a person holding executive office under Ch II of the Constitution: so as to encompass judicial and non-judicial officers of courts established by the Parliament under Ch III of the Constitution [*R v Commonwealth Court of Conciliation and Arbitration; Ex parte Whybrow & Co* (1910) 11 CLR 1; *R v Commonwealth Court of Conciliation and Arbitration; Ex parte Brisbane Tramways Group Ltd* (1914) 18 CLR 54] as well as holders of independent statutory offices established in the exercise of legislative power under Ch I of the Constitution [*Re Cram; Ex parte NSW Colliery Proprietors' Association Ltd* (1987) 163 CLR 117 at 127–8]. Section 75(v) is nevertheless at its apogee in its application to Ministers and other officers of the Executive Government [*Victoria v The Commonwealth and Hayden* (1975) 134 CLR 338 at 380].

[128] The overall constitutional context for any consideration of the nature of Commonwealth executive power is therefore that, although stated in s 61 of the Constitution to be vested in the monarch and to be exercisable by the Governor-General, the executive power of the Commonwealth is and was always to be permitted to be exercised at a functional level by Ministers and by other officers of the Executive Government acting in their official capacities or through agents. It is and was always to involve broad powers of administration, including in relation to the delivery of government services. Its exercise by the Executive Government and by officers and agents of the Executive Government is and was always to be susceptible of control by Commonwealth statute. And its exercise is and was always to be capable of exposing the Commonwealth to common law liability determined in the exercise of jurisdiction under s 75(iii) and of exposing officers of the Executive Government to writs issued and orders made in the exercise of jurisdiction under s 75(v). In 'the last resort' it is necessarily for a court to determine whether a given act is within constitutional limits [*Victoria v The Commonwealth and Hayden* (1975) 134 CLR 338 at 380, quoting *Attorney-General (Vict) v The Commonwealth* (1935) 52 CLR 533 at 566].

[…]

THE BOUNDARIES OF THE *ADJR ACT*

Australian Broadcasting Tribunal v Bond

(1990) 170 CLR 321

High Court of Australia

This leading case on the interpretation of the *ADJR Act* saw the High Court give meaning to the terms 'decision' and 'conduct engaged in for the purpose of making a decision' in sections 5 and 6 respectively. The case came to the High Court on appeal from the Full Court of the Federal Court of Australia.

READING QUESTIONS

1 How does Mason CJ reach the conclusion that the meaning of the term 'decision' should ordinarily be regarded as signalling a decision which is 'final and operative'?
2 How does Mason CJ understand the idea of a decision being 'made under an enactment'?
3 Are you persuaded by his Honour's treatment of the 'policy considerations' relevant to the proper construction of the term 'decision'?
4 What is 'conduct' within the meaning of section 6 of the *ADJR Act*?

[The Broadcasting Act 1942 *(Cth) empowered the Australian Broadcasting Tribunal to conduct inquiries into whether a commercial broadcasting licensee was a 'fit and proper person' to continue to hold a broadcasting licence. The Tribunal commenced such an inquiry into licensee companies controlled by Mr Bond. Among the reasons for the inquiry was an incident in which Mr Bond had made a payment of $400,000 in settlement of a defamation action brought by the then premier of Queensland, Sir Joh Bjelke-Petersen, against a television station that Mr Bond had acquired, and which he described in a television interview as necessary in order to 'do business in Queensland'.*

During the course of its inquiry the Tribunal published a statement called 'Decision on Facts' which recorded its conclusion that the allegations against Mr Bond had been proved, and that it did not consider Mr Bond or the companies he controlled to be 'fit and proper persons' to hold broadcasting licences under the Act. The Tribunal also indicated that, in light of these findings, it would consider whether to take action against the licensees. At this point, Mr Bond and his companies commenced proceedings in the Federal Court under the Administrative Decisions (Judicial Review) Act 1977 (ADJR Act) *to challenge the findings. Mr Bond alleged that the tribunal's 'Decision on Facts' contained 11 'decisions' and seven instances of 'conduct' that contained legal errors amenable to review under sections 5 and 6 respectively of the ADJR Act.*

As stated by Mason CJ, Mr Bond's challenge raised fundamental question 'as to the limits of the jurisdiction of the Federal Court under the ADJR Act *to review conclusions, including findings of fact, which constitute elements in the chain of reasoning leading to the ultimate administrative decision or order which is the subject of the application for review' [at 328]. On the question of the proper construction to be given to both terms, Mason CJ said the following:]*

Australian Broadcasting Tribunal v Bond *continued*

MASON CJ: [334]

Ambit of Judicial Review under the *ADJR Act*

The *ADJR Act* provides, inter alia, for judicial review of 'a decision to which this Act applies' (s.5) and 'conduct (engaged in) for the purpose of making a decision to which this Act applies' (s.6). The expression 'decision to which this Act applies' is defined in s.3(1) to mean 'a decision of an administrative character made … (whether in the exercise of a discretion or not) under an enactment, other than a decision by the Governor-General or a decision included in any of the classes of decisions set out in Schedule 1'. There is no definition of the central term 'decision'.

Section 3(5) of the *ADJR Act* provides that 'conduct engaged in for the purpose of making a decision' includes 'the doing of any act or thing preparatory to the making of the decision, including the taking of evidence or the holding of an inquiry or investigation'. Further, s.3(2) states that a reference to the making of a decision includes a reference to:

(a) making, suspending, revoking or refusing to make an order, award or determination;
(b) giving, suspending, revoking or refusing to give a certificate, direction, approval, consent or permission;
(c) issuing, suspending, revoking or refusing to issue a licence, authority or other instrument;
(d) imposing a condition or restriction;
(e) making a declaration, demand or requirement;
(f) retaining, or refusing to deliver up, an article; or
(g) doing or refusing to do any other act or thing.

[335] It is not disputed in the present case that the Tribunal's decision that the respective licensees were no longer fit and proper persons to hold their licences was a 'decision of an administrative character made … under an enactment', namely, s.88(2)(b)(i) of the Act. However, the remaining 'decisions' of the Tribunal are the subject of contention. These include the 'decision' that Mr Bond would not be found to be a fit and proper person to hold a licence.

(1) Meaning of 'Decision'

The definition in s.3(1) does not elucidate significantly the meaning of the word 'decision' as it is used in the *ADJR Act*. It is clear that a 'decision to which this Act applies' must be a decision of an administrative character, that it may be made in the exercise of a discretion, and that it must be made under an enactment. But these characteristics provide little guidance as to the meaning of the word 'decision' upon which the definition in s.3(1) is based.

The word has a variety of potential meanings. As Deane J. noted in *Director-General of Social Services v. Chaney* [(1980) 47 FLR 80 at 100], in the context of judicial or administrative proceedings it ordinarily refers to an announced or published ruling or adjudication. In such a context, the word may signify a determination of any question of substance or procedure or, more narrowly, a determination effectively resolving an actual substantive issue. Even if it has that more limited meaning, the word can refer to a determination whether final or intermediate or, more narrowly again, a determination which effectively disposes of the matter in hand: see *Chaney*, at 100.