



## Chapter 13

# The Relevancy Grounds in Environmental and Administrative Law

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The relevancy grounds are at the heart of judicial review and the identification of jurisdictional error. They are the first two of the nine types of improper exercise of power identified in s 5(2) of the *Administrative Decisions (Judicial Review) Act 1977* (the ADJR Act), namely “taking an irrelevant consideration into account in the exercise of a power” and “failing to take a relevant consideration into account in the exercise of a power”. We refer to them as the relevancy grounds for ease of use and to acknowledge our debt to the analysis of the grounds in M Aronson and M Groves, *Judicial Review of Administrative Action*, 5th ed, Thomson, 2013, [5.20]-[5.190].

In many respects the law concerning the relevancy grounds is well established and understood. The purpose of this paper is simply to identify and comment upon some particular issues that have been involved in recent decisions of the courts in matters of environmental law, in particular, and administrative law generally.

There is perhaps one respect in which recent authority provides an opportunity to consider the relevancy grounds from a broader perspective. Courts determining judicial review cases have frequently commented upon the overlap between differently expressed grounds of review. The recognition of that fact is, like much of the common law of judicial review, reflected in the terms and application of s 5(1) and (2) of the ADJR Act. The overlap reflects, of course, that the grounds are different aspects of a single concern with the requirement of the law that statutory power is confined by and is to be exercised only in accordance with the statute, which requires the interpretation of the terms of its grant in the context of the subject matter, scope and purpose of the statute.

Judicial review on relevancy grounds has long been considered to involve two aspects of the correction of the “abuse of power” or “improper exercise of power” by the repository of that power. In *Minister for Immigration and Citizenship v Li* [2013] HCA 18; 297 ALR 225, the Chief Justice indicates that “reasonableness” and “rationality” are other descriptions by which to organise some of the core grounds of judicial review. As to rationality, the Chief Justice states that decisions made by reference to irrelevant considerations, or in disregard of mandatory relevant considerations, “fall outside the framework of rationality provided by the statute”



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