LAWS2201
Administrative Law
1st Semester 2010

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Question 2
74/100
(i) Rocky could pursue his claim in the Federal Court. Rocky could try the ADJR Act. The decision to impose conditions is clearly of an administrative character as it affects his licence. It is required by the Act and it is substantive. The power to impose conditions comes from the statute [✓]. Otherwise, under s 75(v) or s 39B, Rocky could try to bring an action, but only for JE. The power to make conditions is for the purposes of the CFL Act, not the HS Act. The Minister seems to have misunderstood his function as he is applying the conditions in regards to the wrong (other) statute. S 30 is in the HS Act, not the CFL Act. S 30 of the HS Act has specifically provided for another means to influence things like licences granted under other statutes [✓ ✓]. The Minister is given the specific power to make regulations to do things like impose different obligations on such licence holders. 
Fishing within 50 km of the Concordia to preserve a shipwreck isn’t relevant to the CFL Statute. The CFL’s purpose is to preserve fishing stocks, financial viability etc. In fact, whilst the CFL Act is there to secure the fishing industry, the HS Act acts against that, limiting its ability to operate. The Minister is taking into account the wrong statute [But a broad discretion?].

Procedural fairness
Clearly, his licence has been personally affected. He has had a condition imposed, based on a completely different Act. He had no way to expect another statute would dictate his licensing conditions [Good-too brief]. Clearly his interests have been affected significantly. However, he has already applied for compensation. There is already a relevant provision under the HS Act to allow him to get compensation. He has made an application and this application probably already included all his detrimental information. There is probably nothing else he could add.

Can he challenge the regulations under s 39B/s 75(v)?
The Regulations under s 30 are there to implement the purposes of the Act. The Act specifically considers the limitation of access to the immediate vicinity [✓ V. G.] of the site (s 5). 50km is not an immediate vicinity. The Governor General seems to be using the power in s 30 to implement regulations with legislative-type effect through the statute instead of through the normal legislative processes. He is trying to get around the normal steps for legislating. The power in s 30 is not for this and the statute specifically does not allow for huge exclusion zones. Under the ADJR Act, such an action would fail as the making of regulations is of a legislative character [✓].

(ii) The AAT section only relates to ss 5, 15 and 16. It could change the amount of payment Rocky received as it can undertake merits review.
An ombudsman can take up complaints that would come under merits review and JR. However, 70-80% of cases are rejected [So?]. However, the majority of complaints made refer to people
complaining that the decision-maker was rude, so there is scope that decisions that are truly detrimental would have an arguably achievable chance of success.

(iii)

Standing
This is an organisation that is of a broad marine environment protection purpose. However, its case is stronger than ACF as it has been involved in the particular area for several years. It is not funded by the Government like North Coast Environmental Council was which may make its case weaker. However, as it fundraises from the public, it does seem to have community recognition which has been considered as aiding the finding of standing [cf RTL].

‘Political motivation’ could be an irrelevant consideration. Political motivation is not particularly relevant to the issuing of licences [✓].

(iv)

Procedural fairness
Was clearly affected in immediate way as his licence is being challenged (Kioa). The information received was not from him; it was from an organisation not covered by the statutory regime. He could not have expected the information to be used in this way (Miah). Also, the Minister does not even seem sure whether the explosives have been used improperly. He said: ‘explosives may have been improperly used’.

In this case, procedural fairness could have been reduced to nothing under s 16. But the Minister is allowed to immediately suspend conditions, not licences [✓].

In Miah, the situation was one of life and death. Here, there would probably be a stricter approach taken on the availability of procedural fairness principles because such a life/death situation is not present [✓].

(v)

Is the declaration void because the area was entered into the register after 28 days?
PBS-look at intention. The statute (s 10) specifically provides a timeframe to register the information. The section is also expressed in mandatory language. Furthermore however, the registration is the only way people will be able to know whether an area has been declared. The fact that people can be charged with a criminal offence simply for being in the area with certain objects would suggest that breach of s 10 was intended to lead to invalidity. The register is the only way people can know if they are in the area and therefore committing an offence [✓].

Does the fact that the wreck was found 50 years ago and therefore not declared in the proper way mean that the declaration is invalid?

The statute (s 4) specifically provides separate procedures to be followed depending on the age of the wreck. If the wreck is 40-75 years old then the Minister is required to undergo a whole extra process of public consultation [✓]. However, although that points towards JE, there is also an aspect of the section that points towards non-JE [Enfield, JF].

It is unlikely that a decision (whether something is of historic interest or not) would have been intended to result in jurisdictional error. Unlike in Enfield, here, the factual finding is for the
Minister’s belief. It is not based on any sort of definition of what “historic interest” could mean. It is unlikely the legislature would have intended for such a finding to result in jurisdictional error. The legislature itself would not have known what the standard of “historic interest” would have even been according to the Minister’s views. “Historic interest” is not something set in stone [Confused, but some useful points]. Ruth can bring a claim under s 75(v) or s 39B if she can prove a JE.

Ruth can bring these actions without showing that she has standing. As the Attorney General always has standing, this means that when he gives his fiat to Ruth, she has his standing and does not need to prove her own.

The ratification of the new Protocol

ADJR Act
The decision to ratify is an administrative decision. The act of ratification itself is not a legislative move. The decision to draft regulations however, would be a legislative act and could not be reviewed. The decision is substantive as it is the act of recognition of international law. However, it would be difficult to show that it is a final decision. It is not even operative, as legislatures can legislate without any need to have an international protocol. The decision to ratify also does not come from the enactment but from the Minister’s prerogative powers. Under s 75(v) or 39B, however, Ruth doesn’t have to fulfil these requirements. She just needs to show a JE.

Procedural Fairness
The Minister has ratified a Protocol without previously consulting the industries like he always had.

Are the industries affected in a significantly different way to others (Kioa)? The consultation had only related to the affected industries. Furthermore, 50km in exclusion is very burdensome.

However, although there would be specific industries affected, perhaps the fact that consultation had extended to industries potentially affected as well would mean the interest group affected would be too broad. Otherwise, as rights have clearly been affected in a major way and the government has previously consulted these people, they would be entitled to have