

# AUSTRALIAN JOURNAL OF ADMINISTRATIVE LAW

Volume 11, Number 3

May 2004

## AWARD OF COSTS IN ADMINISTRATIVE PROCEEDINGS

**Enid Campbell and Matthew Groves**

Courts are granted wide powers to make orders of costs. In most judicial proceedings an order for costs is made as a matter of course when proceedings conclude. The law and practice of administrative proceedings is different. Many administrative tribunals have no power to award costs to parties to proceedings before them. Some tribunals are granted power to award costs, subject to clear limitations. This article examines the circumstances in which costs may be awarded in administrative proceedings before courts and tribunals. The article also examines general principles relevant to the grant of a power to award costs in administrative proceedings, and issues relevant to particular forms of administrative proceedings such as disciplinary and arbitral tribunals. The influence of discretionary considerations in the award of costs, such the influence of right of appeal, is also considered. The final part of this article examines alternatives to awards of costs in administrative proceedings ..... 121

## THE ADMINISTRATIVE DECISIONS (JUDICIAL REVIEW) ACT AND “UNDER AN ENACTMENT”: CAN NEAT DOMESTIC BE RECONCILED WITH GLASSON?

**Graeme Hill**

When a non-Commonwealth body makes a decision for the purposes of Commonwealth legislation, the legal accountability of the decision-maker at the federal level will depend on whether the decision is made “under an enactment” for the purposes of the *Administrative Decisions (Judicial Review) Act 1977*. This article seeks to reconcile the apparently conflicting approaches to this question taken by the High Court in *Glasson* and *NEAT Domestic*. A decision is always made “under an enactment” if the Commonwealth Act confers power to make the decision. If the Commonwealth Act only gives legal effect to a decision, the decision will still be made “under” the Act if federal administrative law obligations can be sensibly accommodated with the decision-maker’s other obligations. That construction of “under an enactment” is consistent with the constitutional basis of the *Administrative Decisions (Judicial Review) Act*. Issues of constitutional power will only arise when the Commonwealth Act does not confer power on a decision-maker... 135

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Editorial inquiries:

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### HEAD OFFICE

100 Harris Street PYRMONT NSW 2009

Tel: (02) 8587 7000 Fax: (02) 8587 7100



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ISSN 1039-3293

Typeset by Lawbook Co., Pyrmont, NSW  
Printed by Ligare Pty Ltd, Riverwood, NSW