

---

# Index

## Volume 14

---

- Access to justice, 71–72 *see also* Lawyers, access to  
    open justice, 72
- Act of state doctrine, 176–177
- Administrative policies, application of *see* Land and Environment Court (NSW)
- Administrative power, 168–169
- Apprehended bias, 117
- Australia-United States Free Trade Agreement *see* Procurement decisions
- Australian Broadcasting Corporation  
    freedom of information exemption for “program material” *see* Freedom of information
- Australian Journal of Administrative Law  
    farewell to Richard Tracey, 5  
    future directions, 5  
    new cover, 6  
    submission of contributions, 6, 175  
    welcome to Damien Cremean, 6
- Bias, apprehended, 117
- Commercial disputes  
    access to justice, 166–167
- Constitutional writs, 145–157
- Costs  
    access to justice, 163–165
- Counsel  
    reasons for refusing silk, 115–116
- Courts *see also* Land and Environment Court (NSW)  
    self-representation, 177  
    tribunals as, 175–176
- Cross-examination  
    limiting, 71–72  
    rule in *Browne v Dunn*, 71
- Discrimination test, 202–215  
    Australia, 212–214
- Canada, 202–208
- England, 210–211
- Ireland, 211–212
- New Zealand, 208–210
- Errors of law  
    judicial review, 76–85
- Freedom of information  
    Australian Broadcasting Corporation’s exemption for “program material” (*ABC v UTS*), 55–65  
    ACIJ request & context, 56–57  
    application to “developmental material”, 63–65  
        impact on ABC & SBS of confining exemption narrowly to “program material”, 64–65  
    decision of AAT, 57–58  
    decision of Federal Court: construction of s 7(2) & Pt II, Sch 2, 58–60  
    differing views in Federal Court about meaning of “program material”, 60–61  
    meaning of “program material” & inclusion of ABC’s exemption in Sch 2, 61–63  
    privacy and, 73–75
- Gender-based persecution *see* Sexual & gender-based persecution
- General Editor  
    farewell to Richard Tracey, 5  
    welcome to Damien Cremean, 6
- Government procurement *see* Procurement decisions
- Human trafficking *see* Sexual & gender-based persecution
- Illogicality *see* Irrationality or illogicality
- International relations

## Index

---

- act of state doctrine, 176–177
- non-justiciability, 176–177
- International treaties *see* Teoh's case
- Irrationality or illogicality *see also* Discrimination test
- judicial review, 76–85
- Wednesbury unreasonableness and, 95–99
- Judges *see* Judicial officers
- Judicial officers
  - state of the judicature, 118–125
    - accountability, 122–123
    - appointment & retention of judges, 121–122
    - court process, 120–121
    - international relations, 124–125
    - judicial leadership, 124
    - judicial training & professional development, 123–124
    - size & structure, 118–120
- Judicial review *see also* Wednesbury unreasonableness
  - quality of decision-maker's decision, 76–85
    - application of quality review, 81–83
    - Australian Retailers case, 83–85
    - merits, 78–81
    - quality review, 76–78
  - sexual & gender-based persecution, 107–109
    - cumulative application of Convention grounds in trafficking context, 109
- Lam's case *see* Teoh's case
- Land and Environment Court (NSW)
  - application of policy by merits review, 38–54
    - environmental impact assessment, 43–44
    - merits review norms for applying policy, 50–54
      - fundamental element or focal point, 51–52
      - merits review norms, 52
      - principles applied to s 79C(1), 53–54
    - morality & amenity, 44–47
      - Land & Environment Court, 45–47
      - Land & Valuation Court, 45
  - policies & the LEC, 47–50
    - numerical standards & development assessment, 48–50
    - weight to policies in judicial review, 48
  - Zhang v Canterbury City Council, 40–43
    - Court of Appeal, 41
    - further consideration by LEC, 42–43
    - in LEC, 40–41
    - policies & lack of evidence of impacts, 43
    - remittal to LEC, 42
- Lawyers, access to, 158–167
  - commercial disputes, 166–167
  - contribution of lawyers, 159–160
  - costs, 163–165
  - economic prosperity, 162–163
  - proportionality, 165–166
  - reality law, 159
  - rule of law, 161–162
  - social order, 160–161
- Legal representation
  - self-representation, 177
- Legitimate expectation *see* Teoh's case
- Local government
  - application of policies *see* Land and Environment Court (NSW)
- Magistrates *see* Judicial officers
- Merits of a case
  - judicial review, 76–85
- Merits review *see* Patents
- Natural justice *see also* Teoh's case
  - apprehended bias, 117
- Non-justiciability, 176–177
- Open justice, 72
- Patents
  - merits review of application, grant & validity decisions, 178–195
  - reports on, 181–189
- Persecution *see* Sexual & gender-based persecution

- Policies, application of *see* Land and Environment Court (NSW)
- Privacy  
     freedom of information and, 73–75
- Procurement decisions (Cth), review mechanisms for, 7–21  
     Australia-US Free Trade Agreement, Art. 15.11  
     implementation of Art 15.11, 12–20  
         external review, 14  
         internal review, 12–14  
         ongoing effects, 20  
         process, 19–20  
         remedies, 14–19  
     implementation of Ch 15, 11–12  
     improving compliance, 20–21  
     predicted effect, 9  
     procedures, 8–9  
         external review, 8  
         internal review, 8  
         ongoing effects, 9  
         process, 8–9  
         remedies, 8  
     side letter, 11  
     US tender challenge system, 9–10  
         external review, 10  
         internal review, 10  
         ongoing effects, 10  
         process, 10  
         remedies, 10  
     role of review, 7–8
- Property rights  
     origin of, 196–201
- Proportionality  
     access to justice, 165–166
- Queen’s counsel  
     reasons for refusing silk, 115–116
- Refugees *see* Sexual & gender-based persecution
- Rule of law  
     access to justice, 161–162
- S20/2002 irrationality *see* Irrationality or illogicality
- Self-representation, 177
- Senior counsel  
     reasons for refusing silk, 115–116
- Sexual & gender-based persecution  
     assessing asylum claims in trafficking context, 106–107  
     definition of “trafficking”, 106  
     refugee protection, 106–107  
     Convention grounds, 103–105  
         particular social groups, 105  
         persecution by non-state agents, 103–104  
     forms of sexual & gender-based violence, 103  
     judicial review of administrative decisions, 107–109  
         cumulative application of Convention grounds in trafficking context, 109  
     refugees  
         administrative decision-making, 102–110
- Standing  
     justification for standing requirements, 23–25  
     necessity for rules for purpose, 26–34  
         legal incentives & disincentives, 29–34  
             abuse of process, 33–34  
             costs, 29–31  
             substantive issues, 31–33  
         non-legal disincentives: illogic of collective action, 26–29  
     need for rules, 34–37  
     sufficiency of rules for purpose, 34  
     uses of rules (1980–2006), 22–37
- Substantive unfairness *see* Teoh’s case
- Teoh’s case, 126–144  
     considered government response: reforms to treaty making process, 133–134  
     immediate government response: express executive statements, 131–133  
     Lam’s case, 134–142  
         doubts cast over legitimate expectation, 135–136  
         equitable concepts in administrative law, 138  
         Kirby J’s view in NAAF case, 140–142

## Index

---

- requirements of natural justice, 136–138
  - specific criticisms of Teoh's case, 134–135
  - substantive unfairness, 138–140
  - response to, 131
  - Tracey, Richard
    - farewell to, 5
  - Trafficking *see* Sexual & gender-based persecution
  - Tribunals
    - as courts, 175–176
    - self-representation, 177
  - United States Free Trade Agreement *see* Australia–United States Free Trade Agreement
  - Unreasonableness *see* Wednesbury
    - unreasonableness
  - Unrepresented parties, 177
  - Wednesbury unreasonableness *see also* Discrimination test
    - judicial review, 76–85
    - legislative reform, 86–101
    - recent cases, 116–117
    - scope of, 86–101
      - accepted test, 86–87
      - ARC Discussion Paper's claims, 87–91
        - academic papers, 88–89
        - case law, 90–91
        - duty to inquire, 87–88
        - empirical study, 89–90
        - role of Wednesbury
      - unreasonableness, 100–101
    - distinction between legality & merits, 91–93
    - fact finding, 93–95
    - illogicality or irrationality, 95–99
    - principles of application, 99–100
  - Writs *see* Constitutional writs
-