

# AUSTRALIAN JOURNAL OF ADMINISTRATIVE LAW

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## ARTICLES

### **Review mechanisms for Commonwealth procurement decisions and Article 15.11 of the Australia-United States Free Trade Agreement – Elizabeth Carroll**

Article 15.11 of the Australia-United States Free Trade Agreement requires the parties to provide a comprehensive system of review for government procurement decisions. Despite a side letter between the parties stating that the Federal Court of Australia and the Supreme Courts of the States and Territories offer external review mechanisms which satisfy Art 15.11, existing approaches do not fully implement the provision's requirements. An assessment of Commonwealth procedures for review of procurement decisions demonstrates that reform of processes, both internal and external to government agencies, is necessary to ensure compliance with Art 15.11. Consequently, Australia's implementation of Art 15.11 may be the subject of attention in the biennial review of Ch 15. .... 7

### **Uses of standing rules 1980-2006 – Roger Douglas**

Standing rules persist despite judicial reservations about their potential for interfering with the rule of law. This article examines judges' justifications for the continued role of standing rules, and then, on the basis of an analysis of higher court standing cases decided between 1980-2006, considers the degree to which standing rules are necessary and sufficient for the achievement of those purposes. It argues that standing rules are rare, that they are almost never conclusive as to the outcome of administrative law cases. But standing rules do sometimes filter out cases which otherwise would have proceeded to trial. Most would probably not have resulted in a finding in the plaintiff's favour, but some would. Standing rules therefore involve sacrificing the rule of law, and the protection of individual and corporate interests at the expense of collective interests. On the other hand, they may contribute to expeditious decision-making and the protection of defendants from the costs occasioned by unmeritorious litigation. The weight to be attached to these conflicting considerations will vary by context, and this is reflected in the diversity of statutory standing regimes, and in judicial decisions which often seem to reflect legislative policies. .... 22

**Policy, morality and the Land and Environment Court – *Andrew Edgar***

The application of administrative policies by merits review tribunals is one of the most significant, controversial and recurring issues in Australian administrative law. Whereas the literature has focused on the way federal tribunals apply policies, there has been little examination of State tribunals, in particular the tribunals that have jurisdiction for development appeals. In New South Wales, the primary case for applying council policies by the Land and Environment Court is *Zhang v Canterbury City Council* (2001) 51 NSWLR 589; 115 LGERA 373 where Spigelman CJ stated that policies are to be the fundamental element or focal point of the assessment. This article examines the *Zhang* litigation as a case study that highlights particular difficulties relating to policy, morality and merits review in the context of development assessment. .... 38

**The ABC's FOI exemption for "program material" in the Federal Court – *Ron Fraser***

A recent decision of the Federal Court has endorsed a very wide scope for the specific exemption of the Australian Broadcasting Corporation (ABC) from the Freedom of Information Act 1982 (Cth) in relation to its "program material". The article argues that the decision was wrong in its construction of the relevant provisions, which should be read to exempt only documents that constitute program material and not also documents relating to program material. If that is accepted, the meaning of "program material" becomes critical and is examined in the light of the exemption's legislative history which indicates that the core meaning of those words refers to the ABC's actual programs. On both those grounds, the material in issue in this case, concerning complaints to the ABC, could not be exempt under the ABC's specific exemption. The article considers briefly whether on balance the proposed narrow reading of the exemption is likely to be detrimental to the ABC. .... 55

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