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Litigating questions of quality – *Greg Weeks*

There are some grounds of judicial review which inherently lead the court to consider questions of the quality of the decision-maker's decision. The most prominent of these are review for *Wednesbury* unreasonableness and S20/2002 irrationality or illogicality. These grounds of review require careful application to avoid reviewing the merits of a case. The *Australian Retailers* case demonstrates another difficulty with quality review – that of what detail should be allowed in the evidence both supporting and rebutting the alleged error of law. This article provides a brief examination of the nature of quality review, followed by an examination of the approach used by Weinberg J in *Australian Retailers*. The article also suggests a method by which judicial review for issues of quality can serve its intended purpose – to catch rare and absurd decisions – without becoming unduly time-consuming or, worse, degenerating into merits review.

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Scope of *Wednesbury* unreasonableness: In need of reform? – *Elizabeth Carroll*

The Administrative Review Council's Discussion Paper entitled, *The Scope of Judicial Review*, was published for the purpose, in part, of identifying judicial review grounds requiring legislative limitation. The Discussion Paper described *Wednesbury* unreasonableness as having "expanded over time to become more onerous and open-ended". This article assesses the Administrative Review Council's claims, first, on the basis of material in the Discussion Paper and, secondly, in the context of *Wednesbury* unreasonableness decisions delivered since the publication of the Discussion Paper. While *Wednesbury* unreasonableness has a degree of flexibility, examination of case law indicates that its scope of operation is limited. The ground should not be the subject of legislative reform, because this would undermine the function of *Wednesbury* unreasonableness to allow courts to intervene in relation to extremely irrational decisions to which other grounds of judicial review do not apply.

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Administrative decision-making in the sexual and gender-based persecution context – Udara Jayasinghe

The new wave of refugees arriving in Australia from the Middle East, Africa and Asia has seen many women claiming sexual and gender-based persecution. This form of violence is socially and culturally constructed as it is inflicted on a woman because of her sex and/or gender and the associated discrimination or vulnerability that exists within a given community. To be a refugee under the Refugees Convention, an applicant must establish that she has suffered sexual and gender-based persecution due to one of the prescribed Convention grounds of race, religion, nationality, political opinion and membership of a particular social group. In the absence of a separate ground of “gender”, Australian courts have considered sexual and gender-based persecution claims under the existing Convention grounds. The essential elements of sexual and gender-based persecution claims exist within the varying cultural and social contexts of the claimant. Determining all the defining attributes of a sexual and gender-based persecution claim is therefore a challenge for administrative decision-makers. This article will first identify the nature and various forms of sexual and gender-based violence. Secondly, it will discuss how claims arising as a result of such violence (including claims in the trafficking context) have been considered under the refugee definition. Finally, using the example of a trafficked woman, the substantive aspects of gender persecution claims and the difficulties presented to administrative decision-makers due to the social and cultural considerations surrounding these forms of persecution will be discussed. 102

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