

# AUSTRALIAN JOURNAL OF ADMINISTRATIVE LAW

Volume 15, Number 4

August 2008

## EDITORIAL

<b>Veteran's entitlements: Revision needed</b> .....	177
<b>Self-represented parties: Failing to call evidence</b> .....	179
<b>A tribunal informing itself</b> .....	179

## RECENT DECISIONS – *Dr Damien J Cremean*

<b>Miriani v Commissioner of Polic, NSW Police</b> (Freedom of Information) .....	181
<b>Worldwide Enterprises Pty Ltd v Silberman</b> (Applications Filed in Victorian Civil and Administrative Tribunal) .....	182
<b>SZLQG v Minister for Immigration &amp; Citizenship</b> (Migration) .....	182
<b>Medical Board (WA) v A Practitioner</b> (Medical Practitioners) .....	183
<b>Pazios v Pulteney Grammar School</b> (Equal Opportunity) .....	184

## ARTICLES

### **Consultation: One aspect of procedural propriety in administrative decision-making** – *Hon Justice Brian J Preston*

Consultation by an administrative decision-maker with the public generally or with particular persons can be utilised to allow participation, and an opportunity to be heard, in the decision-making process. This article provides an overview of recent cases, especially in the United Kingdom, on the ways in which a duty to consult might arise and, when it does, the content of the duty to consult. .... 185

### **Freedom of information implications of information sharing networks for critical infrastructure protection** – *Bill Lane, Stephen Corones, Susan Hedge and Dale Clapperton*

Protection of “critical infrastructure” has become a major issue for governments worldwide. Yet in Australia, as in many other countries, including the United States, an estimated 90% of critical infrastructure is privately owned or operated commercially – in other words, critical infrastructure protection is not the exclusive domain of government. As a result, information sharing between government and the private sector has become a vitally important component of effective risk management. However, establishing effective arrangements of this kind between the public and private sector needs to take account of existing regimes of access and public disclosure which relate to government-held documents; in particular, that which is established by freedom of information (FOI) legislation. This article examines the extent to which the current Commonwealth FOI regime is likely to act as an impediment to the private sector operators of critical infrastructure participating in government-operated information sharing arrangements. By

examining developments in other jurisdictions, principally the United States, the article considers whether amendments to the current Australian FOI regime are necessary to ensure effective participation, consistent with the underlying object and purpose of FOI. ....	193
---	-----

**Sexual and gender-based persecution and tribunal decision making: Challenges for decision-makers when social and cultural mores intersect with administrative review** – *Udara Jayasinghe and Rea Hearn-Mackinnon*

With the new wave of refugees arriving from the Middle East, Africa and Asia, Australia has seen many women claiming sexual and gender-based persecution. This form of violence is socially and culturally constructed. It is triggered by issues relating to sex and gender and the associated discrimination or vulnerability faced by women in their communities. The essential elements of sexual and gender-based persecution claims exist within the varying cultural and social contexts of the claimant. This has made it difficult for administrative decision-makers to identify all the defining attributes of a sexual and gender-based persecution claim. In Australia, this socially and culturally constructed form of persecution has intersected with grounds of judicial review, which require tribunal decision-makers to identify all essential components of a claim on the material that is before the tribunal. This article aims to highlight the practical complexities facing decision-makers in assessing sexual and gender-based violence claims within the Australian framework. ....	213
--	-----

**BOOK REVIEWS** – *Dr Matthew Groves*

<i>Constitutional and Administrative Law in New Zealand</i> by Philip Joseph .....	223
<i>Universal Human Rights: Origins and Development</i> by Stephen James .....	224

---

**VOLUME 15 – 2007-2008**

Table of Article Authors .....	227
Table of Cases .....	229
Index .....	241

# Guidelines for Contributors

## Submission and licence agreement instructions

All contributions to the journal are welcome and should be sent, with a signed licence agreement, to the Production Editor, *Australian Journal of Administrative Law*, Lawbook Co., PO Box 3502, Rozelle, NSW 2039 (mail), 100 Harris St, Pyrmont, NSW 2009 (courier) or by email to [ajadminl@thomson.com.au](mailto:ajadminl@thomson.com.au), for forwarding to the Editor. Licence agreements can be downloaded via the internet at [http://www.thomson.com.au/support/as\\_contributors.asp](http://www.thomson.com.au/support/as_contributors.asp). If you submit your contribution via email, please confirm that you have printed, signed and mailed the licence agreement to the attention of the Production Editor at the mailing address noted above.

## Letters to the Editor

By submitting a letter to the editor of this journal for publication, you agree that Thomson Legal & Regulatory Limited, trading as Lawbook Co., may edit and has the right to, and may license third parties to, reproduce in electronic form and communicate the letter.

## Manuscript

- Manuscript must be original, unpublished work that has not been submitted for publication elsewhere.
- Personal details (name, qualifications, position) for publication and a delivery address, email address and phone number must be included with the manuscript.
- Manuscript must be submitted electronically via email or on disk in Microsoft Word format.
- Manuscript should not exceed 4,000 words for articles or 1,500-2,000 words for section commentary or book reviews. An abstract of 100-150 words is to be submitted with article manuscripts.
- Proof pages will be sent to contributors. Authors are responsible for the accuracy of case names, citations and other references. Excessive changes to the text cannot be accommodated.
- This journal complies with the Higher Education Research Data Collection (HERDC) Specifications for peer review. Each article is, prior to publication, reviewed in its entirety by a suitably qualified expert who is independent of the author.

## Style

1. **Levels of headings should be clearly indicated (no more than four levels).**
2. **Cases:**
  - Case citation follows case name. Where a case is cited in the text, the citation should follow immediately rather than as a footnote. Give at least two and preferably all available citations, the first listed being the authorised reference.
  - Australian citations should appear in the following order: authorised series; Lawbook Co./ATP series; other company series (ie CCH, Butterworths); media neutral citation.
  - “At” references should only refer to the best available citation, eg: *Mabo v Queensland [No 2]* (1992) 175 CLR 1 at 34; 66 ALJR 408; 107 ALR 1.
  - Where only a media neutral citation is available, “at” references should be to paragraph, eg: *YG v Minister for Community Services* [2002] NSWCA 247 at [19].
  - For international cases best references only should be included.
3. **Legislation should be cited as follows:**  
*Trade Practices Act 1974* (Cth), s 51AC. The full citation should be repeated in footnotes.
4. **Books should be cited as follows:**  
Macken JJ, O’Grady P, Sappideen C and Warburton G, *The Law of Employment* (5th ed, Lawbook Co., 2002) p 55.
  - In footnotes do not use *ibid* or *op cit*. The following style is preferred:
    4. Austin RP, “Constructive Trusts” in Finn PD (ed), *Essays in Equity* (Law Book Co, 1985).
    5. Austin, n 4, p 56.
5. **Journals should be cited as follows:**  
Odgers S, “Police Interrogation: A Decade of Legal Development” (1990) 14 Crim LJ 220.  
Wherever possible use official abbreviations not the full name for journal titles.
  - In footnotes do not use *ibid* or *op cit*. The following style is preferred:
    6. Sheehy EA, Stubbs J and Tolmie J, “Defending Battered Women on Trial: The Battered Woman Syndrome and its Limitations” (1992) 16 Crim LJ 220.
    7. Sheehy et al, n 6 at 221.
6. **Internet references should be cited as follows:**  
Ricketson S, *The Law of Intellectual Property: Copyright, Designs and Confidential Information* (Lawbook Co., subscription service) at [16.340], <http://www.subscriber.lawbookco.com.au> viewed 25 June 2002. Underline the URL and include the date the document was viewed.

For further information visit <http://www.thomson.com.au/legal/>.

## SUBSCRIPTION INFORMATION

The *Australian Journal of Administrative Law* comprises four parts a year.

Customer service and sales inquiries:

**Tel: 1300 304 195 Fax: 1300 304 196**

**Web: [http://www.thomson.com.au/legal/p\\_index.asp](http://www.thomson.com.au/legal/p_index.asp)**

**Email: [LRA.Service@thomson.com](mailto:LRA.Service@thomson.com)**

Editorial inquiries:

**Tel: (02) 8587 7000**

### HEAD OFFICE

100 Harris Street PYRMONT NSW 2009

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



© Thomson Legal & Regulatory Limited ABN 64 058 914 668 trading as Lawbook Co.

ISSN 1320-7105

Typeset by Lawbook Co., Pyrmont, NSW

Printed by Ligare Pty Ltd, Riverwood, NSW