Index – Volume 16

AAT see Administrative Appeals Tribunal (Cth) Abuse of process unmeritorious claims, 181-182 Access to justice self-representation, 5-6 Administrative Appeals Tribunal (Cth) migration agent's registration (casenote), 8-11 review of decisions lack of jurisdiction to make original decision, 128-129 security assessment and credibility of evidence, 189-190 security assessment and natural justice, 187-188 security identification cards see Security identification cards (SICs) Administrative law Australia book reviews, 174-175 judicial system, 6 Administrative policies see Tribunals Asylum-seekers see Privative clauses Auditor-General independence, 90-114 appointment & status of Auditor-General, 92-96 conclusions, 111-114 employment arrangements for staff, 102-107 financial arrangements, 96-102 operational independence from Parliament & authority to report to Parliament, 107-111 Bills of rights see also Human rights judicial review and, 181 Book reviews Administrative Law - Context and Critique (2nd ed) (Head), 174-175 J V Barry: A Life (Finnane), 122 The Nine: inside the secret world of the Supreme Court (Toobin), 175

Tribunals in the Common Law World (ed Creyke), 173-174 Canada judicial review see Judicial review Case management justice and, 127-128 Child support SSAT jurisdiction, 16-20 Commander-in-Chief, 82-89 Compelling reasons unmeritorious claims, 181-182 Confidentiality private and public law (casenote), 192-195 Constitutional law Governor-General as Commander-in-Chief, 82-89 judicial review, 181 migration decisions see Migration privative clauses see Privative clauses Crown immunity from statute, 200-210 Australian position, 202-204 early history of doctrine, 200-201 narrow conception, 210 possible views, 204-210 Defence Commander-in-Chief, 82-89 Discrimination see Human rights Employment law fair work laws, 135-137 fair process, 137 workers, 136-137 reviewability of decisions, 196-199 flexible work & individual arrangements, 198-199 general federal workplace legislation, 197 minimum wages, 197-198 titles of legislation and sloganeering, 74-76

Index

Evidence power of board or tribunal to inform itself, 71 views and, 72-73 Fair trial self-represented persons, 5-6 False imprisonment migration detention as, 12-15 Family law marriage and alteration of gender, 127 SSAT jurisdiction over Child Support Registrar decisions, 16-20 Federal Court full court judgments 2008-09 Evans v New South Wales, 187 Habib v Director-General of Security, 189-190 Hussain v Minister for Foreign Affairs, 187-188 Lansen v Minister for Environment & Heritage, 188-189 SZMGX v Minister for Immigration & Citizenship, 190-191 original jurisdiction, 6 Federal Magistrates Court (FMC) review of administrative assessment of child support, 16-20 Fraud on the tribunal, 130-134 evidentiary requirements: Briginshaw, SZLIX and SZJMI, 131-132 legal concept of fraud, 132 SZFDE case, 130-131, 190 cases since, 133-134 SZMGX case, 190-191 Freedom of information public interest basis for tribunal to form opinion (casenote), 77-81 Gender alteration and marriage, 127 Governor-General role as Commander-in-Chief, 82-89 Homosexuality fundamental rights & freedoms, 181 Human rights see also Bills of rights judicial review and, 181 refugee law and, 183-186

Identification cards see Security identification cards (SICs) Identity of informants confidentiality (casenote), 192-195 Immigration see Migration Imprisonment false, migration detention as, 12-15 India judicial role, 181 Judges J V Barry: A Life (book review), 122 Judicial review Canada, 211-230 Australia compared, 217-219 Charter of Rights, 216-217 codification in administrative law, 215 - 216constitutional framework, 212-215 Dunsmuir case, 226-229 preliminary or collateral questions doctrine, 219-226 constitutional rights & freedoms, 181 India, 181 migration decisions see Migration proscription of terrorist organisations see Terrorist organisations Judicial system Australian administrative law, 6 India, 181 Justice case management and, 127-128 Legal professional privilege waiver of privilege (casenote), 77-81 Legal representation self-representation see Self-representation Legal system see Judicial system Legislative drafting obscurity, 6-7 titles of legislation and sloganeering, 74-76 Marriage gender and, 127

Australian Journal of Administrative Law

Index

Migration agent's registration (casenote), 8-11 confidentiality (casenote), 192-195 constitutionality of privative clauses see Privative clauses detention as false imprisonment, 12-15 judicial review of decisions constitutional validity of legislative amendments, 115-121 2005 amendments, 115-116 MZXOT decision, 118-121 political reasoning, 116-117 refugee law and human rights, 183-186 Military law Commander-in-Chief see Governor-General Ministerial decisions Lansen v Minister for Environment & Heritage, 188-189 National security security assessments credibility of evidence, 189-190 natural justice and, 187-188 Natural justice see Procedural fairness Pre-judgment bias responses to long submissions and, 71-72 Privative clauses Migration Act and constitutionality, 21-44 alternative forms of ouster or privative clause regimes, 26 constitutionality of privative clauses, 27-28 contemporary decisions, 29-30 Darling Casino approach to ouster clauses, 34 Dignan principle, 30 Hickman principle, 31-32 divergent approaches post-Hickman, 32-34 "inviolable", "indispensible" and/or "imperative" legislative obligations, 43-44 judicial precedent, 28-29 legitimate expectations of applicants, 41 SZBEL, 41

Migration Act, ss 474 and 476, 24-25 Migration Legislation Amendment (Judicial Review) Act 2001 constitutionality, 36-37 procedural justice, 40 Migration Litigation Reform Act 2005 (Cth), 26-27 overcoming unconstitutionality, 30-31 Plaintiff S157/2002, 37-40 privative clauses defined, 21-24 procedural fairness duties to visa applicants & asylum-seekers, 42-43 Tampa litigation, 34-36 uncodified constitutional principles, 41-42 Procedural fairness see also Judicial review; Natural justice confidentiality and natural justice (casenote), 192-195 Parker v Comptroller-General of Customs (casenote), 138-142 denial of possibility of successful outcome, 141-142 requirements of natural justice, 141 proscription of terrorist organisations, 55-65 security assessments and natural justice, 187-188 self-represented persons, 5-6 Prospects of success see Abuse of process Public interest freedom of information basis for tribunal to form opinion (casenote), 77-81 Querulous litigants abuse of process, 181-182 Reasonable prospect of success unmeritorious claims, 181-182 Reasonableness judicial review standards (Canada), 211-230 Refugee law human rights and, 183-186 Regulation-making power World Youth Day case, 187 Security assessments see National security

Index

Security identification cards (SICs) regulatory framework, 157-172 issuing bodies, 159-160 requirement to hold a SIC, 159 review of decisions by AAT, 168-172 steps to obtain SICs, 160-168 transport & infrastructure security laws, 158 Self-representation duty to ensure fair trial, 5-6 Social Security Appeals Tribunal (Cth) new jurisdiction, 16-20 Submissions responses to, and pre-judgment bias, 71-72 Terrorist organisations review of proscription decisions, 45-66 Criminal Code, 47-48 procedural fairness, 55-65 review mechanisms, 49-55 judicial, 51-55 non-judicial, 49-51

Tribunals see also Administrative Appeals Tribunal (Cth); Social Security Appeals Tribunal (Cth) administrative policies, 143-156 distinction between high and law policies, 144-147 policy review and policy avoidance, 147-151 reasoning process in Drake (No 2), 151-155 basis of forming opinion (casenote), 77-81 common law world (book review), 173-174 fraud on see Fraud on the tribunal power of board or tribunal to inform itself, 71 submissions and process, 71-72 United States Supreme Court (book review), 175 Unmeritorious claims abuse of process, 181-182 Unreasonableness judicial review standards (Canada), 211-230 Views evidence and, 72-73 Workplace relations see Employment law World Youth Day case, 187