

AUSTRALIAN JOURNAL OF ADMINISTRATIVE LAW

Volume 23, Number 2

2016

EDITORIAL

Statutory senility: Judges' retirement age	63
Caretaker convention	64
Apprehended bias	65

CASENOTES – *Nathalie Ng*

Duncan v Independent Commission Against Corruption (2015) 89 ALJR 835; [2015] HCA 32	66
---	----

IMMIGRATION AND INTERNATIONAL ASPECTS – *Stephen Tully*

Legislative developments	69
Immigration and trade agreements	70

DISCRIMINATION AND REFUGEES – *Paula Gerber*

Is Australia breaching human rights in the way it assesses claims for asylum based on sexual orientation or gender identity?	71
---	----

ARTICLES

Operation Sovereign Borders and interdiction at sea: CPCF v Minister for Immigration and Border Protection – *Peter Billings*

This article critically examines the inter-related public law and international law matters before the High Court of Australia in *CPCF v Minister for Immigration & Border Protection* (2015) 89 ALJR 207; [2015] HCA 1. The case concerned the extra-territorial maritime interdiction of asylum seekers intent on seeking protection in Australia. The article explains, and critically examines, the reasoning of the Court in respect of the validity of the decision to deprive asylum seekers of their liberty for nearly a month, in the course of attempting to return them to India. The analysis demonstrates that the High Court's decision was not a ringing endorsement of the Commonwealth's interpretation of its public law powers and international law obligations; rather, the majority decision turned on the agreed (and limited) facts of the Special Case. Notably, three judges cast doubt on the correctness of the contentious decision in the Tampa case (*Ruddock v Vadarlis* (2001) 110 FCR 491), and several judges, including the Chief Justice, either did not embrace or expressly rejected the Commonwealth's restrictive versions of its international refugee law obligations.

.....	76
-------	----

Natural justice: For every man and his dog – Elliott Cook

Since the 1950s, the types of interests attracting the rules of natural justice have gradually expanded. In 2012, this expansion culminated in Plaintiff S10/2011 v Minister for Immigration & Citizenship (2012) 246 CLR 636, where the plurality simply adopted an “interest” as the sole trigger for the application of natural justice (subject to other principles) and equated that interest to the interest that gives a person standing. This new approach arguably excludes very few interests from procedural obligations. More recently, the plurality in *Isbester v Knox City Council* (2015) 89 ALJR 609 has introduced even vaguer terminology, so that, provided the interest in question is important to many people, natural justice will be owed. This article provides a short critique of this new approach to the natural justice threshold question, arguing that greater clarification is needed on its exact scope and application. This article is by no means a thorough account, but rather it aims to highlight a few areas in need of exploration. 102

Seeking the release of Commonwealth documents: A foray into the Archives Act – Ian Latham

The Archives Act 1983 (Cth) provides a mechanism for the public to seek the release of Commonwealth Government documents that are held in the Australian Archives. The Administrative Appeals Tribunal Act provides for merit review of a Commonwealth decision to refuse that release. The process for determining release may be affected by the issuing of a certificate by the Attorney-General that requires material to remain confidential. This article explains how the issue of such a certificate creates significant challenges for the applicant and the Tribunal hearing the application and proposes some tentative proposals for reform. 107

BOOK REVIEWS – Greg Weeks

- The Scope and Intensity of Substantive Review: Traversing Taggart’s Rainbow*, by Hanna Wilberg and Mark Elliott 111
- Control of Government Action: Text, Cases & Commentary*, by Robin Creyke, John McMillan and Mark Smyth 112
- The Evolution of Law and the State in Europe: Seven Lessons*, by Spyridon Flogaitis 113