

# AUSTRALIAN JOURNAL OF ADMINISTRATIVE LAW

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## ARTICLES

**Judicial Impartiality, Bias and Emotion** – *Kathy Mack, Sharyn Roach Anleu and Jordan Tutton*

Impartiality is the defining value of judicial work. Judicial emotion is routinely characterised as inherently inconsistent with impartiality and therefore a source of bias. This article investigates how judicial officers themselves understand impartiality, emotion and bias and examines the practices they use to achieve impartiality and avoid bias. Focusing on cases in which apparently emotionally driven or intemperate judicial conduct in court is challenged generates insight into the practical contexts in which some judicial emotion arises and its legal consequences. This analysis finds a more complex relationship among impartiality, bias and emotion than is encompassed in legal doctrines. .... 66

**Apprehended Bias in Integrated Online Dispute Resolution** – *Anna Olijnyk and Joe McIntyre*

Integrated online dispute resolution (integrated ODR) has the potential to deliver efficient, accessible, satisfying justice to large sections of the community. But by expanding the role of a court or tribunal to the earliest stages of the dispute, integrated ODR creates new risks of actual and apprehended bias. This article weaves together two literatures – judicial impartiality and justice technology – to identify some of those risks. We argue that, while integrated ODR is not necessarily incompatible with impartial decision-making, careful design is necessary to manage risk. .... 83

**Recusal, Reconstitution and the Reasonable Apprehension of Bias in Australian Statutory Tribunals** – *Sarah Lim*

The question of how to ensure the impartiality of multi-member bodies (particularly those that do not exercise judicial power) is the subject of limited academic attention and has yet to receive a satisfactory answer. Accordingly, this article assesses the current procedure for disqualification adopted by multi-member bodies and asks how these procedures might be improved. To do so, it examines the differing procedures utilised by the Administrative Appeals Tribunal and Victorian Civil and Administrative Tribunal in circumstances where a member (or members) of a multi-member Tribunal is accused of bias and must decide whether to recuse himself or herself. .... 100

**Is There a “Small Town” Exception to the Bias Rule?** – *Matthew Groves*

The rule against bias provides a rule of general application to promote impartiality in decision-making. It is well known that the rule can be adjusted to take account of the different forms of decision-making that occur outside the courts. These adaptations reflect the flexibility of both the common law in general and the rules of fairness in particular. This article examines a lesser known example of the flexible nature of the bias rule, which occurs when claims of bias arise in small jurisdictions. The article argues that principles of impartiality, which operate to prevent judges from deciding cases that involve people or issues that the judge have an association with, cannot apply easily to jurisdictions of a very limited size. ....

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