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Update Summary

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UPDATE 260

DECEMBER 2023

FEDERAL
ADMINISTRATIVE LAW

G Flick

Material Code 42059642

Print Post Approved PP255003/00383

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Updated commentary has been provided by Jason Donnelly

Administrative Appeals Tribunal Act 1975

Updated

- Context and purpose of the AAT Act does not lead to the conclusion that that Act expresses a clear intention to authorise the Tribunal to curtail a party's personal liberty and autonomy. See *Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs v LPSP* [2023] FCAFC 24, at [AAT33.380].
- Section 39(1) does not impose any higher obligation than the common law. See *Kamal v Minister for Immigration, Citizenship and Multicultural Affairs* [2023] FCAFC 159, at [AAT39.20].

Administrative Decisions (Judicial Review) Act 1977

Updated:

- There is a capacity for the 28-day period under the ADJR Act to be extended under r 31.02 of the *Federal Court Rules 2011* (Cth). See *Copyright Agency Ltd v Isentia Pty Ltd* [2022] FCAFC 163, at [ADJR11.150].
- There is a like standard of "reasonable conjecture" to that which informs whether an error is jurisdictional. See *Fulton v Chief of Defence Force* [2023] FCAFC 134, at [ADJR16.40].

Judiciary Act – s 39B

Updated:

- A matter arising under the *Therapeutic Goods Act 1989* (Cth) fell within s 39B(1A)(c) of the *Judiciary Act 1903* (Cth). See *Parry v Secretary, Department of Health* (Cth) [2023] HCA 9, at [JUD39B.80].

Ombudsman

Updated:

- The definition of "prescribed authority" would ostensibly comprehend the Ombudsman on the basis that he is a "person holding, or performing the

duties of, an office established by an enactment". See *Skiba v Commonwealth Ombudsman* [2022] FedCFamC2G 216, at [OMB3.20].

- The Ombudsman's functions are to investigate complaints and to perform such other functions as conferred on him by the Ombudsman Act. See *Fitzwarryne v Commonwealth Ombudsman* [2023] FCA 175, at [OMB5.20].
- The obligation to investigate administrative action found in s 5(1) is not limited to investigation of others' actions. See *Skiba v Commonwealth Ombudsman* [2022] FedCFamC2G 216, at [OMB5.30].
- To clarify that the Ombudsman was expressing an opinion, certain expressions would be 'helpful'. See *Owners Corporation PS 419696X & Ors v Municipal Building Surveyor for the City of Melbourne* [2023] VBAB 7, at [OMB8.40].
- A claim of lack of good faith is not one to be made lightly. See *Paschke v Secretary, Department of Social Services* [2023] FCAFC 143, at [OMB33.20].

