

ADMINISTRATIVE POWER AND THE LAW

BY FIONA MCKENZIE

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BY FIONA MCKENZIE

BA/LLB (MON), LL.M (ANU)

BARRISTER, VICTORIA

SENIOR FELLOW, UNIVERSITY OF MELBOURNE

**A succinct guide to
administrative law**

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**AUSTRALIAN
LAW IN PRACTICE**

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Australian Law in Practice, ABN 70449836755.
Telephone 03 9225 6939, mobile 0434 601 835.
Email inquiries to fionamckenzie@vicbar.com.au
Website www.adminlaw.com.au

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FOREWORD

Administrative law is, in my view, an extremely interesting area of law. It is also increasingly important.

I have practised in the area for many years. More recently, I have taught the subject at university level, and conducted training for public servants and others. The combination in administrative law of human (and corporate) interests, political imperatives, and intellectual complexities, hold endless fascination for me.

However, aspects of administrative law can be baffling. Those in government can find that deceptively simple phrases like 'natural justice' are hard to apply in practice. Law students often find the subject conceptually difficult, and quite different from other areas of legal study. Lawyers do not always fully understand it, even when they are practising in the area.

I believe that administrative law is best understood when seen operating in the real world. Academic legal principles can then take on life. This book presents administrative law questions and principles as they operate in practice. It aims to meet the perspective of the 'user', and in doing so, I hope it brings administrative law to life.

I would like to thank my husband, Michael, and children, Simon, Finlay and Marshall, for their endurance. Thanks especially to Finlay for the terrific drawings. And to my mother and father, Tui and John, who taught me to think. Thanks to Anthony Cavanough QC for his guidance on delegation issues, and to Bruce Dyer for his advice on natural justice. Thanks to Ruth Shann for her editing work. And thanks to those clever administrative law practitioners, clients and students who have helped me to understand more about the subject.

LEGISLATION

AAT	Administrative Appeals Tribunal (Cth)
AAT Act	Administrative Appeals Tribunal Act 1975 (Cth)
ADJR Act	Administrative Decisions Judicial Review Act 1977 (Cth)
ALA Act	Administrative Law Act 1978 (Vic)
FOI Act	Freedom of Information Act 1982 (Cth)
Victorian FOI Act	Freedom of Information Act 1982 (Vic)
FOI	Freedom of Information legislation in all Australian jurisdictions
Judiciary Act	Judiciary Act 1903 (Cth)
Privacy legislation	Commonwealth, State or Territory privacy legislation such as: Privacy Act 1998 (Cth) Information Privacy Act 2000 (Vic) Health Records Act 2001 (Vic)
VCAT	Victorian Civil and Administrative Tribunal
VCAT Act	Victorian Civil and Administrative Tribunal Act 1998 (Vic)

CASES

Aala	<i>Re Refugee Review Tribunal; Ex parte Aala</i> (2000) 204 CLR 82
Abebe	<i>Abebe v Commonwealth</i> (1999) 197 CLR 510
AFMA v Adams	<i>Australian Fisheries Management Authority v P.W. Adams Pty Ltd</i> (1995) 61 FCR 314
Agfa-Gevaert	<i>Collector of Customs v Agfa-Gevaert Limited</i> (1996) 186 CLR 389
ABT v Bond	<i>Australian Broadcasting Tribunal v Bond</i> (1990) 170 CLR 321
Alphaone	<i>Commissioner for Australian Capital Territory Revenue v Alphaone Pty Ltd</i> (1994) 49 FCR 576
Bhardwaj	<i>Minister for Immigration and Multicultural Affairs v Bhardwaj</i> (2002) 209 CLR 597
B v Victorian Lawyers	<i>B v Victorian Lawyers RPA Limited</i> (2002) 6 VR 642
Burns v ANU	<i>Burns v Australian National University</i> (1982) 40 ALR 707
Carltona	<i>Carltona Ltd v Commissioner of Works</i> [1943] 2 All ER 560
Chan	<i>Chan Yee Kin v Minister for Immigration and Ethnic Affairs</i> (1989) 169 CLR 379
Chittick	<i>Chittick and Another v Ackland</i> (1984) 1 FCR 254
Craig	<i>Craig v South Australia</i> (1995) 184 CLR 163
Drake	<i>Re Drake and Minister for Immigration and Ethnic Affairs (No 2)</i> (1979) 2 ALD 634

CASES

Enfield	<i>Corporation of the City of Enfield v Development Assessment Commission</i> (2000) 199 CLR 135
Eshetu	<i>Minister for Immigration and Multicultural Affairs v Eshetu</i> (1999) 197 CLR 611
Hot Holdings	<i>Hot Holdings Pty Ltd v Creasy</i> (2002) 210 CLR 438
Hughes and Vale	<i>Hughes and Vale Pty Ltd v The State of New South Wales [No.2]</i> (1995) 93 CLR 127
Industrial Equity	<i>Industrial Equity Ltd v Deputy Commissioner of Taxation</i> (1990) 170 CLR 649
Kioa	<i>Kioa v Minister for Immigration and Ethnic Affairs (West)</i> (1985) 159 CLR 550
Lam	<i>Re Minister for Immigration and Multicultural and Indigenous Affairs; Ex parte Lam</i> (2003) 214 CLR 1
Miah	<i>Minister for Immigration and Multicultural Affairs; Ex parte Miah</i> (2001) 206 CLR 57
Muin	<i>Muin v Refugee Review Tribunal</i> (2002) 76 ALJR 966
O'Reilly	<i>O'Reilly v State Bank of Victoria Commissioners</i> (1983) 153 CLR 1
Osmond	<i>Public Service Board of New South Wales v Osmond</i> (1986) 159 CLR 656
Owendale	<i>Owendale Pty Ltd v Anthony</i> (1967) 117 CLR 539
Palme	<i>Re Minister for Immigration and Multicultural and Indigenous Affairs; Ex parte Palme</i> (2003) 216 CLR 212

CASES

Peko-Wallsend	<i>Minister for Aboriginal Affairs v Peko-Wallsend</i> (1986) 162 CLR 24
Pozzolanic	<i>Collector of Customs v Pozzolanic</i> (1993) 43 FCR 280
Project Blue Sky	<i>Project Sky Blue Inc v Australian Broadcasting Authority</i> (1998) 194 CLR 355
Re Ombudsman	<i>Re Reference under s11, Ombudsman Act 1976; Ex parte Director-General of Social Services</i> (1979) 2 ALD 86
Ruddock v Vadarlis SAT FM	<i>Ruddock v Vadarlis</i> (2001) 110 FCR 491 <i>SAT FM Pty Ltd v Australian Broadcasting Authority</i> (1997) 75 FCR 604
S157	<i>Plaintiff S157 v Commonwealth of Australia</i> (2003) 211 CLR 476
S20	<i>Re Minister for Immigration and Multicultural Affairs; Ex parte Applicant S20/2002</i> (2003) 77 ALJR 1165
Teoh	<i>Teoh v Minister for Immigration, Local Government and Ethnic Affairs</i> (1994) 49 FCR 409
Tooheys	<i>Minister for Industry and Commerce v Tooheys Ltd</i> (1982) 4 ALD 661
VEAL	<i>Applicant VEAL of 2002 v Minister for Immigration and Multicultural and Indigenous Affairs</i> (2005) 222 ALR 411
Wednesbury	<i>Associated Provincial Picture Houses Ltd v Wednesbury Corporation</i> [1948] 1 KB 223