

Contents

<i>List of Chapters</i>	v
<i>Preface</i>	xi
<i>Key Words and Phrases</i>	xv
<i>Abbreviations</i>	xix
<i>Table of Cases</i>	xxi
<i>Table of Statutes</i>	xxxi
1 What is Administrative Law?	1
Boundaries of Administrative Law	2
Seeing the Law in Context	3
Legacies of a Troubled History	3
The Contemporary Relevance and Values of Administrative Law	4
Why this Book?	5
The Structure of the Book	8
Administrative Law in Action	9
2 How to Approach Administrative Law	17
A Varied Landscape	17
Red and Green Light Approaches?	18
Political, Economic and Administrative Contexts	19
The Rise (and Decline?) of the New Administrative Law	30
Human Rights Legislation	36
3 The Constitutional and Legal Framework	39
Federal or State Jurisdiction?	39
Parliamentary Rule or Responsible Government	40
Sovereignty of Parliament	41
The Rule of Law	43
The Separation of Powers	48
Classification of Powers	51
Merits Review versus Legal Review	51
4 Where to Begin? Non-Judicial Review of Administrative Action	55
Initial Avenues of Review	56
Review by Tribunals	60
5 Other Avenues of Review: The Ombudsman, Freedom of Information and the Right to Reasons	81
The Ombudsman	81
Freedom of Information	90
New South Wales Government Information Act	112
A Common Law Right to Reasons for Decisions?	113

6	Delegated Legislation and Statutory Interpretation	119
	Delegated Legislation	119
	Statutory Interpretation	134
7	Introduction to Judicial Review: Jurisdiction, Justiciability and Standing	143
	Jurisdiction	145
	Justiciability	150
	Standing	160
8	"Simple" Ultra Vires: Decisions Made Beyond Power	172
	Basic Approach	173
	Simple or Substantive Ultra Vires	175
	Procedural Ultra Vires	182
9	"Extended" Ultra Vires: Abuse of Power	188
	Improper Purpose and Bad Faith	189
	Irrelevant and Relevant Considerations	194
	Unreasonableness and Irrationality	200
	Uncertainty	210
	No Evidence	210
10	"Extended" Ultra Vires: Refusal to Exercise a Discretion	215
	Inflexible Application of Policy	215
	Acting under Dictation	218
	Sub-delegation	221
11	Procedural Fairness (Natural Justice)	226
	What is Procedural Fairness?	226
	Implication of the Duty: General Principles	234
	Implication of the Duty: Particular Situations	244
	Exclusionary and Restricting Factors	250
12	The Content of the Hearing Rule	257
	What Kind of Hearing?	257
	A Minimum Content?	258
	Written Submissions May Suffice	259
	The Right to Know the Matters to be Considered	259
	Delay	261
	Administrative Norms	261
	The Right to Representation	262
	Cross-examination of Witnesses	264
	Must All Members Consider the Evidence?	264
	The Effect of a Minor Breach	265
	Exercising Appeal Rights or Waiving the Right to a Fair Hearing	266

13	The Bias Rule, Reasons and Probative Evidence	269
	The Bias Rule	269
	Reasons for Decisions	284
	Probative Evidence	284
14	Substantive Fairness? Estoppel: Undertakings Regarding the Future Exercise of Power	287
	Case Study: The “Bali 9”	288
	The Restrictive Australian Approach	289
	<i>Kurtovic</i> and <i>Quin</i> : Some Chinks Left Open?	290
	A Sad Conclusion and Summary	293
15	Jurisdictional Errors and Ouster Clauses	295
	Jurisdictional Errors	297
	Errors of Law on the Face of the Record	301
	Privative or Ouster Clauses	303
16	The Final Hurdle! Judicial Remedies and the ADJR Act	309
	Order of Approach	309
	Reconsideration	310
	Collateral Attack	310
	Damages Arising from an Unlawful Administrative Act	311
	Interim Relief	314
	The Common Law Prerogative Writs	314
	Declarations and Injunctions	320
	A Case Study in the Flexible Use of Common Law Remedies	323
	Statutory Remedies – <i>Administrative Decisions (Judicial Review) Act</i>	324
	Discretion in Granting Remedies	331
17	A Brief Overview and Exam Advice	338
	An Overview	338
	Judicial Review	342
	The Content of the Hearing Rule	348
	The Bias Rule	349
	The Right to Reasons	351
	Estoppel	351
	Status of Unlawful Decisions	351
	Remedies	352
	Exam advice	354
	Case Study 1: The Release of the 1975 “Palace Letters”	360
	<i>Hocking v Director-General of the National Archives of Australia</i> [2020] HCA 19; 94 ALJR 569	360
	The High Court Ruling	360
	The Facts and Legal Background	361

CONTENTS

The High Court Judgments	362
What Happened Next?	364
What Was Revealed?	364
The Background	365
Case Study 2: The Removal of the Kosovar Refugees	367
<i>Re Minister for Immigration and Multicultural Affairs;</i> <i>Ex parte Fejzullahu</i> (2000) 200 CLR 234	367
Introduction	367
The Political Background	368
The High Court Proceedings	368
The Legislation	369
The Evidence	369
The Decision	370
<i>Index</i>	374