

## Class 12 Access to government documents

### 1) Legislation

Government Information (Public Access) Act (NSW)	Freedom of Information Act (Cth)
1) Purpose of the act: <b>s3(1)</b>	<b>S3</b>
2) Right to access unless there is an overriding public interest against disclosure <b>s9</b>	<b>S11</b>
3) Exempt documents <ul style="list-style-type: none"> <li>o <b>Schl 1 clause 2</b> Cabinet information: dominate purpose               <ul style="list-style-type: none"> <li>o not apply to simply as attachment</li> <li>o factual material</li> </ul> </li> <li>o <b>clause 5</b> Legal professional privilege</li> </ul>	<ul style="list-style-type: none"> <li>o <b>S34</b> Cabinet document: dominate purpose               <ul style="list-style-type: none"> <li>o not apply to simply as attachment or published</li> </ul> </li> <li>o <b>S42</b> Legal professional privilege               <ul style="list-style-type: none"> <li>o Not apply to <b>s8A</b> operational info</li> </ul> </li> <li>o <b>S47C</b> Deliberative process: conditionally exempt               <ul style="list-style-type: none"> <li>o Sub(2) factual material and operational information</li> <li>o Sub(3) report</li> </ul> </li> </ul>
4) <b>s13 Public interest test</b> <ul style="list-style-type: none"> <li>o s12 favouring factors</li> <li>o s14 consideration against disclosure</li> <li>o s15 irrelevant factors</li> </ul>	<b>s11B</b> Gleeson CJ in <i>McKinnon</i> : it is not a balancing test but decide on the object of the act.
5) Review	

- 2) Parliament's power to order to production: responsible government and ministerial responsibility *Cons* s49
- o Production is reasonably necessary for the performance of function of LC because of the nature of the document *Egan v Willis*
  - o Legal professional privilege could be override. But to avoid conflict with the ministerial responsibility, cabinet deliberation exemption can apply. *Egan v Chadwick*

## Class 13 Regulation making

### 1) Whether the regulation goes beyond the scope of the delegation of legislative power?

- o Delegation of legislative power is long standing in English Law *Victorian Stevedoring Co v Dignan*
- o Whether the regulation adds to the general plan of the primary legislation or extend to further filed *Shanahan v Scott*
- o Only for the purpose of the legislative power *Northern Land Council*
- o Principle of legality: there must be clear express to restrict common law right *Evans*

### 2) Legislation Act (cth)

- o Registration s15
- o Tabling in parliament s38
- o Scrutiny: Senate Standing Order 23
  - o that it is in accordance with the statute;
  - o that it does not trespass unduly on personal rights and liberties;
  - o that it does not unduly make the rights and liberties of citizens dependent upon administrative decisions which are not subject to review of their merits by a judicial or other independent tribunal; and
  - o that it does not contain matter more appropriate for parliamentary enactment.
- o Disallow s42
- o Public consultation ss17,19

## Class 14

### 1) Ombudsman Act (Cth) for recommendation only

- o Jurisdiction: **s5(1)** act on complaint or self-motion; **s5(2)** not on minister, parliament or judge
- o Investigate **s8**
- o Report: **s15(1)** on finding; **s15(2)** on recommendation
- o Inform PM **s16** or parliament **s17**
- o Inform complainant **s12**

### 2) ICAC Act (NSW)

- o Whether it is corrupt conduct? Jurisdiction: conduct that falls within **s8** does not amount to corrupt conduct unless it could fulfil **s9** ( s9(4)(5) related to mister; consider *Ministerial Code of Conduct* )
- o Investigate **s13**
- o Report to parliament **s74**
- o *Greiner v ICAC*: objective test at s9(3) reasonable grounds
- o *ICAC v Cunneen*: Conduct that affect efficacy but not probity is not corrupt (before 2015)
- o *Duncan v ICAC*: changing substantive law with retrospective effect is allowed