

Administrative Law Notes

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1. (Introduction to Australian Administrative Law)

What is Administrative Law – That law which controls and supervises the decisions and actions of executive arm of government in the exercise of power: *“The political foundational feature is that the law that controls public power must conform to the Constitutional framework under which the Executive is responsible and accountable to Parliament based on observance of the Rule of Law framed constitutionally, for public power purposes, by s 75(v) of the Constitution. Within this framework, the role and duty of the courts is to exercise a kind of ‘supervisory’ control over the exercise of executive and legislative power by lawful constraint, also observing relevant constitutional limits.”*

Purpose of administrative law

1. To safeguard and protect the rights and interests of individuals and corporations in their dealings with government agencies and prevent abuses of power; and,
2. Define the values or principles that administrative law is designed to uphold – being, openness, fairness, participation, accountability, consistency, rationality, accessibility of judicial and non-judicial grievance procedures, legality and impartiality: *Aronson, Dyer and Groves*.

History

Until 1970s was viewed as a branch of common law concerned with the exercise of judicial power in relation to ministerial or administrative acts of government officers. “Soft law” – Article by Robert Craig. Includes guidelines, rulebooks, practice manuals, circulars, code of conduct...

Tension between the organs of government

The growth of executive power generated a need for an increase in the scope of judicial review of executive and administrative action: Lord Denning MR in *Moorgate Mercantile Co v Twitchings* [1975].

The traditional view of administrative law is that it should aim to bolster the rule of law and ensure the accountability of Executive Government to the will of Parliament and, at least indirectly, of the people. The approach is exemplified by the following statement from Peter Cane:

“It is often said that the enforcement of statutory duties and the control of the exercise of statutory powers by the courts is ultimately justifiable in terms of the doctrine of parliamentary supremacy: even though Parliament has not expressly authorised the courts to supervise governmental activity, it cannot have intended breaches of duty by governmental agencies to go un-remedied (even if no remedy is provided in the statute itself), nor can it have intended to give administrative agencies the freedom to exceed or abuse their powers, or to act unreasonably. It is the task of the courts to interpret and enforce the provisions of statutes which impose duties and confer powers on administrative agencies. In so doing they are giving effect to the will of Parliament”

The ability for one organ of government to control, or at least interfere with, the exercise of the functions of another organ of government is healthy. This is well illustrated when one considers the subject of subordinate or delegated legislation:

1. the legislature delegates its law-making power to the executive;
2. the executive exercises that power and makes statutory rules having the force of law; and,
3. such rules may be disallowed by the legislature (e.g., Senate Standing Committee) or declared invalid by the courts.

Main goals of Administrative Law

1. To redress individual complaints; and,
2. Improve the quality of decision-making, to the advantage of those who seek redress from government.

Main focus of administrative law is on **'judicial review'**. that is, the exercise of the inherent supervisory jurisdiction of superior courts in relation to decisions made by inferior courts, statutory tribunals, administrative authorities and domestic tribunals.

However, administrative law is also concerned with the **'administrative review'** of decisions made by administrators; and other mechanism designed to secure the accountability of decision-makers. Administrators make policy and choices involving value judgments. Note however that Administrative Decisions (Judicial Review) Act 1977 (Cth) (ADJR Act) does not define what is "administrative", but examples include: decision relating to examination of students (*Evans v Friemann* (1982)); personnel promotion decisions (*Hamblin v Duffy* (1981)); dismissal of an employee (*Burns v Australian National University* (1982)); decisions and ruling of the Administrative Appeals Tribunal (*Pancontinental Mining Ltd v Burns* (1994)); decision of a mental health review tribunal to initiate examination of whether a person had a mental illness (not the medical decision itself) (*MDF v central Queensland Network Authorised Mental Health Service* [2020]).

Federal System

High Court (Apex), Federal Court of Australia, Administrative Review Tribunal (ART) (previously known as Administrative Appeals Tribunal (AAT)), specialist tribunals (Note: not all are called "tribunals").

State System

NSW Supreme Court, NSW Civil and Administrative Tribunal (NCAT), then specialist State tribunals again.

Providing Reasons for Decision under the "new" admin law.

Common Law

- No general rule of common law principle of natural justice that requires administrative decision-makers to provide reasons for their decisions: *Public Service Board of New South Wales v Osmond* (1986) 159 CLR 656.

ADJR Act

- Under s 13 of the ADJR Act, a person who is entitled (i.e., 'person aggrieved') to make an application under the Act for review of a decision has a right to request the decision-maker to provide a statement of reasons for the decision unless the decision is included in any of the classes of decisions set out in Schedule 2 to the Act.
 - Person with standing for review of decision under s 5 of the Act may seek reasons for that decision.

ART Act 2024

- Under s 268 of ART Act, a person 'whose interests are affected by a reviewable decision' can seek reasons for a reviewable decision (without lodging an application to review the decision). Under s 23 of the ART Act, the ART can require a decision-maker to provide a statement of reasons for a decision, and a copy of every document in the possession or control of the decision-maker.
 - A person 'whose interests are affected by a decision' is defined under s 15 of the ART Act as 'an organisation or association of persons, whether incorporated or not, is taken to be a person whose interests are affected by a decision if:
 - (a) the decision relates to a matter included in the objects or purposes of the organisation or association at the time the decision is made; and

(b) the matter has not been removed from the objects or purposes of the organisation or association.

- A decision is a 'reviewable decision' if an Act or a legislative instrument provides for an application to be made to the Tribunal for review of the decision: s 12 of ART Act.

CONTENT OF REASONS STATEMENT

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Judicial Review (Foundational Concepts)

Judicial review is neither more nor less than the enforcement of the rule of law over executive action; it is the means by which **executive action** is prevented from exceeding the powers and functions assigned to the executive by law and the interests of the individual are protected accordingly: *Church of Scientology Inc v Woodward* (1982) 154 CLR 24.

Subordinate legislation or legislative instruments may also be ruled invalid by a superior court: *City of London v Wood* (1702).

The Federal Court of Australia (FCA) is granted power under the ADJR Act to review the legality of administrative decisions made under an enactment. It also has power under s 39B of the Judiciary Act 1903 (Cth) to review, by means of the prerogative writs, the legality of action taken by an officer of the Commonwealth. **However, unlike the Administrative Appeals Tribunal, the court does not have power to substitute its own decision for that of the administrator.**

Three Sources of Jurisdiction for Judicial Review:

- Administrative Decisions (Judicial Review) Act 1977 (Cth) – ADJR Act [s 8 of ADJR Act, Federal Courts of Australia has jurisdiction to review **decisions** (s 5) or **conduct** (s 6) of administrative character made under Commonwealth Acts]. See details [here](#).
- High Court s75(v) of the Australian Constitution – *where writ of Mandamus or prohibition or an injunction is sought against an officer of the Commonwealth*. The writs of prohibition and mandamus are only available if a decision involves jurisdictional error: *Plaintiff S157/2002 v Commonwealth*. **Note: In cases where jurisdictional error is involved, privative clauses do not apply.**
- 39B of Judiciary Act 1903 – Original Jurisdiction of the *Federal Court of Australia* (i.e., FCA is a statutory court, unlike HCA whose jurisdiction is conferred on by the Australian Constitution). Much more broad-based avenue of review.
- States and Territory courts do have jurisdictions to conduct judicial reviews too (for some special Commonwealth Acts pursuant to the 'vesting' Act)

Judicial review at its simplest involves a court deciding whether a decision-maker breached a specific ground of review in making a decision. As seen from the case of *Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223, judicial review is more narrowly confined than merits review, and looks only at whether a decision complies with the limits imposed by law.

Judicial review is 'neither more nor less than the enforcement of the rule of law over executive action; it is the means by which executive action is prevented from exceeding the powers and functions assigned to the executive by law and the interests of the individual are protected accordingly' (*Church of Scientology Inc v Woodward* (1982) 154 CLR 25).

However, 'it is not the function of the court to substitute its own decision for that of the administrator by exercising a discretion which the legislature has vested in the administrator. Its role is to set limits on the exercise of the discretion, and a decision made within those boundaries cannot be impugned' (*Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24).

Five Elements for Judicial Review

- (1) the person seeking redress has STANDING;
- (2) the matter is JUSTICIABLE;
- (3) the COURT HAS JURISDICTION to review the matter;
- (4) there is an AVAILABLE GROUND OF REVIEW; and
- (5) there is an APPROPRIATE REMEDY.

Grounds for Judicial Review

Australian courts, for the most part, continue to classify the grounds of review in fairly traditional terms, that is, **procedural fairness (natural justice)**, **ultra vires**, and **jurisdictional error** (including error of law, 'whether or not the error appears on the record of the decision'). See also the ground for judicial review based on '**lack of proportion**' on part of decision-maker (*State of New South Wales v Macquarie Bank Ltd* (1992); *R v Home Secretary ex parte Brind* (1991));

FAILURE TO TAKE INTO ACCOUNT RELEVANT CONSIDERATIONS – A FORM OF 'JURISDICTION ERROR'

The effect of 'identifying a wrong issue, asking a wrong question, ignoring relevant material or relying on irrelevant material in a way that affects the exercise of power is to make an **ERROR OF LAW**': *Minister for Immigration and Multicultural Affairs v Yusuf* (2001) 206 CLR 323 at [82]. The test is whether the person affected by an error has been deprived of the possibility – not probability – of a favourable decision: *Morrison v Minister for Immigration* [2008] FCA 54.

Mason J in *Minister for Aboriginal Affairs v Peko-Wallsend Ltd* (1986) 162 CLR 24at [15]:

(1) FAILURE TO TAKE INTO ACCOUNT A RELEVANT CONSIDERATION

15. The **failure of a decision-maker to take into account a relevant consideration** in the making of an administrative decision is one instance of an abuse of discretion entitling a party with sufficient standing to seek judicial review of ultra vires administrative action. That ground now appears in s.5(2)(b) of the ADJR Act which, in this regard, is substantially declaratory of the common law. Together with the related ground of taking into account irrelevant considerations, it has been discussed in a number of decided cases, which have established the following propositions:

(a) The ground of failure to take into account a relevant

consideration can only be made out if a decision-maker fails to take into account a consideration which he is bound to take into account in making that decision (*Sean Investments Pty Ltd v MacKellar* (1981) 38 ALR 363, at p 375; *CREEDNZ Inc. v. Governor-General* (1981) 1 NZLR 172, at pp 183, 196-197; *Ashby v. Minister of Immigration* (1981) 1 NZLR 222, at pp 225, 230, 232-233). The statement of Lord Greene M.R. in *Associated Provincial Picture Houses Ltd v. Wednesbury Corporation* (1948) 1 KB 223, at p 228, that a decision-maker must take into account those matters which he "ought to have regard to" should not be understood in any different sense in view of his Lordship's statement on the following page that a person entrusted with a discretion "must call his own attention to the matters which he is bound to consider".

(b) What factors a decision-maker is bound to consider in

making the decision is determined by construction of the statute conferring the discretion. If the statute expressly states the considerations to be taken into account, it will often be necessary for the court to decide whether those enumerated factors are exhaustive or merely inclusive. If the relevant factors - and in this context I use this expression to refer to the factors which the decision-maker is bound to consider - are not expressly stated, they must be determined by implication from the subject matter, scope and purpose of the Act.

In the context of judicial review on the ground of **taking into account irrelevant considerations**, this Court has held that, where a statute confers a discretion which in its terms is unconfined,

the factors that may be taken into account in the exercise of the discretion are similarly unconfined, except in so far as there may be found in the subject matter, scope and purpose of the statute some implied limitation on the factors to which the decision-maker may legitimately have regard (see *Reg. v. Australian Broadcasting Tribunal; Ex parte 2HD Pty Ltd* (1979) 144 CLR 45, at pp 49-50, adopting the earlier formulations of Dixon J. in *Swan Hill Corporation v. Bradbury* (1937) 56 CLR 746, at pp 757-758, and *Water Conservation and Irrigation Commission (N.S.W.) v. Browning* (1947) 74 CLR 492, at p 505). By analogy, where the ground of review is that a relevant consideration has not been taken into account and the discretion is unconfined by the terms of the statute, the court will not find that the decision-maker is bound to take a particular matter into account unless an implication that he is bound to do so is to be found in the subject matter, scope and purpose of the Act.

(c) Not every consideration that a decision-maker is bound to take into account but fails to take into account will justify the court setting aside the impugned decision and ordering that the discretion be re-exercised according to law. A factor might be so insignificant that the failure to take it into account could not have materially affected the decision (see, for example, the various expressions in *Baldwin & Francis Ltd v. Patents Appeal Tribunal* (1959) AC 663, at p 693; *Hanks v. Minister of Housing and Local Government* (1963) 1 QB 999, at p 1020; *Reg. v. Chief Registrar of Friendly Societies; Ex parte New Cross Building Society* (1984) QB 227, at p 260). A similar principle has been enunciated in cases where regard has been had to irrelevant considerations in the making of an administrative decision (*Reg. v. Bishop of London* (1889) 24 QBD 213, at pp 226-227; *Reg. v. Rochdale Metropolitan Borough Council; Ex parte Cromer Ring Mill Ltd* (1982) 3 All ER 761, at pp 769-770).

(d) The limited role of a court reviewing the exercise of an administrative discretion must constantly be borne in mind. It is not the function of the court to substitute its own decision for that of the administrator by exercising a discretion which the legislature has vested in the administrator. Its role is to set limits on the exercise of that discretion, and a decision made within those boundaries cannot be impugned (*Wednesbury Corporation*, at p.228). It follows that, in the absence of any statutory indication of the weight to be given to various considerations, it is generally for the decision-maker and not the court to determine the appropriate weight to be given to the matters which are required to be taken into account in exercising the statutory power (*Sean Investments Pty Ltd v. MacKellar*, at p 375; *Reg. v. Anderson; Ex parte Ipec-Air Pty Ltd* (1965) 113 CLR 177, at p 205; *Elliott v. Southwark London Borough Council* (1976) 1 WLR 499, at p 507; (1976) 2 All ER 781, at p 788; *Pickwell v. Camden London Borough Council* (1983) QB 962, at p 990).

I say "generally" because both principle and authority indicate that in some circumstances a court may set aside an administrative decision which has failed to give adequate weight to a relevant factor of great importance, or has given excessive weight to a relevant factor of no great importance. The preferred ground on which this is done, however, is not the failure to take into account relevant considerations or the taking into account of irrelevant considerations, but that the decision is "manifestly unreasonable". This ground of review was considered by Lord Greene M.R. in *Wednesbury Corporation*, at pp.230, 233-234, in which his Lordship said that it would only be made out if it were shown that the decision was so unreasonable that no reasonable person could have come to it. This ground is now expressed in ss.5(2)(g) and 6(2)(g) of the ADJR Act in these terms. The test has been embraced in both Australia and England (*Parramatta City Council v. Pestell* (1972) 128 C.L.R. 305, at p.327; *Bread Manufacturers of N.S.W. v. Evans* (1981) 56 ALJR 89, at p 96; 38 ALR 93, at p 106; *Re Moore; Ex parte Co-operative Bulk Handling Ltd* (1982) 56 ALJR 697; 41 ALR 221, at pp 221-222; *Hall & Co. Ltd v. Shoreham-By-Sea Urban District Council* (1964) 1 W.L.R. 240, at pp.248, 255; (1964)

1 All E.R. 1, at pp.8, 13; Reg. v. Hillingdon London Borough Council; Ex parte Royco Homes Ltd (1974) QB 720, at pp 731-732; Newbury District Council v. Secretary of State for the Environment (1981) AC 578, at pp 599-600, 608).

However, in its application, there has been considerable diversity in the readiness with which courts have found the test to be satisfied (compare, for example, Wednesbury Corporation, at p.230, and Parramatta City Council, at p.328, with the conclusions reached in South Oxfordshire District Council v. Secretary of State for the Environment (1981) 1 WLR 1092, at p 1099; (1981) 1 All ER 954, at p 960; Shoreham-By-Sea Urban District Council, and Minister of Housing and Local Government v. Hartnell (1965) AC 1134, at p 1173). But guidance may be found in the close analogy between judicial review of administrative action and appellate review of a judicial discretion. In the context of the latter, it has been held that an appellate court may review a discretionary judgment that has failed to give proper weight to a particular matter, but it will be slow to do so because a mere preference for a different result will not suffice (Lovell v. Lovell (1950) 81 CLR 513, at p 519; Gronow v. Gronow (1979) 144 CLR 513, at pp 519-520, 534, 537-538; Mallet v. Mallet (1984) 58 ALJR 248, at pp 252, 255; 52 ALR 193, at pp.200-201, 206-207). So too in the context of administrative law, a court should proceed with caution when reviewing an administrative decision on the ground that it does not give proper weight to relevant factors, lest it exceed its supervisory role by reviewing the decision on its merits.

(e) The principles stated above apply to an administrative decision made by a Minister of the Crown (Murphyores Incorporated Pty Ltd v. The Commonwealth (1976) 136 CLR 1; Re Hunt; Ex parte Sean Investments Pty Ltd (1979) 53 ALJR 552; 25 ALR 497; Padfield v. Minister of Agriculture, Fisheries and Food (1968) AC 997; Secretary of State for Education and Science v. Tameside Metropolitan Borough Council (1977) A.C. 1014). However, in conformity with the principle expressed in (b) above, namely that relevant considerations may be gleaned from the subject matter, scope and purpose of the Act, where the decision is made by a Minister of the Crown, due allowance may have to be made for the taking into account of broader policy considerations which may be relevant to the exercise of a ministerial discretion.

JURISDICTIONAL ERROR (DETAILS IN WEEK 6)

Note: House of Lords in *Anisminic* abolished the distinction between 'jurisdictional error' as the concept of 'ultra vires': *Anisminic Ltd v Foreign Compensation Commission* [1969]. BUT, *Anisminic* DOES NOT APPLY IN AUSTRALIA. See details [here](#).

JURISDICTION VS POWER

Jurisdiction – There is an important distinction between a tribunal's jurisdiction and its powers. The word 'jurisdiction' has different meanings according to its context.

Jurisdiction can describe the kinds of matters that a tribunal is authorised to decide or the kinds of powers that it exercises. For example, the taxation jurisdiction of a tribunal can mean its powers to determine taxation matters. That is, some matters can 'originate' in some tribunals.

A narrower meaning of 'jurisdiction' refers to the scope or limits of a particular power given to a tribunal. Whenever Parliament gives a power to a tribunal, it sets limits to the power. The limits may be express or implied. They may relate to the subject matter of the power or to the procedures for exercising it. If a tribunal sets out to determine a matter that it has no power to decide, it acts outside its jurisdiction. Or if a tribunal has power to decide the matter but goes about it in an unauthorised manner, the tribunal may be said to act beyond its jurisdiction.

Where this occurs, a party may apply to a court for an order to set aside the tribunal's decision or to restrain it from proceeding to make a decision.

In short, the jurisdiction of a tribunal is limited to the review of decisions that are defined by its legislation. Accordingly, a tribunal may only hear a matter if it comes within its statutory remit. Legislation will often define what is a 'reviewable decision', with some precision. If not, legislation setting out the powers of tribunals like the AAT will define 'decision' expansively.

Power – It refers to a tribunal's power to make decisions (rather than its power to take action, because actions are based upon decisions). Most tribunals are established by statute. More rarely, public sector tribunals may operate under non-statutory powers of government. For example, a Minister who has the function of reviewing government decisions may establish a tribunal to hear the applications and make recommendations to him or her.

PROCEDURAL FAIRNESS (NATURAL JUSTICE) – A FORM OF 'JURISDICTION ERROR'

According to the case of *Ex parte Aala* failure to accord procedural fairness constitutes jurisdiction error on the part of the decision-maker.

See details in Week 4 [here](#).

ULTRA VIRES / ILLEGALITY

The doctrine of **ultra vires** forms the basis of judicial review, consisting of executive action taken despite the lack of power, executive action taken in excess of power, executive action taken through improper use of power, or simply the failure to exercise power.

WEDNESBURY/LEGAL UNREASONABLENESS – A FORM OF 'JURISDICTION ERROR'

In the case of "unreasonableness" as a ground of judicial review, it is critical for the same to be framed in the context of the **legality/merits divide**. While the distinction is not always easy to draw, so 'neither the same between night and day' (Gleeson CJ) and as such, *Wednesbury* unreasonableness does not invalidate the difference between full merits and judicial review of administrative action.

Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948] 1 KB 223 – Sunday Entertainments Act 1932 provided that a licensed cinema could open on a Sunday only with permission of the local authority. The plaintiff company was given permission by the Wednesbury Corporation subject to a condition that 'no children under the age of 15 shall be admitted to any entertainment whether accompanied by an adult or not'. The plaintiff sought a declaration that the condition was 'unreasonable'. Action was dismissed at first instance and on appeal, Court of Appeal also refused to intervene. Notably, Lord Greene MR stated:

*When an executive discretion is entrusted by Parliament to a body such as the local authority... what appears to be an exercise of that discretion can only be challenged in the courts in a strictly limited class of case... the court is not a court of appeal... It is clear that the local authority are entrusted by Parliament with the decision on a matter which the knowledge and experience of that authority can best be trusted to deal with. [However], it is true to say that, **if a decision on a competent matter is so unreasonable that no reasonable authority could ever have come to it, then the courts can interfere...** But to prove a case of that kind would require something overwhelming... The decision of the local authority can be upset if it is proved to be unreasonable... in the sense that the court considers it to be a decision that no reasonable body could have come to. It is not what the court considers unreasonable, a different thing altogether... The effect of the legislation is not to set up the court as an arbiter of the correctness of one view over another. It is the local authority that are set in that position and, provided they act, as they have acted, within the four corners of their jurisdiction, this court, in my opinion, cannot interfere.*

Note: *Wednesbury* is a case against legislation instrument (not administrative decisions)

Attorney-General (NSW) v Quin (1990) 170 CLR 1 – Mr Quin sought a declaration that his application to be re-appointed as a magistrate be considered under the former policy that existing magistrates be reappointed unless they were unfit for judicial office. The High Court by majority held that the government was not prevented by a principle of administrative estoppel or otherwise from changing its policy on appointment of magistrates.

On the **topic of legal unreasonableness**, Brennan J states that it is not up to court to make decisions regarding the merits of an administrative decision. Courts only concerned about the legality of the decision. The courts are conscious of not exceeding their supervisory role by undertaking a review of the merits of an exercise of discretionary power. However, properly applied, a standard of legal reasonableness does not involve substituting a court's view as to how a discretion should be exercised for that of a decision-maker. Wednesbury unreasonable can amount to an abuse of power:

"Wednesbury unreasonableness" ... which may appear to open the gate to judicial review of the merits of a decision or action taken within power. Properly applied, Wednesbury unreasonableness leaves the merits of a decision or action unaffected unless the decision or action is such as to amount to an abuse of power.

Minister for Immigration and Citizenship v Li (2013) 87 ALJR 618 – Li was an overseas student with training and experience as a cook. She applied for a skilled-independent overseas student visa. Application was refused, and she sought review by the Migration Review Tribunal (MRT). As Li was waiting for the outcome of her skills assessment review, she requested for MRT to adjourn its decision. However, MRT did not wait for the outcome of said skills assessment review and proceeded to affirm the initial decision of not issuing a visa to Li, on grounds that she had '*been provided with enough opportunities to present her case*', had not provided evidence that she sought re-assessment, and had had a '*reasonable period of time to obtain evidence of competent English*'. The Federal Magistrates Court set aside the MRT's decision on the basis that its refusal to adjourn the proceedings under s363(1)(b) of the Migration Act (i.e., "*Tribunal may ... adjourn the review from time to time*") was **'unreasonable, unfair and involved jurisdictional error'**. This was affirmed by the High Court on subsequent appeal.

French CJ: "*The decision of the MRT to proceed to its determination was not, on the face of it, informed by any consideration other than the asserted sufficiency of the opportunities provided to the first respondent to put her case. The MRT did not in terms or by implication accept or reject the substance of the reasons for a deferment put to it by the first respondent's migration agent. It did not suggest that the first respondent's request for a deferment was due to any fault on her part or on the part of her migration agent. It did not suggest that its decision was based on any balancing of the legislative objectives set out in s 353. Its decision was fatal to the first respondent's application. There was in the circumstances, including the already long history of the matter, an arbitrariness about the decisions, which rendered it unreasonable in the limiting sense explained above.*"

Minister of Immigration and Border Protection v Eden (2016) –

Note: Legal reasonableness must be drawn from the statutory context.

Statutory Construction Principles

See Gleeson CJ's elaboration of the established principles of statutory construction in the case of *Plaintiff S157/2002*. The principles of statutory constructions are as follow:

- (1) If legislation is enacted pursuant to or in contemplation of an **international instrument**, in cases of ambiguity, a court should favour a construction which accords with Australia's obligation.