Administration Law – case notes

Week 1: Introduction			
	Case	**Facts**	**Rule**
Procedural fairness – at risk rights	***Kioa v West (1985) 159 CLR 550***	Mr. Kioa, a Tongan national, entered Australia on a temporary visa and overstayed. The Department of Immigration made a deportation decision against him, arguing that his continued presence was not in Australia's best interest. Mr. Kioa and his family were not informed of adverse material considered by the decision-maker, including allegations of illegal activities.	HCA **established the importance of procedural fairness in administrative decisions that affect individuals' rights or interests.** The Court ruled that Mr. Kioa should have been allowed to respond to the adverse material. This case underscored that procedural fairness is an essential part of the common law duty for decision-makers, reinforcing that affected individuals should be heard, especially where their rights are at risk.
Accountability to international treaties	***Minister for Immigration and Ethnic Affairs v Teoh (1995) 183 CLR 273***	Mr. Teoh, a Malaysian citizen, faced deportation after his application for residency was refused, despite being married to an Australian and having children. Teoh argued that his deportation would harm his family and contravened Australia's ratified (but not domestically implemented) international obligations under the Convention on the Rights of the Child.	HCA found that the ratification of international treaties, even if not incorporated into domestic law, can create a legitimate expectation that administrative decision-makers will act in accordance with those treaties. While not legally binding, this expectation **requires decision-makers to take the treaty into account or provide reasons for not doing so**. This case had profound implications for how administrative law in Australia treats international obligations.
Clarified scope of judicial intervention – how?	***Salemi v Mackellar (No 2) (1977) 137 CLR 396***	Mr. Salemi, an Italian national, faced deportation after overstaying his visa. He challenged the Minister's decision on various grounds, including claims of improper exercise of discretion.	This case reaffirmed that while the executive has significant discretionary powers under the Migration Act, these **powers must be exercised within the bounds of legality and fairness.** Salemi v Mackellar (No 2) clarified the scope of judicial intervention, focusing on whether there was an abuse of power or improper considerations in administrative decision-making.
Procedural fairness and adherence to basic legal principles	***R v Mackellar: Ex parte Ratu (1977) 137 CLR 461***	Mr. Ratu, a Fijian citizen, was in Australia without proper legal status. He sought to challenge the validity of deportation proceedings initiated by the Minister for Immigration. Ratu argued that procedural errors occurred during the decision-making process.	HCA emphasised the importance of procedural fairness and judicial review in immigration cases. The decision highlighted that while the **government holds broad discretionary power in immigration matters, these powers must still comply with basic legal principles, including procedural fairness and adherence to statutory requirements.**
Right to respond	***Water Conservation and***	The Water Conservation and Irrigation Commission sought to revoke a license held by	This case is important as it emphasises that even statutory bodies must observe principles of natural justice and

	Judicial questions	was unlikely to succeed, prompting a claim of apprehended bias.	**Principle:** **Judicial comments or questioning during proceedings do not necessarily indicate bias unless they show a closed mind**
Actual Bias - Domestic Bodies	***Maloney v New South Wales National Coursing Association Ltd [1978] 1 NSWLR 161*** **Open mind**	Maloney was disqualified by the NSW National Coursing Association after being accused of misconduct. He claimed actual bias because members of the Association's committee had prejudged his case.	**Decision:** The court found actual bias because the committee members had expressed clear views about Maloney's guilt before the hearing. **Principle: Actual bias occurs when a decision-maker has a clear and demonstrable predisposition or prejudice against one party.** Procedural fairness requires decision-makers to approach the matter with an open mind.
	Dale v New South Wales Trotting Club Ltd [1978] 1 NSWLR 551 *Evidence of hostility*	Dale, a trainer, was suspended by the NSW Trotting Club. He argued actual bias, claiming the committee members involved in the decision were hostile towards him.	**Decision:** The court held that there was evidence of actual bias due to the committee's demonstrated hostility and unfair treatment of Dale during the hearing. **Principle: Actual bias is established when there is evidence of a decision-maker's active hostility or unwillingness to consider evidence impartially.**
	R v Hircock, Farmer Leggett [1970] 1 QB 67 **A finding of actual bias requires proof that the decision-maker's judgment was improperly influenced by personal interest or prejudice.**	In a criminal trial, Hircock claimed that the judge exhibited actual bias by making comments during the trial that suggested prejudgment of his guilt.	**Decision:** The court ruled that the judge's comments demonstrated actual bias because they reflected a lack of impartiality and fairness during the trial. **Principle:** • **Judges must avoid expressing views during proceedings that indicate prejudgment of an issue or party**.
	Jones v National Coal Board [1957] 2 QB 55 **Actual bias is present where a decision-maker expresses views that demonstrate**	In an industrial accident case, Jones alleged that the tribunal chair had shown actual bias by making disparaging comments about his claim and credibility during the hearing.	**Decision:** The court found actual bias, holding that the tribunal chair's conduct created an atmosphere of hostility that deprived Jones of a fair hearing. **Principle:** • Actual bias is established when the decision-maker's conduct or comments indicate a closed mind or hostility towards one party.

	Invalid or grant appropriate relief		**Discretion of the Court:** • The court granted a constitutional writ of certiorari, quashing the Tribunal's decision. • It emphasized that procedural fairness is fundamental and decisions made in breach of it cannot stand. **Principle:** **A denial of procedural fairness constitutes a jurisdictional error that renders a decision invalid**. Courts can issue remedies such as certiorari or mandamus to correct such errors.
Week 5: Merits review and tribunals			
	Briginshaw v Briginshaw (1938) 60 CLR 336 ***Briginshaw principle: standard of proof***	The case involved a divorce proceeding where the husband alleged adultery against his wife. The standard of proof required to establish such a serious allegation was in question.	**Decision:** HCA held that the standard of proof in civil cases varies according to the gravity of the allegations. For serious allegations, such as adultery, stronger evidence is required to reach satisfaction on the balance of probabilities. **Legal Principle:** • Known as the **Briginshaw principle, it requires that in civil matters, the standard of proof (balance of probabilities) must reflect the seriousness of the issue at hand.** • This principle applies to tribunals when assessing evidence in merits reviews involving serious allegations.
	HG v The Queen (1999) 197 CLR 414 **findings of fact must be based on logically probative evidence, and mere suspicion or speculation is insufficient.**	HG was convicted of sexual offenses. Expert psychological evidence was introduced to support the victim's account, but HG argued the evidence was improperly relied upon.	**Decision:** HCA held that the expert evidence was inadmissible as it went beyond the scope of acceptable expert testimony and improperly influenced the tribunal's fact-finding process. **Legal Principle:** **Tribunals must exercise caution when relying on expert evidence. The evidence must assist the decision-maker without determining the ultimate issue of fact.** • In merits review, tribunals must independently assess the evidence and not defer to expert opinions on critical findings of fact.
	Minister for Immigration and Ethnic Affairs v Pochi (1980) 31 ALR 666 at 670-1	Pochi, a permanent resident of Australia, faced deportation after being convicted of criminal offenses. The Administrative Appeals Tribunal (AAT) reviewed the minister's decision to deport him.	**Decision:** FC confirmed that the AAT had the authority to review the merits of the case but emphasized that it must adhere to the law when making its decision. **Legal Principle:**

	Must be based on facts not policy or opinion		• Tribunals conducting merits review **must base their decisions on material facts and evidence rather than personal opinions or policy considerations outside the scope of the enabling statute.** • The role of the tribunal is to act as a substitute decision-maker and ensure that its decision complies with the law.
	Minister for Immigration and Multicultural Affairs v Yusuf (2001) 206 CLR 323 **Must consider all relevant material**	Yusuf, a non-citizen, applied for judicial review of a Refugee Review Tribunal (RRT) decision denying him refugee status. Yusuf argued the tribunal failed to consider certain claims and evidence.	**Decision:** HCA held that the tribunal's failure to consider relevant material constituted a jurisdictional error. The decision was invalid. **Legal Principle:** • Tribunals must consider all relevant claims and material before them. • A failure to do so results in a jurisdictional error and renders the decision subject to judicial review. • In merits review, tribunals must act within their jurisdiction and comply with procedural fairness requirements. **Merits review requires a tribunal to make findings of fact and apply the law correctly, and a failure to consider relevant evidence or misapplying the law may give rise to judicial review for jurisdictional error.**
Week 6: Judicial Review			
	ABC v Kane (No 2) *[2020] FCA 133*	The case involved a challenge by the ABC to the validity of a search warrant issued under section 3E of the *Crimes Act 1914 (Cth)*. The warrant was issued in connection with an AFP investigation into leaked documents known as "The Afghan Files," which were classified as "SECRET" and published by the ABC in 2017. The ABC sought judicial review under the *Administrative Decisions (Judicial Review) Act 1977 (Cth)* and the *Judiciary Act 1903 (Cth)*, arguing the warrant was invalid on multiple grounds, including that it disproportionately burdened the implied constitutional freedom of political communication and failed to comply with statutory requirements. **Legal Issues:**	**Decision:** The Federal Court dismissed the ABC's application for judicial review. 1. The Court held that the warrant was valid and complied with statutory requirements. 2. The Court found the issuing officer had reasonable grounds to suspect that the premises contained evidential material related to the identified offences. 3. The ABC's arguments about the implied freedom of political communication and other statutory issues were rejected. 4. The Court ordered the ABC to pay the respondents' costs. While Justice Abraham acknowledged the potential 'chilling effect' on political speech of a law which authorised the issuance of a search warrant for journalists' premises,xiv this burden was justified by the 'important and legitimate' purpose

		1. The warrant's incompatibility with the implied freedom of political communication. 2. Non-compliance with statutory requirements under the *Crimes Act* (e.g., lack of meaningful limits on the scope of the search). 3. Misdescription of offences under the *Defence Act 1903 (Cth)*. 4. Legal unreasonableness in the issuance of the warrant.	of 'gathering evidence against…those who have broken the criminal law' (in all circumstances, and not merely those involving the disclosure of classified information to a journalist).xv ABC v Kane (No 2) effectively puts to rest any suggestion that the implied freedom of political communication may offer journalists legal protection against conduct in pursuance of a valid warrant.
Grounds for judicial review			
	ADJR Act	**5 Applications for review of decisions** (1) A person who is aggrieved by a decision to which this Act applies that is made after the commencement of this Act may apply to the Federal Court or the Federal Circuit and Family Court of Australia (Division 2) for an order of review in respect of the decision on any one or more of the following grounds: a) that a breach of the rules of natural justice occurred in connection with the making of the decision; b) that procedures that were required by law to be observed in connection with the making of the decision were not observed; c) that the person who purported to make the decision did not have jurisdiction to make the decision; d) that the decision was not authorized by the enactment in pursuance of which it was purported to be made; e) that the making of the decision was an improper exercise of the power conferred by the enactment in pursuance of which it was purported to be made; f) that the decision involved an error of law, whether or not the error appears on the record of the decision; g) that the decision was induced or affected by fraud; h) that there was no evidence or other material to justify the making of the decision; i) that the decision was otherwise contrary to law. (2) The reference in paragraph (1)(e) to an improper exercise of a power shall be construed as including a reference to: a) taking an irrelevant consideration into account in the exercise of a power; b) failing to take a relevant consideration into account in the exercise of a power; c) an exercise of a power for a purpose other than a purpose for which the power is conferred; d) an exercise of a discretionary power in bad faith; e) an exercise of a personal discretionary power at the direction or behest of another person; f) an exercise of a discretionary power in accordance with a rule or policy without regard to the merits of the particular case; g) an exercise of a power that is so unreasonable that no reasonable person could have so exercised the power; h) an exercise of a power in such a way that the result of the exercise of the power is uncertain; and i) any other exercise of a power in a way that constitutes abuse of the power. (3) The ground specified in paragraph (1)(h) shall not be taken to be made out unless:	

		development, but the central issue was whether the organization had the legal standing to bring the case. **Legal Issues:** 1. **Standing**: The primary issue was whether the Sierra Club had standing to sue the U.S. government, as the organization was not directly harmed in the traditional sense (i.e., no personal injury or loss of property). 2. **Environmental and Organizational Standing**: Whether an environmental group could bring a case based on a **generalized public interest** in preserving the environment, or whether it needed to show specific, tangible harm to its members or property.	environmental litigation. The ruling reinforced the requirement that plaintiffs **must demonstrate a concrete injury rather than a generalized or abstract interest**. **"Injury in Fact":** • The concept of "injury in fact" became a central requirement for standing in U.S. federal courts. This decision clarified that **generalized grievances or general public interests are not sufficient to confer standing**, even for well-established environmental organizations like the Sierra Club.
	Shop Distributive and Allied Employees Association v Minister for Industrial Affairs.(SA) (1995) 183 CLR 552 *Unions have standing – direct interests of members*	**Background**: The Shop Distributive and Allied Employees Association (SDA), a trade union representing workers in the retail and allied sectors, sought to challenge a decision made by the South Australian Minister for Industrial Affairs. **Claim**: The SDA argued that the Minister's decision violated provisions of the *South Australian Industrial Relations Act* and impacted workers' rights and industrial awards. The case revolved around the scope of **standing** and whether the union, as a representative body, had the right to bring a judicial review application on behalf of its members. **Legal Issues:** 1. **Standing**: The key issue was whether the SDA had the legal standing to bring a judicial review challenge. The union claimed that it had a direct interest in protecting the rights and interests of its members, but the Minister argued that the union did not have sufficient standing to challenge the decision. 2. **Public Interest vs. Special Interest**: Whether the union's general interest in the matter was sufficient to demonstrate the **special interest**	The High Court ruled in favor of the SDA, finding that the union had standing to bring the case. The Court held that the union had a **special interest** in the decision due to its role in representing workers and its stake in the industrial matters at issue. The union's standing was tied to its position as an advocate for its members' industrial rights. **Significance:** **Clarification of Standing for Unions**: • The case reinforced the standing of **trade unions and representative bodies to challenge decisions that affect the interests of their members,** especially in the context of **industrial relations** and **employment law**. **Special Interest Doctrine**: • The ruling underscored the importance of showing a **special interest that is directly tied to the matter being challenged**. This principle is crucial for judicial review in Australia, ensuring that only those with a legitimate, concrete interest in the outcome can bring proceedings.

Legislation	*Acts Interpretation Act 1901 (Cth) s 25D*	**Content of statements of reasons for decisions** Where an Act requires a tribunal, body or person making a decision to give written reasons for the decision, whether the expression "reasons", "grounds" or any other expression is used, the **instrument giving the reasons shall also set out the findings on material questions of fact and refer to the evidence or other material on which those findings were based.**
	Administrative Appeals Tribunal Act 1975 (Cth) ss ss 28, 37, 38, 43(2), (2B)	**S28 Person affected by decision may obtain reasons for decision** (s28 (2) exceptions contrary to public interest include (a) national security, (b) cabinet decisions etc). **S37 Lodging of material documents with Tribunal** (A decision-maker must give the tribunal a statement explaining their decision and all relevant documents, and if the tribunal asks for more, they must provide those too). **S38 Power of Tribunal to obtain additional statements.** (If the tribunal thinks a decision-maker's statement lacks enough detail on key facts or reasons, it can order them to provide a clearer, more detailed statement) **S43 Review by Tribunal.** *(2) The Tribunal shall give reasons in writing for its decision and those reasons shall include its findings on material questions of fact.*
	ADJR Act 1977 (Cth), ss 13, 13A, 14 and Schedule 2	**S13 Reasons for decision may be obtained** • If a person is affected by a government decision, they can request a written explanation, including key facts, evidence, and reasons, from the decision-maker within 28 days. • If the decision-maker believes the person is not entitled to the explanation, they can refuse the request by providing written notice or applying to the court for confirmation. • If the explanation is inadequate, the person can ask the court to order a more detailed statement, but some types of decisions are excluded from this requirement by law or regulation. **S13A Certain information not required to be disclosed** (Certain confidential or legally protected information, such as personal details, trade secrets, or information restricted by law, does not have to be included in a statement of reasons, but the decision-maker must provide written notice explaining why the information is withheld.) **S14 Certification by Attorney - General concerning the disclosure of information** (If the Attorney-General certifies that disclosing certain information would harm national security, international relations, Cabinet confidentiality, or another public interest, that information does not have to be included in a statement of reasons, but the decision-maker must provide written notice explaining why it is withheld.) **Sch 2 Classes of decisions that are not decisions to which section 13 applies** (Certain government decisions, such as those related to national security, immigration, law enforcement, judicial proceedings, military personnel, foreign affairs, aviation safety, and public service employment, are exempt from the requirement to provide written reasons under section 13.)
	Australian Information	The *Australian Information Commissioner Act 2010* establishes the Office of the Australian Information Commissioner (OAIC), which oversees functions related to freedom of information and privacy, including reviewing decisions made under the *Freedom of Information Act 1982*.

Week 9: Ombudsman and Privacy			
Ombudsman	***VU v VV & VW [2020] AICmr 52*** **Timely access**	**Facts:** The complainant ('VU') sought access to personal information held by the respondents ('VV' and 'VW'). The respondents failed to provide access within the required timeframe under the Privacy Act 1988 (Cth). **Issues:** Whether the respondents breached Australian Privacy Principle (APP) 12 by not providing timely access to the complainant's personal information.	**Decision:** The Australian Information Commissioner found that the respondents had breached APP 12 by failing to provide access to the complainant's personal information. The Commissioner ordered the respondents to provide access to the information within 30 days. **Legal Principle:** This case underscores the obligation of entities to provide individuals with access to their personal information upon request, as stipulated under APP 12 of the Privacy Act.
	VQ v Secretary to the Department of Home Affairs [2020] AICmr 49	**Facts:** The complainant ('VQ') alleged that the Department of Home Affairs had mishandled their personal information, leading to a breach of privacy. Specfically an FOI request to Home Affairs, where the applicant sought access to documents concerning immigration procedures and policies affecting them personally. Alleges inaccurate information was provided to another government agency, which affected the complainant's travel plans and visa status. **Issues:** Whether the Department had breached any of the Australian Privacy Principles in its handling of the complainant's personal information.	**Decision:** The Australian Information Commissioner investigated the complaint and found that the Department had not breached any of the APPs in its handling of the complainant's personal information. **Legal Principle:** This case highlights the importance of adhering to the APPs in handling personal information and demonstrates the Commissioner's role in investigating alleged breaches.
	VI v CSIRO [2020] AICmr 44 **Use information only for the purposes for which it is collected**	**Facts:** The complainant ('VI') alleged that CSIRO had mishandled their personal information, leading to a breach of privacy. Specifically: personal information from a worker's compensation claim was circulated to other employees and used for a secondary purpose (grievance claim by another employee) **Issues:** Whether CSIRO had breached any of the Australian Privacy Principles in its handling of the complainant's personal information.	**Decision:** The Australian Information Commissioner investigated the complaint and found that CSIRO had breached APP 6 by using the complainant's personal information for a purpose other than that for which it was collected, and APP 11 by failing to take reasonable steps to protect the information from misuse. The Commissioner awarded the complainant $5,000 for non-economic loss. **Legal Principle:** This case emphasises the necessity for entities to **use personal information only for the purposes for which it was collected and to take reasonable steps to protect such information,** in compliance with APPs 6 and 11.

			publication of related material can constitute a breach of confidence.
	Giller v Procopets [2008] VSCA 236 **Right to recover damages**	**Facts:** The appellant, Ms. Giller, was in a de facto relationship with the respondent, Mr. Procopets. During their relationship, intimate activities were recorded on videotape with mutual consent. After their relationship ended, Mr. Procopets showed these tapes to third parties without Ms. Giller's consent, causing her significant distress. **Issues:** The primary legal issues were: 1. Whether the unauthorised disclosure of intimate videotapes constituted a breach of confidence. 2. Whether damages for emotional distress could be awarded for such a breach.	**Decision:** The Victorian Court of Appeal held that: 1. Mr. Procopets' actions amounted to a breach of confidence. 2. Damages for emotional distress are recoverable in cases of breach of confidence, even in the absence of economic loss. **Legal Principle:** This case established that Australian law recognises the right to recover damages for emotional distress resulting from a breach of confidence, particularly concerning the unauthorised dissemination of private information.
	Grosse v Purvis (2003) Aust Torts Reports 81 **Recognition of tort invasion of privacy**	**Facts:** This case involved allegations of stalking and harassment. Ms Grosse alleged that Mr. Purvis engaged in a prolonged campaign of harassment, including surveillance and unwanted communications, causing her significant distress and psychological harm. **Issues:** The central issue was whether Australian law recognizes a tort of invasion of privacy, allowing for damages due to such intrusive conduct.	**Decision:** The Queensland District Court recognised a tort of invasion of privacy, awarding Ms. Grosse $178,000 in damages for the distress and harm suffered. **Legal Principle:** This landmark decision marked one of the **first instances where an Australian court explicitly recognised a tort of invasion of privacy, setting a precedent for future cases involving serious invasions of personal privacy.**
	Kalaba v Commonwealth [2004] FCA 763 **Uncertainty about tort of invasion of privacy**	**Facts:** Mr. Kalaba sought damages from the Commonwealth, alleging that his privacy was invaded during a criminal investigation. He claimed that the actions of law enforcement officers amounted to a tortious invasion of his privacy. **Issues:** The key issue was whether Australian law recognises a common law tort of invasion of privacy that could provide a remedy in such circumstances.	**Decision:** The Federal Court dismissed Mr. Kalaba's claim, holding that Australian law does not recognise a tort of invasion of privacy. The court referenced the High Court's decision in *Australian Broadcasting Corporation v Lenah Game Meats Pty Ltd* (2001) 208 CLR 199, which left open the question of whether such a tort exists. **Legal Principle:** This case highlighted the **uncertainty in Australian law regarding the recognition of a tort of invasion of privacy,** with the court opting not to extend the common law to encompass such a tort in this instance.

	Australia (No 2) [2014] HCA 23	**Issue:** Whether the Commonwealth had the power to fund the school chaplaincy program directly.	**Legal Principle:** The executive power of the Commonwealth to spend money is not unlimited and requires clear legislative authority for certain types of expenditure.
Week 12: Anti-terrorism and security			
National security	***Al-Kateb v Godwin (2004) 219 CLR 562*** **Lawfulness of indefinite detention**	**Facts:** Al-Kateb, a stateless Palestinian, arrived in Australia without a visa and was detained as an unlawful non-citizen. He applied for a protection visa, which was refused. He requested to be removed from Australia, but no country would accept him. **Issue:** Whether indefinite detention of an unlawful non-citizen was constitutionally valid when their removal from Australia was not reasonably practicable in the foreseeable future.	**Decision:** The High Court held that the legislation requiring detention of 'unlawful non-citizens' was constitutionally valid, even if their removal was not reasonably practicable in the foreseeable future. **Legal Principle:** **Indefinite immigration detention is lawful under Australian law, even when there is no real prospect of removal in the foreseeable future.** This case has implications for preventative detention under anti-terrorism laws, as it upholds broad executive detention powers.
	Australian Communist Party v Commonwealth (1951) 83 CLR 1 **Overeach of Cth power**	**Facts:** The Menzies government passed legislation to dissolve the Australian Communist Party, confiscate its property, and ban communists from certain employment. **Issue:** Whether the legislation was a valid exercise of the Commonwealth's constitutional powers, particularly the defence power.	**Decision:** The High Court struck down the legislation as unconstitutional. Invalid use of Defnce powers under s51(vi). **Legal Principle:** The Commonwealth cannot recite itself into power by merely asserting a threat to national security. The Court's assessment of such threats must be based on judicial notice, not evidence presented by the government. **The court held that the legislation was an overreach of Commonwealth power and infringed upon the implied freedom of political communication.** This case limits the scope of anti-terrorism laws—**Parliament cannot declare groups illegal without judicial oversight.**
	Dietrich v R (1992) 109 ALR 385 **Legal rep and fair trial**	**Facts:** Dietrich was charged with serious drug offences. He was unable to obtain legal representation and was convicted after a trial in which he was unrepresented. **Issue:** Whether the accused's lack of legal representation resulted in an unfair trial.	**Decision:** The High Court held that in cases involving serious criminal offences, courts should stay proceedings until legal representation is available, except in exceptional circumstances. **Legal Principle:** The right to a fair trial is fundamental in the Australian legal system, and in serious criminal cases, this right may require that an accused has legal representation.
	Guzzardi v Italy (1980) 3 EHRR 333	**Facts:** Antonio Guzzardi was subjected to special police supervision and restricted to live	**Decision:** The European Court of Human Rights held that the restrictions imposed did amount to a deprivation of liberty.

	Excessive preventive actions	in a small island by the Italian government, which severely limited his freedom. **Issue:** Whether these preventative restrictions amounted to a deprivation of liberty under Article 5 of the European Convention on Human Rights.	**Legal Principle:** The court emphasised that the difference between deprivation of and restriction upon liberty is one of degree or intensity, and not one of nature or substance. **Preventative detention measures must be proportionate and justified under human rights law.** This case influences **anti-terrorism control orders**, as it suggests heavy restrictions may amount to unlawful detention.
	Haneef v Minister for Immigration and Citizenship [2007] FCA 1273 **Visa cancellation for terrorism must be based on real evidence, not mere association.**	**Facts:** Dr Mohamed Haneef, an Indian national, was arrested at Brisbane airport on 2 July 2007 in connection with a failed London bomb plot. He was detained for nearly two weeks without charge under counter-terrorism legislation. On 14 July 2007, Dr Haneef was formally charged with intentionally providing resources to a terrorist organization. On 16 July 2007, the Minister for Immigration and Citizenship cancelled Dr Haneef's subclass 457 visa. **Issue:** Whether the Minister exceeded his powers in cancelling Dr Haneef's visa.	**Decision:** The Federal Court set aside the visa cancellation decision on 21 August 2007. The Minister had interpreted "association with persons involved in criminal conduct" too broadly and the Court found no sufficient evidence linking Haneef to terrorist activities. **Legal Principle:** The Minister applied the wrong test in revoking Haneef's visa, rendering the decision beyond the Minister's power under the Migration Act and invalid. Visa cancellation on **security grounds must be based on reasonable evidence, not mere suspicion**. This case shows limits on executive power under anti-terrorism laws, protecting individuals from wrongful actions based on guilt by association.
	Hussain v Minister for Foreign Affairs [2008] FCAFC 128 **broad discretion of the executive in counter-terrorism measures**	**Facts:** Syed Mustapha Hussain, an Australian citizen, had his passport cancelled and was refused a new one based on an adverse security assessment by ASIO. **Issue:** Whether the decision to cancel Hussain's passport was legally valid, given that substantial material considered adverse to Hussain was restricted due to national security concerns.	**Decision:** The Full Federal Court dismissed Hussain's appeal. The Court ruled Minister had acted within power under the Charter of the United Nations Act 1945 (Cth). Hussain was not entitled to procedural fairness, as the listing process was political and international, not a domestic legal decision. **Legal Principle:** UN terrorism listings are not subject to standard procedural fairness requirements. This case reinforces the **broad discretion of the executive in counter-terrorism measures, even at the expense of individual rights.**
	Jabbour v Hicks [2008] FMCA 178 **National security v individual privacy**	**Facts:** • David Hicks, an Australian citizen, was detained in Guantanamo Bay for terrorism-related offences.	**Decision:** • The Federal Magistrates Court ruled against Hicks, allowing the AFP to access his information. • The Court held that national security concerns outweighed privacy rights.