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The imaginary observer of the bias rule – *Matthew Groves*

A successful claim of bias requires its claimant to establish that a source of alleged bias might cause a decision maker not to approach a matter impartially. The courts decide this issue by asking what a fair minded and informed observer might apprehend in the circumstances. This hypothetical observer is a legal fiction used by the courts to ensure that claims of bias are decided by an objective standard that reflects views of the wider public rather than the court itself. The hypothetical observer has been questioned in recent years. Some argue that the courts attribute so much knowledge to the observer that they are, in truth, applying their own views. The observer has also been criticised as a complex and obscure device. This article examines the principles governing the hypothetical observer and considers whether it should be retained as part of the test for bias. 186

Tribunal independence in an age of migration control – *Yee-Fui Ng*

This article examines the structural relationship between the immigration tribunals (Refugee Review Tribunal and Migration Review Tribunal) and the Immigration Department and Minister compared to other tribunals, utilising the Administrative Appeals Tribunal (AAT) as a point of comparison. The immigration tribunals are closely held and have less structural independence than the AAT (except in the AAT's migration jurisdiction). The author examines whether the structural dependence of the immigration tribunals affects their decision-making in normal circumstances and in situations of abuse of executive power; and whether the specific controls in the whole spectrum of

immigration decision-making (including the immigration tribunals and the AAT's migration jurisdiction) affect tribunal independence. The author contends that ministerial directions used by the Immigration Minister decrease the decisional independence of tribunal decision-making in the immigration arena for both immigration tribunals and the AAT (within the AAT's migration jurisdiction) by reducing their willingness to question or depart from government policy. Further, the author argues that the structural dependence of the immigration tribunals is more likely to cause a loss of decisional independence of tribunal members compared to the AAT in situations where the Executive abuses its powers.	201
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