

AUSTRALIAN JOURNAL OF ADMINISTRATIVE LAW

Volume 20, Number 3

July 2013

DISCRIMINATION AND REFUGEES – *Dr Paula Gerber*

Parliamentary contortions following the High Court’s Malaysian Declaration decision 109

WORK AND EMPLOYMENT – *Joo-Cheong Tham and Beth Gaze*

Workplace Gender Equality Act 2012: Setting standards through delegated legislation 113

CIVIL AND POLITICAL RIGHTS – *Steven Churches*

How closed can a court be and still remain a common law court? 117

TRADE, COMMERCE AND REVENUE – *Justin Davidson*

New panel to review anti-dumping decisions 121

CASENOTES – *Rebecca Heath*

Plaintiff S10/2011 v Minister for Immigration and Citizenship 126

ARTICLES

Between rules and discretion: Legislative principles and the “relevant considerations” ground of review – *Andrew Edgar*

Principles may be included in legislation for administrators to apply in the exercise of discretionary powers. But can courts enforce them and, if so, how? This article examines the difficulties that arise when applicants challenge decisions on the basis of improper application of legislative principles. It does so by examining challenges that are made, according to the relevant considerations ground of review, to the administration of the principles of ecologically sustainable development. The article examines the elements of the relevant considerations ground that make it difficult for courts to enforce legislative principles. It also examines the normative factors that are likely to lead courts to exercise restraint when faced with claims that legislative principles, and in particular environmental principles, have not been properly applied. 132

Australia’s autonomous sanctions regime: Problems and prospects – *Stephen Tully*

This article examines Australia’s new legislative framework for the implementation of autonomous sanctions. These measures, introduced during 2011, are targeted at specific individuals, entities or governments and in general terms deny access to financial assets, prevent individuals from entering Australian territory and impose embargoes on transacting in particular goods and services. This article argues that, in the absence of empirical support, the autonomous sanctions regime should not have been modelled upon

the framework for implementing multilateral sanctions. The attributes of the regime include noteworthy public law implications with respect to the delegation of legislative power, statutory interpretation, the doctrine of implied legislative repeal and the usual undertakings as to damages. The potentially broad ambit of the regime may also inadvertently capture innocent conduct, be inconsistently applied and infringe personal rights and liberties, particularly with respect to affording procedural fairness to affected individuals and entities. 149