AUSTRALIAN JOURNAL OF ADMINISTRATIVE LAW

Volume 32, Number 3

2025

EDITORIAL – *General Editor: Matthew Groves*

Fairness in Migration Decision-making and Its Review 105

ARTICLES

Standing in Environmental Cases – *Justice Kristen Walker*

The test for standing in administrative law balances the need to ensure finality of decision-making with the public interest in ensuring that government decisions are lawful. In environmental law the balance has led to more liberal approaches to standing, with incorporated associations becoming an attractive vehicle for pursuing supervisory litigation. This article traces the development of the test for standing in the environmental law context, both at general law and under the *Administrative Decisions (Judicial Review) Act 1975* (Cth). It also considers the legislative responses that have broadened standing (eg, the "open standing" provisions in the *Environment Protection and Biodiversity Conservation Act 1999* (Cth)) and those that have narrowed the categories of person who may challenge decisions. These tensions recently culminated in the High Court's decision of Forestry Corp of New South Wales v South East Forest Rescue Inc, a case which demonstrates that further legislative attempts to narrow standing must be done in clear and unmistakable terms. 108

Prerogative Pardons and the Rule of Law – *Justice Sarah Pritchard*

In Australia, the prerogative of mercy or power of pardon is exercised as a last resort after all avenues of appeal have been exhausted. I contend that the prerogative of mercy retains an important role in recognising the role of mercy at the "rough edges" of the system for the administration of criminal justice in Australia, and in a system of responsible government that its exercise is consistent with the rule of law. The relatively uncontentious exercise of the prerogative or executive pardon in Australia demonstrates the robustness of our accountability mechanisms. By contrast, the exercise of the pardon power in the United States *Constitution* in the Presidential system of government in the United States is replete with instances of abuse of the power and there is not infrequently an overreach of executive power. 122

Character Cancellations and Refusals on Review: Does the Migration Act Hinder or Help the Purpose of the Administrative Review Tribunal? – *Jessica Schulman, William Berthelot, Sarah Akanda and Checker McCarthy*

People who have their visas cancelled or refused under the character provisions in the *Migration Act 1958* (Cth) face an expedited review process shaped by restrictive time limits and rules, unique to this jurisdiction. The time limits and rules in this jurisdiction cannot be extended or waived under any circumstances. People who have their visas cancelled or refused under the character provisions are often the most vulnerable in our communities by virtue of their experiences with trauma, mental and physical health conditions, low levels

of literacy and barriers to access to legal assistance and resources. When experiencing such immense vulnerability, compounded by the legal complexity of a character matter, applicants are required to grapple with an overly restrictive and unforgiving merits review process, the outcome of which will determine how and where they spend the rest of their lives. This paper explores whether the restrictions imposed on the merits review process for those who have their visas cancelled or refused under the character provisions of the *Migration Act* serve to assist or hinder the objective of the Administrative Review Tribunal. 153