Legal Profession Admission Board of New South Wales

Diploma in Law
09 Administrative Law
Examinable Curriculum

Subject Description

Administrative law is a branch of public law that is concerned with the legal control of decisions and actions of governmental agencies and officials, and those of non-governmental bodies which affect the public.

In Australia today, governmental and non-governmental regulation - at federal, state and local government levels - impinges on most areas of life. Notable examples include social security, education, immigration, broadcasting and television, public sector employment, industry and commerce, exploration and mining, ownership and use of property, occupational licensing, town planning and the environment.

The emphasis of the course is on the principles and procedures of administrative law relating to the review of such governmental and non-governmental administrative action.
At state and local government levels, these principles and procedures are to be found mainly in the common law of judicial review. This includes the grounds of judicial review – including denial of procedural fairness and error of law - and the judicial remedies - prohibition, *certiorari*, *mandamus*, injunction and declaration. Administrative review is by the Ombudsman and the Administrative Decisions Tribunal. Freedom of information legislation has also been enacted.

At federal level, a comprehensive system of review is provided by both statute. This involves judicial review by the Federal Court of Australia and administrative review by the Commonwealth Ombudsman and the Administrative Review Tribunal. Freedom of information legislation has also been enacted.

Subject Objectives

At completion of this subject, a student-at-law should be able to:

- Identify and describe the relevant principles and procedures of administrative law relating to the review of governmental and non-governmental administrative action.
- Demonstrate an understanding of the detailed framework of legislation supporting administrative law at State and Federal levels.
- Critically analyse administrative grounds of judicial review and judicial remedies.
- Apply the principles and procedures of administrative law in practical situations.
- Express, in clear and concise language, well-structured and logical arguments with particular reference to how the principles and procedures of administrative law apply to, or operate with, legislation.

Prescribed Books and Materials

As updated by the LPAB Examinations Committee from time to time.

Prescribed Topics

Topic 1: Administrative law theory

- The relationship between legislative, executive and judicial power
- Theoretical justifications for the existence of and limits on judicial review (including importance of statutory interpretation to administrative law)

Topic 2: Administrative decisions

- Legislation, delegated legislation and policy
- Discretion
- Obtaining reasons for administrative decisions

Topic 3: Freedom of information

- *Freedom of Information Act 1982* (Cth)
- *Government Information (Public Access) Act 2009* (NSW)

Topic 4 Merits review

- Merits review and judicial review distinguished
- Administrative Review Tribunal
- NCAT

Topic 5: Ombudsman

- Commonwealth Ombudsman
- NSW Ombudsman

Topic 6: Sources of judicial review jurisdiction

- Section 75(v) of the Commonwealth Constitution
- *Administrative Decisions (Judicial Review) Act 1977* (Cth)
- *Supreme Court Act 1970* (NSW) s 69

Topic 7: Standing

Topic 8: Grounds for judicial review (other than procedural fairness)

- Failure to comply with statutory requirements
- Absence of jurisdictional fact
- Legal unreasonableness (including no evidence, irrationality and duty to inquire)
- Improper purpose
- Failure to take into account relevant considerations
- Taking into account irrelevant considerations
- Unlawful policy/inflexible application of policy

Topic 9: Procedural fairness

- When does obligation to afford procedural fairness arise?
- Statutory modification and exclusion
- Hearing rule
- Bias rule
- Effect of breach of procedural fairness

Topic 10: Jurisdictional error and privative clauses

Topic 11: Judicial review remedies

- Certiorari
- Mandamus
- Habeas corpus
- Declarations
- Injunctions

Topic 12: Crown immunity

09 Administrative Law – Examinable Curriculum

This subject covers the following topics in the Priestley 11 academic area of Administrative Law as prescribed in Schedule 1, Part 2 of the Legal Profession Uniform Admission Rules 2015, as follows:

(a) Organisation and structure of the administration
(b) Administrative law theory
(c) Common law and statutory avenues of judicial review at Commonwealth and State level
(d) Grounds of judicial review
(e) Remedies
(f) Crown immunity
(g) Administrative Appeals Tribunal
(h) Statutory review
(i) Freedom of information