



- (c) the value of the money and property involved in the conduct is, in the opinion of the trier of fact, grossly out of proportion to the defendant's income and expenditure; or
- (d) the conduct involves a significant cash transaction within the meaning of the *Financial Transaction Reports Act 1988*, and the defendant:
- (i) has contravened his or her obligations under that Act relating to reporting the transaction; or
 - (ii) has given false or misleading information in purported compliance with those obligations; or
- (e) the defendant:
- (i) has stated that the conduct was engaged in on behalf of or at the request of another person; and
 - (ii) has not provided information enabling the other person to be identified and located.
- (3) Subparagraph (1)(b)(ii) applies if the conduct in question takes place:
- (a) in the course of or for the purposes of importation of goods into, or exportation of goods from, Australia; or
 - (b) by means of a communication using a postal, telegraphic or telephonic service within the meaning of paragraph 51(xx) of the Constitution; or
 - (c) in the course of banking (other than State banking that does not extend beyond the limits of the State concerned).
- (4) Absolute liability applies to paragraph (1)(b).
- (5) This section does not apply if the defendant proves that he or she had no reasonable grounds for suspecting that the money or property was derived or realised, directly or indirectly, from some form of unlawful activity.

Note: A defendant bears a legal burden in relation to the matter in subsection (5) (see section 13.4).

400.10 Mistake of fact as to the value of money or property

- (1) A person is not criminally responsible for an offence against section 400.3, 400.4, 400.5, 400.6 or 400.7 in relation to money or property if:
- (a) at or before the time of dealing with the money or property, the person considered what was the value of the money or property, and was under a mistaken but reasonable belief about that value; and
 - (b) had the value been what the person believed it to be, the person's conduct would have constituted another offence against this Division for which the maximum penalty, in penalty units, is less than the maximum penalty, in penalty units, for the offence charged.

Example: Assume that a person deals with money or property that is the proceeds of crime. While the person believes it to be proceeds of crime, he or she is under a mistaken but reasonable belief that it is worth \$90,000 when it is in fact worth \$120,000.

That belief is a defence to an offence against subsection 400.4(1) (which deals with money or property of a value of \$100,000 or more). However, the person would be guilty of an offence against subsection 400.5(1) (which deals with money or property of a value of \$10,000 or more). Section 400.14 allows for an alternative verdict of guilty of an offence against subsection 400.5(1).

Note: A defendant bears an evidential burden in relation to the matter in subsection (1) (see subsection 13.3(3)).

- (2) A person may be regarded as having considered what the value of the money or property was if:
- (a) he or she had considered, on a previous occasion, what the value of the money or property was in the circumstances surrounding that occasion; and



- (b) he or she honestly and reasonably believed that the circumstances surrounding the present occasion were the same, or substantially the same, as those surrounding the previous occasion.

400.11 Proof of certain matters relating to kinds of offences not required

In a prosecution for an offence against a provision of this Division, it is not necessary to prove the existence of any fault element in relation to any of the following:

- (a) whether an offence may be dealt with as an indictable offence;
- (b) whether an offence is an indictable offence;
- (c) whether an offence is a Commonwealth indictable offence;
- (d) whether an offence is a foreign indictable offence.

400.12 Combining several contraventions in a single charge

(1) A single charge of an offence against a provision of this Division may be about 2 or more instances of the defendant engaging in conduct (at the same time or different times) that constitutes an offence against a provision of this Division.

(2) If:

- (a) a single charge is about 2 or more such instances; and
- (b) the value of the money and other property dealt with is an element of the offence in question;

that value is taken to be the sum of the values of the money and other property dealt with in respect of each of those instances.

400.13 Proof of other offences is not required

(1) To avoid doubt, it is not necessary, in order to prove for the purposes of this Division that money or property is proceeds of crime, to establish:

- (a) a particular offence was committed in relation to the money or property; or
- (b) a particular person committed an offence in relation to the money or property.

(2) To avoid doubt, it is not necessary, in order to prove for the purposes of this Division an intention or risk that money or property will be an instrument of crime, to establish that:

- (a) an intention or risk that a particular offence will be committed in relation to the money or property; or
- (b) an intention or risk that a particular person will commit an offence in relation to the money or property.

400.14 Alternative verdicts

If, on a trial for an offence against a provision of this Division (the *offence charged*), the trier of fact:

- (a) is not satisfied that the defendant is guilty of the offence charged; but
- (b) is otherwise satisfied that the defendant is guilty of another offence against this Division for which the maximum penalty, in penalty units, is less than the maximum penalty, in penalty units, for the offence charged;

the trier of fact may find the defendant not guilty of the offence charged but guilty of the other



offence, so long as the person has been accorded procedural fairness in relation to that finding of guilt.

400.15 Geographical jurisdiction

Section 15.2 (extended geographical jurisdiction—category B) applies to each offence against this Division.

400.16 Saving of other laws

This Division is not intended to exclude or limit the operation of any other law of the Commonwealth or any law of a State or Territory.

Proceeds of Crime Act 1987

2 Subsection 4(1) (definition of proceeds of crime)

Repeal the definition.

3 Division 1 of Part V

Repeal the Division.

Telecommunications (Interception) Act 1979

4 Paragraph 5D(4)(a)

Repeal the paragraph, substitute:

(a) Part 10.2 of the *Criminal Code* (other than section

There is no need for me to write the details of
ALL RIGHTS RESERVED

Kind Regards



Signature: _____

Name / Title: ANDREW MORTON GARRETT: Global Chairman/ Managing Trustee of the Boards of Trustees of the Andrew Garrett Family Irrevocable Living Trust trading as OenoViva Capital Resources (Global) and the Better World Future Fund (Global) , Global International Crown Unitary Executive, Global International Crown Attorney General, Global Chief Justice of International Crown Court of Justice, Global Chief Justice of International Crown Criminal Court for Abolition of Impunity, Global International Crown Managing Director,, Global International Crown Licensor of Judicial, Quasi-Judicial and Administrative Discretionary Public Powers, Global International Crown Trustee In Bankruptcy, Global International Crown Liquidator, Global International Crown Managing Controller, Global International Crown Receiver And Manager.



ANNEXURE 1

11/24/25, 3:44 PM Track your parcels - Australia Post

2

TRACKING

CITIBANK N.A. KIN C. YIP

Tracking
Overview Journey

- We've got it**

Received by our network
COLLINSWOOD SA • Wed 5 Nov, 2.19pm
- It's on its way**

Scheduled for despatch
ADELAIDE SA • Wed 5 Nov, 6.25pm

Arrived at facility
ADELAIDE SA • Wed 5 Nov, 6.55pm

Item processed at sorting facility
ADELAIDE AIRPORT SA • Wed 5 Nov, 6.55pm

Cleared and awaiting international departure
ADELAIDE SA • Thu 6 Nov, 9.03am

Booked for flight
Thu 6 Nov, 10.16am

Flight departed
Thu 6 Nov, 11.39am

Booked for flight
Thu 6 Nov, 5.17pm

We'd really love your feedback. Do you have a moment to tell us what you think?

[Start survey](#) Chat

<https://auspost.com.au/mypost/track/details/EJ343993559AU> 1/3



11/24/25, 3:44 PM

Track your parcels - Australia Post



Item handed over to the local postal authority
Fri 7 Nov, 6.24pm

International arrival - awaiting clearance
NEW YORK (US), UNITED STATES OF AMERICA • Fri 7 Nov, 6.23pm

Arrived at facility
UNITED STATES OF AMERICA • Sat 8 Nov, 5.23pm

Arrived at local facility for delivery
UNITED STATES OF AMERICA • Mon 10 Nov, 1.44am

Onboard for delivery
UNITED STATES OF AMERICA • Mon 10 Nov, 6.10am

Unsuccessful delivery - Addressee not available
UNITED STATES OF AMERICA • Mon 10 Nov, 6.44pm

Delivered

Delivered with signature
UNITED STATES OF AMERICA • Wed 12 Nov, 4.49pm



Details

Tracking number

EJ343993559AU

Delivery address

Can't be shown



We'd really love your feedback. Do you have a moment to tell us what you think?



ANNEXURE 2

From: Yip, Kin C <kin.c.yip@citi.com>

Sent: Thursday, 20 November 2025 2:19 AM

To: andrew.garrett@dynamic-capital-bank.com

Subject: Not read: AMG 9158b CITIBANK ELAINE DI PAPAS NOTICE OF CRYSTALLISATION; SEIZURE OF COLLATERAL; RETENTION OF COLLATERAL 31.10.25

Importance: High

Your message

To: Yip, Kin C [USPB]

Subject: AMG 9158b CITIBANK ELAINE DI PAPAS NOTICE OF CRYSTALLISATION; SEIZURE OF COLLATERAL; RETENTION OF COLLATERAL 31.10.25

Sent: Thursday, October 30, 2025 10:00:11 PM (UTC-05:00) Eastern Time (US & Canada)

was deleted without being read on Wednesday, November 19, 2025 10:48:55 AM (UTC-05:00) Eastern Time (US & Canada).

Fact Sheet No.2 (Rev.1), The International Bill of Human Rights

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

UNIVERSAL DECLARATION OF HUMAN RIGHTS (art. 1),
adopted by General Assembly resolution 217 A (III) of 10 December 1948.

Contents:

- Background
- Universal Declaration of Human Rights
- International Covenants on Human Rights
- Worldwide influence of the International Bill of Human Rights

- Annex: The International Bill of Human Rights
 - Universal Declaration of Human Rights
 - International Covenant on Economic, Social and Cultural Rights
 - International Covenant on Civil and Political Rights
 - Optional Protocol to the International Covenant on Civil and Political Rights
 - Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty

Background

The International Bill of Human Rights consists of the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights and its two Optional Protocols.

Human rights had already found expression in the Covenant of the League of Nations, which led, inter alia, to the creation of the International Labour Organisation. At the 1945 San Francisco Conference, held to draft the Charter of the United Nations, a proposal to embody a "Declaration on the Essential Rights of Man" was put forward but was not examined because it required more detailed consideration than was possible at the time. The Charter clearly speaks of "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion" (Art. 1, para. 3). The idea of promulgating an "international bill of rights" was also considered by many as basically implicit in the Charter.

The Preparatory Commission of the United Nations, which met immediately after the closing session of the San Francisco Conference, recommended that the Economic and Social Council should, at its first session, establish a commission for the promotion of human rights as envisaged in Article 68 of the Charter. Accordingly, the Council established the Commission on Human Rights early in 1946.

At its first session, in 1946, the General Assembly considered a draft Declaration on Fundamental Human Rights and Freedoms and transmitted it to the Economic and Social Council "for reference to the Commission on Human Rights for consideration . . . in its preparation of an international bill of rights" (resolution 43 (I)). The Commission, at its first session early in 1947, authorized its officers to formulate what it termed "a preliminary draft International Bill of Human Rights". Later the work was taken over by a formal drafting committee, consisting of members of the Commission from eight States, selected with due regard for geographical distribution.

Towards the Universal Declaration

In the beginning, different views were expressed about the form the bill of rights should take. The Drafting Committee decided to prepare two documents: one in the form of a declaration, which would set forth general principles or standards of human rights; the other in the form of a convention, which would define

specific rights and their limitations. Accordingly, the Committee transmitted to the Commission on Human Rights draft articles of an international declaration and an international convention on human rights. At its second session, in December 1947, the Commission decided to apply the term "International Bill of Human Rights" to the series of documents in preparation and established three working groups: one on the declaration, one on the convention (which it renamed "covenant") and one on implementation. The Commission revised the draft declaration at its third session, in May/June 1948, taking into consideration comments received from Governments. It did not have time, however, to consider the covenant or the question of implementation. The declaration was therefore submitted through the Economic and Social Council to the General Assembly, meeting in Paris.

By its resolution 217 A (III) of 10 December 1948, the General Assembly adopted the Universal Declaration of Human Rights as the first of these projected instruments.

Towards the International Covenants

On the same day that it adopted the Universal Declaration, the General Assembly requested the Commission on Human Rights to prepare, as a matter of priority, a draft covenant on human rights and draft measures of implementation. The Commission examined the text of the draft covenant in 1949 and the following year it revised the first 18 articles, on the basis of comments received from Governments. In 1950, the General Assembly declared that "the enjoyment of civic and political freedoms and of economic, social and cultural rights are interconnected and interdependent" (resolution 421 (V), sect. E). The Assembly thus decided to include in the covenant on human rights economic, social and cultural rights and an explicit recognition of the equality of men and women in related rights, as set forth in the Charter. In 1951, the Commission drafted 14 articles on economic, social and cultural rights on the basis of proposals made by Governments and suggestions by specialized agencies. It also formulated 10 articles on measures for implementation of those rights under which States parties to the covenant would submit periodic reports. After a long debate at its sixth session, in 1951/1952, the General Assembly requested the Commission "to draft two Covenants on Human Rights, . . . one to contain civil and political rights and the other to contain economic, social and cultural rights" (resolution 543 (VI), para. 1). The Assembly specified that the two covenants should contain as many similar provisions as possible. It also decided to include an article providing that "all peoples shall have the right of self-determination" (resolution 545 (VI)).

The Commission completed preparation of the two drafts at its ninth and tenth sessions, in 1953 and 1954. The General Assembly reviewed those texts at its ninth session, in 1954, and decided to give the drafts the widest possible publicity in order that Governments might study them thoroughly and that public opinion might express itself freely. It recommended that its Third Committee start an article-by-article discussion of the texts at its tenth session, in 1955. Although the article-by-article discussion began as scheduled, it was not until 1966 that the preparation of the two covenants was completed.

The International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights were adopted by the General Assembly by its resolution 2200 A (XXI) of 16 December 1966. The first Optional Protocol to the International Covenant on Civil and Political Rights, adopted by the same resolution, provided international machinery for dealing with communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant.

Universal Declaration of Human Rights

The Universal Declaration of Human Rights was adopted and proclaimed by the General Assembly

as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.

Forty-eight States voted in favour of the Declaration, none against, with eight abstentions. In a statement following the voting, the President of the General Assembly pointed out that adoption of the Declaration was "a remarkable achievement, a step forward in the great evolutionary process. It was the first occasion on

which the organized community of nations had made a Declaration of human rights and fundamental freedoms. The instrument was backed by the authority of the body of opinion of the United Nations as a whole, and millions of people -men, women and children all over the world- would turn to it for help, guidance and inspiration.

The Declaration consists of a preamble and 30 articles, setting forth the human rights and fundamental freedoms to which all men and women, everywhere in the world, are entitled, without any discrimination.

Article 1, which lays down the philosophy on which the Declaration is based, reads:

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

The article thus defines the basic assumptions of the Declaration: that the right to liberty and equality is man's birthright and cannot be alienated: and that, because man is a rational and moral being, he is different from other creatures on earth and therefore entitled to certain rights and freedoms which other creatures do not enjoy.

Article 2, which sets out the basic principle of equality and non discrimination as regards the enjoyment of human rights and fundamental freedoms, forbids "distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

Article 3, the first cornerstone of the Declaration, proclaims the right to life, liberty and security of person -a right essential to the enjoyment of all other rights. This article introduces articles 4 to 21, in which other civil and political rights are set out, including: freedom from slavery and servitude; freedom from torture and cruel, inhuman or degrading treatment or punishment; the right to recognition everywhere as a person before the law; the right to an effective judicial remedy; freedom from arbitrary arrest, detention or exile; the right to a fair trial and public hearing by an independent and impartial tribunal; the right to be presumed innocent until proved guilty; freedom from arbitrary interference with privacy, family, home or correspondence; freedom of movement and residence; the right of asylum; the right to a nationality; the right to marry and to found a family; the right to own property; freedom of thought, conscience and religion; freedom of opinion and expression; the right to peaceful assembly and association; and the right to take part in the government of one's country and to equal access to public service in one's country.

Article 22, the second cornerstone of the Declaration, introduces articles 23 to 27, in which economic, social and cultural rights -the rights to which everyone is entitled "as a member of society" -are set out. The article characterizes these rights as indispensable for human dignity and the free development of personality, and indicates that they are to be realized "through national effort and international cooperation". At the same time, it points out the limitations of realization, the extent of which depends on the resources of each State.

The economic, social and cultural rights recognized in articles 22 to 27 include the right to social security; the right to work; the right to equal pay for equal work; the right to rest and leisure; the right to a standard of living adequate for health and well-being; the right to education; and the right to participate in the cultural life of the community.

The concluding articles, articles 28 to 30, recognize that everyone is entitled to a social and international order in which the human rights and fundamental freedoms set forth in the Declaration may be fully realized, and stress the duties and responsibilities which each individual owes to his community. Article 29 states that "in the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society". It adds that in no case may human rights and fundamental freedoms be exercised contrary to the purposes and principles of the United Nations. Article 30 emphasizes that no State, group or person may claim any right, under the Declaration, "to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth" in the Declaration.

Importance and influence of the Declaration

Conceived as "a common standard of achievement for all peoples and all nations", the Universal Declaration of Human Rights has become just that: a yardstick by which to measure the degree of respect for, and compliance with, international human rights standards.

Since 1948 it has been and rightly continues to be the most important and far-reaching of all United Nations declarations, and a fundamental source of inspiration for national and international efforts to promote and protect human rights and fundamental freedoms. It has set the direction for all subsequent work in the field of human rights and has provided the basic philosophy for many legally binding international instruments designed to protect the rights and freedoms which it proclaims.

In the Proclamation of Teheran, adopted by the International Conference on Human Rights held in Iran in 1968, the Conference agreed that "the Universal Declaration of Human Rights states a common understanding of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community". The Conference affirmed its faith in the principles set forth in the Declaration, and urged all peoples and Governments "to dedicate themselves to [those] principles . . . and to redouble their efforts to provide for all human beings a life consonant with freedom and dignity and conducive to physical, mental, social and spiritual welfare".

In recent years, there has been a growing tendency for United Nations organs, in preparing international instruments in the field of human rights, to refer not only to the Universal Declaration, but also to other parts of the International Bill of Human Rights.

International Covenants on Human Rights

The preambles and articles 1, 3 and 5 of the two International Covenants are almost identical. The preambles recall the obligation of States under the Charter of the United Nations to promote human rights; remind the individual of his responsibility to strive for the promotion and observance of those rights; and recognize that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can be achieved only if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights.

Article 1 of each Covenant states that the right to self-determination is universal and calls upon States to promote the realization of that right and to respect it.

The article provides that "All peoples have the right of self-determination" and adds that "By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development". Article 3, in both cases, reaffirms the equal right of men and women to the enjoyment of all human rights, and enjoins States to make that principle a reality. Article 5, in both cases, provides safeguards against the destruction or undue limitation of any human right or fundamental freedom, and against misinterpretation of any provision of the Covenants as a means of justifying infringement of a right or freedom or its restriction to a greater extent than provided for in the Covenants. It also prevents States from limiting rights already enjoyed within their territories on the ground that such rights are not recognized, or recognized to a lesser extent, in the Covenants.

Articles 6 to 15 of the International Covenant on Economic, Social and Cultural Rights recognize the rights to work (art. 6); to the enjoyment of just and favourable conditions of work (art. 7); to form and join trade unions (art. 8); to social security, including social insurance (art. 9); to the widest possible protection and assistance for the family, especially mothers, children and young persons (art. 10); to an adequate standard of living (art. 11); to the enjoyment of the highest attainable standard of physical and mental health (art. 12); to education (arts. 13 and 14); and to take part in cultural life (art. 15).

In its articles 6 to 27, the International Covenant on Civil and Political Rights protects the right to life (art. 6) and lays down that no one is to be subjected to torture or to cruel, inhuman or degrading treatment or punishment (art. 7); that no one is to be held in slavery; that slavery and the slave-trade are to be prohibited; and that no one is to be held in servitude or required to perform forced or compulsory labour (art. 8); that no one is to be subjected to arbitrary arrest or detention (art. 9); that all persons deprived of

their liberty are to be treated with humanity (art. 10); and that no one is to be imprisoned merely on the ground of inability to fulfil a contractual obligation (art. 11).

The Covenant provides for freedom of movement and freedom to choose a residence (art. 12) and for limitations to be placed on the expulsion of aliens lawfully in the territory of a State party (art. 13). It makes provision for the equality of all persons before the courts and tribunals and for guarantees in criminal and civil proceedings (art. 14). It prohibits retroactive criminal legislation (art. 15); lays down the right of everyone to recognition everywhere as a person before the law (art. 16); and calls for the prohibition of arbitrary or unlawful interference with an individual's privacy, family, home or correspondence, and of unlawful attacks on his honour and reputation (art. 17).

The Covenant provides for protection of the rights to freedom of thought, conscience and religion (art. 18) and to freedom of opinion and expression (art. 19). It calls for the prohibition by law of any propaganda for war and of any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (art. 20). It recognizes the right of peaceful assembly (art. 21) and the right to freedom of association (art. 22). It also recognizes the right of men and women of marriageable age to marry and to found a family, and the principle of equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution (art. 23). It lays down measures to protect the rights of children (art. 24), and recognizes the right of every citizen to take part in the conduct of public affairs, to vote and to be elected, and to have access, on general terms of equality, to public service in his country (art. 25). It provides that all persons are equal before the law and are entitled to equal protection of the law (art. 26). It also calls for protection of the rights of ethnic, religious and linguistic minorities in the territories of States parties (art. 27).

Finally, article 28 provides for the establishment of a Human Rights Committee responsible for supervising implementation of the rights set out in the Covenant.

Conditions

The Universal Declaration of Human Rights affirms that the exercise of a person's rights and freedoms may be subject to certain limitations, which must be determined by law, solely for the purpose of securing due recognition of the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. Rights may not be exercised contrary to the purposes and principles of the United Nations, or if they are aimed at destroying any of the rights set forth in the Declaration (arts. 29 and 30).

The International Covenant on Economic, Social and Cultural Rights states that the rights provided for therein may be limited by law, but only in so far as it is compatible with the nature of the rights and solely to promote the general welfare in a democratic society (art. 4).

Unlike the Universal Declaration and the Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights contains no general provision applicable to all the rights provided for in the Covenant authorizing restrictions on their exercise. However, several articles in the Covenant provide that the rights being dealt with shall not be subject to any restrictions except those which are prescribed by law and are necessary to protect national security, public order, or the rights and freedoms of others.

Certain rights, therefore, may never be suspended or limited, even in emergency situations. These are the rights to life, to freedom from torture, to freedom from enslavement or servitude, to protection from imprisonment for debt, to freedom from retroactive penal laws, to recognition as a person before the law, and to freedom of thought, conscience and religion.

The Covenant on Civil and Political Rights allows a State to limit or suspend the enjoyment of certain rights in cases of officially proclaimed public emergencies which threaten the life of the nation. Such limitations or suspensions are permitted only "to the extent strictly required by the exigencies of the situation" and may never involve discrimination solely on the ground of race, colour, sex, language, religion or social origin (art. 4). The limitations or suspensions must also be reported to the United Nations.

First Optional Protocol

The first Optional Protocol to the International Covenant on Civil and Political Rights enables the Human Rights Committee, set up under that Covenant, to receive and consider communications from individuals claiming to be victims of violations of any of the rights set forth in the Covenant.

Under article I of the Optional Protocol, a State party to the Covenant that becomes a party to the Protocol recognizes the competence of the Human Rights Committee to receive and consider communications from individuals subject to its jurisdiction who claim to be victims of a violation by that State of any of the rights set forth in the Covenant. Individuals who make such a claim, and who have exhausted all available domestic remedies, are entitled to submit a written communication to the Committee (art. 2).

Such communications as are determined to be admissible by the Committee (in addition to article 2, articles 3 and 5 (2) lay down conditions for admissibility) are brought to the attention of the State party alleged to be violating a provision of the Covenant. Within six months, that State must submit to the Committee written explanations or statements clarifying the matter and indicating the remedy, if any, that it may have applied (art. 4).

The Human Rights Committee considers the admissible communications, at closed meetings, in the light of all written information made available to it by the individual and the State party concerned. It then forwards its views to the State party and to the individual (art. 5).

A summary of the Committee's activities under the Optional Protocol is included in the report which it submits annually to the General Assembly through the Economic and Social Council (art. 6).

Second Optional Protocol

The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, was adopted by the General Assembly by its resolution 44/128 of 15 December 1989. Under its article 1, no one within the jurisdiction of a State party to the Protocol may be executed.

Under article 3 of the Protocol, States parties must include in the reports which they submit to the Human Rights Committee information on measures taken to give effect to the Protocol.

Article 5 of the Second Optional Protocol provides that, with respect to any State party to the first Optional Protocol, the competence of the Human Rights Committee to receive and consider communications from individuals subject to that State's jurisdiction shall extend to the provisions of the Second Optional Protocol, unless the State party concerned has made a statement to the contrary at the moment of ratification or accession.

Under article 6, the provisions of the Second Optional Protocol apply as additional provisions to the Covenant.

Entry into force of the Covenants and the Optional Protocols

The International Covenant on Economic, Social and Cultural Rights entered into force on 3 January 1976, three months after the date of deposit with the Secretary-General of the thirty-fifth instrument of ratification or accession, as provided in article 27. As at 30 September 1995, the Covenant had been ratified or acceded to by 132 States:

Afghanistan, Albania, Algeria, Angola, Argentina, Armenia, **Australia**, Austria, Azerbaijan, Barbados, Belarus, Belgium, Benin, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, Colombia, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Democratic People's Republic of Korea, Denmark, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Estonia, Ethiopia, Finland, France, Gabon, Gambia, Georgia, Germany, Greece, Grenada, Guatemala, Guinea, Guinea-Bissau, Guyana, Haiti, Hungary, Iceland, India, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kenya, Kyrgyzstan, Latvia, Lebanon, Lesotho, Libyan Arab Jamahiriya, Lithuania, Luxembourg, Madagascar, Malawi, Mali, Malta, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Nicaragua,

Niger, Nigeria, Norway, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, Saint Vincent and the Grenadines, San Marino, Senegal, Seychelles, Slovakia, Slovenia, Somalia, Spain, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Syrian Arab Republic, The former Yugoslav Republic of Macedonia, Togo, Trinidad and Tobago, Tunisia, Ukraine, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia and Zimbabwe.

The International Covenant on Civil and Political Rights entered into force on 23 March 1976, three months after the date of deposit with the Secretary-General of the thirty-fifth instrument of ratification or accession, as provided in article 49. As at 30 September 1995, the Covenant had been ratified or acceded to by 132 States:

Afghanistan, Albania, Algeria, Angola, Argentina, Armenia, **Australia**, Austria, Azerbaijan, Barbados, Belarus, Belgium, Benin, Bolivia, Bosnia and Herzegovina, Brazil, Bulgaria, Burundi, Cambodia, Cameroon, Canada, Cape Verde, Central African Republic, Chad, Chile, Colombia, Congo, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Democratic People's Republic of Korea, Denmark, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Estonia, Ethiopia, Finland, France, Gabon, Gambia, Georgia, Germany, Grenada, Guatemala, Guinea, Guyana, Haiti, Hungary, Iceland, India, Iran (Islamic Republic of), Iraq, Ireland, Israel, Italy, Jamaica, Japan, Jordan, Kenya, Kyrgyzstan, Latvia, Lebanon, Lesotho, Libyan Arab Jamahiriya, Lithuania, Luxembourg, Madagascar, Malawi, Mali, Malta, Mauritius, Mexico, Mongolia, Morocco, Mozambique, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Nigeria, Norway, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Rwanda, Saint Vincent and the Grenadines, San Marino, Senegal, Seychelles, Slovakia, Slovenia, Somalia, Spain, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Syrian Arab Republic, The former Yugoslav Republic of Macedonia, Togo, Trinidad and Tobago, Tunisia, Uganda, Ukraine, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Uzbekistan, Venezuela, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia and Zimbabwe.

As at the same date, 44 States parties to the International Covenant on Civil and Political Rights had made the declaration under its article 41, recognizing the competence of the Human Rights Committee "to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations" under the Covenant. The provisions of article 41 entered into force on 28 March 1979 in accordance with paragraph 2 of that article.

The first Optional Protocol to the International Covenant on Civil and Political Rights entered into force simultaneously with the Covenant, having received the minimum 10 ratifications or accessions required. As at 30 September 1995, 85 States parties to the Covenant had also become parties to the first Optional Protocol:

Algeria, Angola, Argentina, Armenia, **Australia**, Austria, Barbados, Belarus, Belgium, Benin, Bolivia, Bosnia and Herzegovina, Bulgaria, Cameroon, Canada, Central African Republic, Chad, Chile, Colombia, Congo, Costa Rica, Cyprus, Czech Republic, Denmark, Dominican Republic, Ecuador, El Salvador, Equatorial Guinea, Estonia, Finland, France, Gambia, Georgia, Germany, Guinea, Guyana, Hungary, Iceland, Ireland, Italy, Jamaica, Kyrgyzstan, Latvia, Libyan Arab Jamahiriya, Lithuania, Luxembourg, Madagascar, Malta, Mauritius, Mongolia, Namibia, Nepal, Netherlands, New Zealand, Nicaragua, Niger, Norway, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Russian Federation, Saint Vincent and the Grenadines, San Marino, Senegal, Seychelles, Slovakia, Slovenia, Somalia, Spain, Suriname, Sweden, The former Yugoslav Republic of Macedonia, Togo, Trinidad and Tobago, Ukraine, Uruguay, Uzbekistan, Venezuela, Zaire and Zambia.

The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, entered into force on 11 July 1991, having received the minimum 10 ratifications or accessions required. As at 30 September 1995, the Protocol had been ratified or acceded to by 28 States:

Australia, Austria, Denmark, Ecuador, Finland, Germany, Hungary, Iceland, Ireland, Italy, Luxembourg, Malta, Mozambique, Namibia, Netherlands, New Zealand, Norway, Panama, Portugal, Romania, Seychelles, Slovenia, Spain, Sweden, Switzerland, The former Yugoslav Republic of Macedonia, Uruguay and Venezuela.

Worldwide influence of the International Bill of Human Rights

From 1948, when the Universal Declaration of Human Rights was adopted and proclaimed, until 1976, when the International Covenants on Human Rights entered into force, the Declaration was the only completed portion of the International Bill of Human Rights. The Declaration, and at a later stage the Covenants, exercised a profound influence on the thoughts and actions of individuals and their Governments in all parts of the world.

The International Conference on Human Rights, which met at Teheran from 22 April to 13 May 1968 to review the progress made in the 20 years since the adoption of the Universal Declaration and to formulate a programme for the future, solemnly declared in the Proclamation of Teheran:

1 . It is imperative that the members of the international community fulfil their solemn obligations to promote and encourage respect for human rights and fundamental freedoms for all without distinctions of any kind such as race, colour, sex, language, religion, political or other opinions;

2. The Universal Declaration of Human Rights states a common understanding, of the peoples of the world concerning the inalienable and inviolable rights of all members of the human family and constitutes an obligation for the members of the international community;

3. The International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Declaration on the Granting of Independence to Colonial Countries and Peoples, the International Convention on the Elimination of All Forms of Racial Discrimination as well as other conventions and declarations in the field of human rights adopted under the auspices of the United Nations, the specialized agencies and the regional intergovernmental organizations, have created new standards and obligations to which States should conform;

...

Thus, for more than 25 years, the Universal Declaration on Human Rights stood alone as an international "standard of achievement for all peoples and all nations". It became known and was accepted as authoritative both in States which became parties to one or both of the Covenants and in those which did not ratify or accede to either. Its provisions were cited as the basis and justification for many important decisions taken by United Nations bodies; they inspired the preparation of a number of international human rights instruments, both within and outside the United Nations system; they exercised a significant influence on a number of multilateral and bilateral treaties; and they had a strong impact as the basis for the preparation of many new national constitutions and national laws.

The Universal Declaration came to be recognized as a historic document articulating a common definition of human dignity and values. The Declaration is a yardstick by which to measure the degree of respect for, and compliance with, international human rights standards everywhere on earth.

The coming into force of the Covenants, by which States parties accepted a legal as well as a moral obligation to promote and protect human rights and fundamental freedoms, did not in any way diminish the widespread influence of the Universal Declaration. On the contrary, the very existence of the Covenants, and the fact that they contain the measures of implementation required to ensure the realization of the rights and freedoms set out in the Declaration, gives greater strength to the Declaration.

Moreover, the Universal Declaration is truly universal in scope, as it preserves its validity for every member of the human family, everywhere, regardless of whether or not Governments have formally accepted its principles or ratified the Covenants. On the other hand, the Covenants, by their nature as multilateral conventions, are legally binding only on those States which have accepted them by ratification or accession.

In many important resolutions and decisions adopted by United Nations bodies, including the General Assembly and the Security Council, the Universal Declaration of Human Rights and one or both Covenants have been cited as the basis for action.

Nearly all the international human rights instruments adopted by United Nations bodies since 1948 elaborate principles set out in the Universal Declaration of Human Rights. The International Covenant on Economic, Social and Cultural Rights states in its preamble that it developed out of recognition of the fact that

in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights.

A similar statement is made in the preamble to the International Covenant on Civil and Political Rights.

The Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the General Assembly in 1975 (resolution 3452 (XXX)), spells out the meaning of article 5 of the Universal Declaration of Human Rights and article 7 of the International Covenant on Civil and Political Rights, both of which provide that no one may be subjected to torture or to cruel, inhuman or degrading treatment or punishment. This prohibition was further reinforced by the adoption in 1984 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (General Assembly resolution 39/46). Similarly, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, proclaimed by the General Assembly in 1981 (resolution 36/55); clearly defines the nature and scope of the principles of non discrimination and equality before the law and the right to freedom of thought, conscience, religion and belief contained in the Universal Declaration and the International Covenants.

A similar situation prevails as regards international human rights instruments adopted outside the United Nations system. For example, the preamble to the Convention for the Protection of Human Rights and Fundamental Freedoms, adopted by the Council of Europe at Rome in 1950, concludes with the following words:

Being resolved, as the Governments of European countries which are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law, to take the first steps for the collective enforcement of certain of the rights stated in the Universal Declaration;

Article II of the Charter of the Organization of African Unity, adopted at Addis Ababa in 1963, provides that one of the purposes of the Organization is "to promote international cooperation, having due regard to the Charter of the United Nations and the Universal Declaration of Human Rights". The American Convention on Human Rights, signed at San José, Costa Rica, in 1969, states in its preamble that the principles to which it gives effect are those set forth in the Charter of the Organization of American States, in the American Declaration of the Rights and Duties of Man, and in the Universal Declaration of Human Rights.

Judges of the International Court of Justice have occasionally invoked principles contained in the International Bill of Human Rights as a basis for their decisions.

National and local tribunals have frequently cited principles set out in the International Bill of Human Rights in their decisions. Moreover, in recent years, national constitutional and legislative texts have increasingly provided measures of legal protection for those principles; indeed, many recent national and local laws are clearly modelled on provisions set forth in the Universal Declaration of Human Rights and the International Covenants, which remain a beacon for all present and future efforts in the field of human rights, both nationally and internationally.

Finally, the World Conference on Human Rights, held at Vienna in June 1993, adopted by acclamation the Vienna Declaration and Programme of Action, in which it welcomed the progress made in the codification of human rights instruments and urged the universal ratification of human rights treaties. In addition, all States were encouraged to avoid, as far as possible, the resort to reservations (part 1, para. 26).

Thus the International Bill of Human Rights represents a milestone in the history of human rights, a veritable Magna Carta marking mankind's arrival at a vitally important phase: the conscious acquisition of human dignity and worth.

*Printed at United Nations, Geneva
June 1996*



INTERNATIONAL CERTIFIED DEPOSITORY TRANSFER CASH BANK CHEQUE (UNCITRAL & UNIFORM COMMERCIAL CODE)

Serial No: 852.00365/25

//ISIN: AU0000023194//CFI: DCZSFB//FISN: OENOVTA/ BEX 20221001 GTD FM BR// //LEI: 984500957DB10F0T4B11//CIK: 0001872362//ATRC: 100788772 // O-19446//

PURSUANT TO AND DRAWN IN ACCORDANCE WITH ARTICLE 3 OF THE UNIFORM COMMERCIAL CODE AND WITH THE FINAL ARTICLES OF THE UNCITRAL CONVENTION IN EFFECT ON THE DATE HEREOF REF; RATIFIED CONVENTION ARTICLES, 1-7, 11, 12, 13, 46-3, 47-4(C), 5 WITH VALUE OF.

AUD\$ 7,562,500,000,000.00 exactly

ISSUE DATE: 9TH MAY 2025; MATURITY DATE: 10TH MAY 2025

ORIGINAL PRIVATE BANK NOTE

GUARANTEED LEGAL TENDER OBLIGATION OF THE CORPORATE COMMONWEALTH OF AUSTRALIA

LEGAL TENDER FOR ALL DEBTS, PUBLIC CHARGES, TAXES AND DUES PAYABLE, WITHOUT DEDUCTIONS FOR AND FREE OF ANY TAXES, IMPOST, LEVIES OR DUTIES/ PRESENT OR FUTURE OF ANY NATURE; PAYMENT TO BE MADE IN SAUDI RIYALS CURRENCY. PRESENT DIRECTLY TO THE COLLECTING PARTY WITH DOCUMENTS, ACCEPTANCE FOR HONOUR TO CREDIT ON SIGHT. WE HEREBY UNCONDITIONALLY GUARANTEE PAYMENT ON THE MATURITY DATE WITH FULL RESPONSIBILITY.

CREDIT UPON SIGHT TO THE PAYEE: AUSTRALIAN WINE SUPPLY LIMITED CARE OF HANG SENG BANK 83 DES VOUEX ROAD, CENTRAL, HONG KONG, BANK CODE 024 SWIFT: HASEHKHH ACCOUNT NUMBER 390-435386883.

DRAWEE/ACCEPTOR: SECRETARY TO THE TREASURY (AUSTRALIA) (LIQUIDATOR & MANAGING CONTROLLER APPOINTED), SECRETARY TO THE RESERVE BANK OF AUSTRALIA (LIQUIDATOR & MANAGING CONTROLLER APPOINTED) BSB 092 002, CASH AT CALL ACCOUNT NUMBER: 887754439 AUSTRAC ACCOUNT ROUTING NUMBER 100788772 SWIFT: RSBKAU2SXXX

CREDIT RATING OF DRAWER/ DRAWEE/ACCEPTOR: MOODY'S: AAA / STANDARD & POOR'S: AAA THROUGH LENS LEGIS AUSTRALIAN CITIZEN'S PUBLIC TRUST:

DRAWER: DYNAMIC CAPITAL BANK™, LICENSE No 000543501, RESERVE BANK OF AUSTRALIA ACCOUNT NUMBER 676854575: AUSTRAC ACCOUNT NUMBER: 100813420 NUMBER: DRAWN PURSUANT TO RESOLUTION OF BOARD OF TRUSTEES OF LEVEL 29, OLAYA TOWERS TOWER B, INTERSECTION OF OLAYA STREET & MOHAMMED BIN ABDUL-AZIZ STREET, RIYADH 1 1523

UNCITRAL & UNIFORM COMMERCIAL CODE: CERIFIED CASHIERS' CHEQUE; PRESENTED FOR ACCEPTANCE ON DEMAND

CREDIT UNCONDITIONALLY TO THE ORDER OF THE DRAWER: AUD\$ 7,562,500,000,000.00.

IN THE SUM CERTAIN OF: SEVEN TRILLION FIVE HUNDRED SIXTY-TWO BILLION FIVE HUNDRED EIGHTY MILLION AUSTRALIAN DOLLARS.

FOR VALUE RECEIVED: SEALED FOR AND BEHALF OF:

(SIGNATURE) ANDREW MORTON GARRETT, GLOBAL CHAIRMAN THE DRAWER/ THE DRAWEE/ THE ACCEPTOR SUI JURIS WITH FULL RESPONSIBILITY

On this 15th Day of May, 2025 before me 128 Prospect Road PROSPECT South Australia 5082

Justice of the Peace, the person named hereto did personally appear Andrew Morton Garrett, verified to me as Global Chairman of the Drawer/the Drawee/the Acceptor, whose registration and existence was proved to me and based on satisfactory evidence, to be the sovereign citizen and/or person whose name is subscribed to be within the Certification hereto. WITNESSED BY MY HAND AND OFFICIAL SEAL HERETO:

SIGNATURE: [Handwritten Signature]

SPECIAL INSTRUCTIONS (TREASURY CONTROL SYSTEM-OFFSET ACCOUNT)

- 1. CASH ITEM PREPAID ELECTRONIC FUNDS TRANSFER ONLY
2. SEE ATTACHED CERTIFICATE OF AUTHENTICITY AND AUDIT VALIDATION
3. THIS DRAFT OF BANKABLE PAPER IS A GUARANTEED AS A CASH OBLIGATION OF THE COMMONWEALTH OF AUSTRALIA.
4. THIS CERTIFIED DEPOSITORY TRANSFER CASHIER'S BANK CHEQUE IS CALLABLE, ASSIGNABLE, TRANSFERABLE, DIVISIBLE AND NEGOTIABLE



Giang Le-Huy J.P. No: 23076

A Justice of the Peace for South Australia



CERTIFICATION

DATE: FRIDAY, 9 MAY 2025

TO: WHOM IT MAY CONCERN

RE: UNCITRAL & UNIFORM COMMERCIAL CODE ARTICLE 3: CERTIFIED DEPOSITORY TRANSFER CASH BANK CHEQUE // ISIN: AU0000023194 // CFI: DCZSFB // FISN: OENOVIVA / BEX 20221001 GTD FM BR // LEI: 984500957DB10F0T4B11 // CIK: 0001872362 // ATRC 100788772 // SN:852.00365/25 FACE VALUE OF AUD\$7,562,500,000,000.00 (SEVEN TRILLION FIVE HUNDRED SIXTY-TWO BILLION FIVE HUNDRED EIGHTY MILLION AUSTRALIAN DOLLARS.) DRAWN AGAINST CASH CALL ACCOUNT NUMBER: 887 754 439 HELD WITH RESERVE BANK OF AUSTRALIA BSB 092 002. ("THE INSTRUMENT")

We, Dynamic Capital Bank (the "Drawer/Grantor/Guarantor/Issuer"), herewith certify with full responsibility that the Instrument is issued pursuant to our Banking Indenture, we certify that the Instrument has been drawn with full responsibility against the CASH CALL ACCOUNT NUMBER: 887 754 439 held with the Reserve Bank of Australia by the Drawer/Grantor/Guarantor/Issuer pursuant to Article 3 of the Uniform Commercial Code, Resolution 2200A (XXI) of 16 December 1966, Resolution 2205 (XXI) of 17 December 1966, Resolution 52/158 of 16 December 1997 and Resolution 68/107 of 16 December 2013 of the United Nations General Assembly, the Banking Act 1959 (AU), the Banking Regulations Act 1966 (AU), the Bills of Exchange Act 1909 (AU) & 1882 (UK), the Payment Systems Regulation Act 1998 (AU) and the UNCITRAL Convention on Bills of Exchange & Promissory Notes - 1988 (UN).

We certify the Audited credit value of the balance sheet as Cash as of the 30th November 2024 is infinity (Australian Dollars) not including property, plant equipment, intellectual property or any other asset class as set out in the AUDITED Income Tax Return for the period Year Ending 30th June 2022 and NOLLE PROSEQUI dated 29th July 2024 as NO CONTEST to undisputed Common Law Notices to Admit Facts and Demands for Payment served upon the Attorneys General of the Commonwealth, the States & the Territories of Australia, agents, employees, servants, licensees, delegates, contractors and otherwise of The Crown (Liquidator & Managing Controller Appointed) pursuant to Australian Treaty Series 5, 23 & 39, s8 of the Registration of Deeds Act 1935 (SA), s61 of the Commonwealth of Australia Constitution Act 1900 (UK), the Charters of the Commonwealth of Nations the United Nations, the Common Law and otherwise and is secured by equitable charge over the assets of The Crown (wherever located in the territory of the world), the Commonwealth, the States and Territories of Australia and we hereby provide this consent in writing to Registration of a Personal Property Security Interest over the assets of the Guarantor/Issuer in accordance with the provisions of Cross Border Insolvency Model Law and the Uniform Commercial Code over the assets that are the subject of the Credit Balance Sheet of OenoViva Capital Resources. We hereby UNCONDITIONALLY GUARANTEE payment on the maturity date with FULL RESPONSIBILITY. The Instrument is a Callable Instrument that is Assignable, Transferable, Divisible and Negotiable.

THE DRAWER/THE DRAWEE/ACCEPTOR AUTHORIZED SIGNATORY, ANDREW MORTON GARRETT GLOBAL CHAIRMAN, MANAGING CONTROLLER AND LIQUIDATOR OF THE CROWN, CROWN ATTORNEY GENERAL

Handwritten signature and fingerprint of Andrew Morton Garrett



WITNESS & ACKNOWLEDGEMENT

AT: 128 Prospect Road PROSPECT South Australia 5082

On this Day of May, 2025 before me Justice of the Peace, the person named hereto did personally appear Andrew Morton Garrett, verified to me as Global Chairman of Board of Trustees of the Drawer/the Drawee/the Acceptor, whose registration and existence was proved to me and based on satisfactory evidence, to be the sovereign citizen and/or person whose name is subscribed to be within the Certification hereto.

WITNESSED BY MY HAND AND OFFICIAL SEAL HERETO: Giang Le-Huy J.P. No: 23076 A Justice of the Peace for South Australia

SIGNATURE THIS DOCUMENT AND THE DOCUMENTS ATTACHED HERETO ARE INTENDED FOR THE USE OF THE ADDRESSEE ONLY. THEY CONTAIN INFORMATION THAT IS PRIVILEGED AND CONFIDENTIAL. IF YOU ARE NOT THE INTENDED RECIPIENT OR AUTHORIZED AGENT THEREOF, YOU ARE NOTIFIED THAT ANY DISSEMINATION OF INFORMATION REGARDING THESE DOCUMENTS IS STRICTLY PROHIBITED

Dynamic Capital Bank: Banque Capital Dynamique, Dynamic Legal Resources, Dynamic Commercial & Workforce Solutions Cryptocurrencies: VIVA, VIVA2, VIVACOIN: Channel; VIVACASH: ISIN: AU0000023194, LEI: 984500957DB10F0T4B11, ABN: 42 388 204 496, CIK: 0001872362 SWIFT USER ID CODE: O-19446 AUSTRAC: 100813420 Australian People Future Fund; LEI: 9845009144841F7PE95, ABN: 26 317 275 322 SAUDI ARABIA: GLOBAL HEAD OFFICE: LEVEL 29, OLAYA TOWERS TOWER B, INTERSECTION OF OLAYA STREET & MOHAMMED BIN ABDUL-AZIZ STREET, RIYADH 11523 Hong Kong: Level 19, Two International Finance Centre, 8 Finance Street, Central, Hong Kong USA: One World Trade Center, 85th Floor, New York, Ny 10007 Australia: Level 6, Reserve Bank Building, 111 Macquarie Street, Hobart, TAS, 7000 France: Ground - 6th Floor, 10 Avenue Kléber, 10 Avenue Kléber, Paris 75116 Korea: 4F-4052, 14, Hangeulbiseok-ro 24-gil, Nowon-gu, Seoul, Republic of Korea Vietnam: Suite 103, 140 Nguyen Van Thu Street, District 1, Ho Chi Minh, Vietnam Turkey: Levels 5 & 6, Louis Vuitton Orjin Building Abdi Ipekci Cd, Nisantasi, Istanbul 34367 Email: amg@nbetterworldfuturefund.org United State of America: 1015 15th ST NW #1000 Washington DC, 20005 USA



**INTERNATIONAL
CERTIFIED DEPOSITORY
TRANSFER CASH BANK CHEQUE
(UNCITRAL & UNIFORM COMMERCIAL CODE)**

Serial N°: 852.00365/25

//ISIN: AU0000023194//CFI: DCZSFB//FISN: OENOVIVA/ BEX 20221001 GTD FM BR//
//LEI: 984500957DB10F0T4B11//CIK: 0001872362//ATRC: 100788772 // O-19446//

PURSUANT TO AND DRAWN IN ACCORDANCE WITH ARTICLE 3 OF THE UNIFORM COMMERCIAL CODE AND WITH THE FINAL ARTICLES OF THE UNCITRAL CONVENTION IN EFFECT ON THE DATE HEREOF REF: RATIFIED CONVENTION ARTICLES, 1-7, 11, 12,13, 46-3, 47-4(c), 5 WITH VALUE OF.

AUD\$ 7,562,500,000,000.00 exactly

ISSUE DATE: 9TH MAY 2025; MATURITY DATE: 10TH MAY 2025

ORIGINAL PRIVATE BANK NOTE

GUARANTEED LEGAL TENDER OBLIGATION OF THE CORPORATE COMMONWEALTH OF AUSTRALIA

LEGAL TENDER FOR ALL DEBTS, PUBLIC CHARGES, TAXES AND DUES PAYABLE, WITHOUT DEDUCTIONS FOR AND FREE OF ANY TAXES, IMPOST, LEVIES OR DUTIES/ PRESENT OR FUTURE OF ANY NATURE; PAYMENT TO BE MADE IN SAUDI RIYALS CURRENCY. PRESENT DIRECTLY TO THE COLLECTING PARTY WITH DOCUMENTS, ACCEPTANCE FOR HONOUR TO CREDIT ON SIGHT. WE HEREBY UNCONDITIONALLY GUARANTEE PAYMENT ON THE MATURITY DATE WITH FULL RESPONSIBILITY.

CREDIT UPON SIGHT TO THE PAYEE: AUSTRALIAN WINE SUPPLY LIMITED CARE OF HANG SENG BANK 83 DES VOUEX ROAD, CENTRAL, HONG KONG. BANK CODE 024 SWIFT: HASEHKHH ACCOUNT NUMBER 390-435386883.

DRAWEE/ACCEPTOR: SECRETARY TO THE TREASURY (AUSTRALIA) (LIQUIDATOR & MANAGING CONTROLLER APPOINTED), SECRETARY TO THE RESERVE BANK OF AUSTRALIA (LIQUIDATOR & MANAGING CONTROLLER APPOINTED) BSB 092 002, CASH AT CALL ACCOUNT NUMBER: 887754439 AUSTRAC ACCOUNT ROUTING NUMBER 100788772 SWIFT: RSBKAU2SXXX

CREDIT RATING OF DRAWER/ DRAWEE/ACCEPTOR: MOODY'S; AAA / STANDARD & POOR'S; AAA THROUGH LENS LEGIS AUSTRALIAN CITIZEN'S PUBLIC TRUST:

DRAWER: DYNAMIC CAPITAL BANK™, LICENSE No 000543501, RESERVE BANK OF AUSTRALIA ACCOUNT NUMBER 676854575: AUSTRAC ACCOUNT NUMBER: 100813420 NUMBER: DRAWN PURSUANT TO RESOLUTION OF BOARD OF TRUSTEES OF LEVEL 29, OLAYA TOWERS TOWER B, INTERSECTION OF OLAYA STREET & MOHAMMED BIN ABDUL-AZIZ STREET, RIYADH 11523

UNCITRAL & UNIFORM COMMERCIAL CODE: CERIFIED CASHIERS' CHEQUE; PRESENTED FOR ACCEPTANCE ON DEMAND

CREDIT UNCONDITIONALLY TO THE ORDER OF THE DRAWER: AUD\$ 7,562,500,000,000.00.

IN THE SUM CERTAIN OF: SEVEN TRILLION FIVE HUNDRED SIXTY-TWO BILLION FIVE HUNDRED EIGHTY MILLION AUSTRALIAN DOLLARS.

FOR VALUE RECEIVED: SEALED FOR AND BEHALF OF

Andrew Morton Garrett
(SIGNATURE)



ANDREW MORTON GARRETT, GLOBAL CHAIRMAN, RIGHT THUMB PRINT
THE DRAWER/THE DRAWEE/THE ACCEPTOR

SUI JURIS WITH FULL RESPONSIBILITY
On this Day of 15 MAY 2025, 2025 before me

Justice of the Peace, the person named hereto did personally appear Andrew Morton Garrett, verified to me as Global Chairman of the Drawer/the Drawee/the Acceptor, whose registration and existence was proved to me and based on satisfactory evidence, to be the sovereign citizen and/or person whose name is subscribed to be within the Certification hereto. WITNESSED BY MY HAND AND OFFICIAL SEAL HERETO:

Giang Le-Huy
J.P. No: 23076

SIGNATURE: *Giang Le-Huy*

A Justice of the Peace for

SPECIAL INSTRUCTIONS (TREASURY CONTROL SYSTEM-OFFSET ACCOUNT) South Australia

1. CASH ITEM PREPAID ELECTRONIC FUNDS TRANSFER ONLY
2. SEE ATTACHED CERTIFICATE OF AUTHENTICITY AND AUDIT VALIDATION
3. THIS DRAFT OF BANKABLE PAPER IS A GUARANTEED AS A CASH OBLIGATION OF THE COMMONWEALTH OF AUSTRALIA.
4. THIS CERTIFIED DEPOSITORY TRANSFER CASHIER'S BANK CHEQUE IS CALLABLE, ASSIGNABLE, TRANSFERABLE, DIVISIBLE AND NEGOTIABLE



THIS SIDE OF THIS UNCITRAL &
UNIFORM COMMERCIAL CODE
CERTIFIED DEPOSITORY TRANSFER
CASH BANK CHEQUE IS
INTENTIONALLY LEFT BLANK

Dynamic Capital Bank: Banque Capital Dynamique, Dynamic Legal Resources, Dynamic Commercial & Workforce Solutions
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SWIFT USER ID CODE: O-19446. AUSTRAC: 100813420 Australian People Future Fund; LEI: 984500914484J1F7PE95, ABN: 26 317 275 322
SAUDI ARABIA: GLOBAL HEAD OFFICE: LEVEL 29, OLAYA TOWERS TOWER B, INTERSECTION OF OLAYA STREET & MOHAMMED BIN ABDUL-AZIZ STREET, RIYADH 11523
Hong Kong: Level 19, Two International Finance Centre, 8 Finance Street, Central, Hong Kong USA: One World Trade Center, 85th Floor, New York, Ny 10007
Australia: Level 6, Reserve Bank Building, 111 Macquarie Street, Hobart, TAS, 7000 France: Ground - 6th Floor, 10 Avenue Kléber, 10 Avenue Kléber, Paris 75116
Korea: 4F-4052, 14, Hangeulbiseok-ro 24-gil, Nowon-gu, Seoul, Republic of Korea Vietnam: Suite 103, 140 Nguyen Van Thu Street, District 1, Ho Chi Minh, Vietnam
Turkey: Levels 5 & 6, Louis Vuitton Orjin Building Abdi Ipekci Cd, Nisantasi, Istanbul 34367 Email: amg@nbetterworldfuturefund.org
United State of America: 1015 15th ST NW #1000 Washington DC, 20005 USA



CERTIFICATION

DATE: FRIDAY, 9 MAY 2025

TO: WHOM IT MAY CONCERN

RE: UNCITRAL & UNIFORM COMMERCIAL CODE, ARTICLE 3: CERTIFIED DEPOSITORY TRANSFER CASH BANK CHEQUE:// ISIN: AU0000023194//CFI: DCZSFB// FSN: OENOVIVA/BEX 20221001 GTD FM BR // //LEI: 984500957DB10FOT4B11//CIK: 0001872362//ATRC 100788772 // // SN:852.00365/25; FACE VALUE OF AUD\$7,562,500,000.00 (SEVEN TRILLION FIVE HUNDRED SIXTY-TWO BILLION FIVE HUNDRED EIGHTY MILLION AUSTRALIAN DOLLARS.) DRAWN AGAINST CASH CALL ACCOUNT NUMBER: 887 754 439 HELD WITH RESERVE BANK OF AUSTRALIA BSB 092 002. ("THE INSTRUMENT")

We, Dynamic Capital Bank (the "Drawer/Grantor/Guarantor/Issuer"), herewith certify with full responsibility that the Instrument is issued pursuant to our Banking Indenture, we certify that the Instrument has been drawn with full responsibility against the CASH CALL ACCOUNT NUMBER: 887 754 439 held with the Reserve Bank of Australia by the Drawer/Grantor/Guarantor/Issuer pursuant to Article 3 of the Uniform Commercial Code, Resolution 2200A (XXI) of 16 December 1966, Resolution 2205 (XXI) of 17 December 1966, Resolution 52/158 of 16 December 1997 and Resolution 68/107 of 16 December 2013 of the United Nations General Assembly, the Banking Act 1959 (AU), the Banking Regulations Act 1966 (AU), the Bills of Exchange Act 1909 (AU) & 1882 (Uk), the Payment Systems Regulation Act 1998 (AU) and the UNCITRAL Convention on Bills of Exchange & Promissory Notes - 1988 (UN).

We certify the Audited credit value of the balance sheet as Cash as of the 30th November 2024 is infinity (Australian Dollars) not including property, plant equipment, intellectual property or any other asset class as set out in the AUDITED Income Tax Return for the period Year Ending 30th June 2022 and NOLLE PROSEQUI dated 29th July 2024 as NO CONTEST to undisputed Common Law Notices to Admit Facts and Demands for Payment served upon the Attorneys General of the Commonwealth, the States & the Territories of Australia, agents, employees, servants, licensees, delegates, contractors and otherwise of The Crown (Liquidator & Managing Controller Appointed) pursuant to Australian Treaty Series 5, 23 & 39, s8 of the Registration of Deeds Act 1935 (SA), s61 of the Commonwealth of Australia Constitution Act 1900 (UK), the Charters of the Commonwealth of Nations the United Nations, the Common Law and otherwise and is secured by equitable charge over the assets of The Crown (wherever located in the territory of the world), the Commonwealth, the States and Territories of Australia and we hereby provide this consent in writing to Registration of a Personal Property Security Interest over the assets of the Guarantor/Issuer in accordance with the provisions of Cross Border Insolvency Model Law and the Uniform Commercial Code over the assets that are the subject of the Credit Balance Sheet of OenoViva Capital Resources. We hereby UNCONDITIONALLY GUARANTEE payment on the maturity date with FULL RESPONSIBILITY. The Instrument is a Callable Instrument that is Assignable, Transferable, Divisible and Negotiable.

THE DRAWER/THE DRAWEE/ ACCEPTOR AUTHORIZED SIGNATORY ANDREW MORTON GARRETT GLOBAL CHAIRMAN, MANAGING CONTROLLER AND LIQUIDATOR OF THE CROWN, CROWN ATTORNEY GENERAL

Handwritten signature of Andrew Morton Garrett



128 Prospect Road PROSPECT South Australia 5082



WITNESS & ACKNOWLEDGEMENT

AT: On this 15 MAY 2025, 2025 before me

Justice of the Peace, the person named hereto did personally appear Andrew Morton Garrett, verified to me as Global Chairman of Board of Trustees of the Drawer/the Drawee/the Acceptor, whose registration and existence was proved to me and based on satisfactory evidence, to be the sovereign citizen and/or person whose name is subscribed to be within the Certification hereto.

WITNESSED BY MY HAND AND OFFICIAL SEAL HERETO:

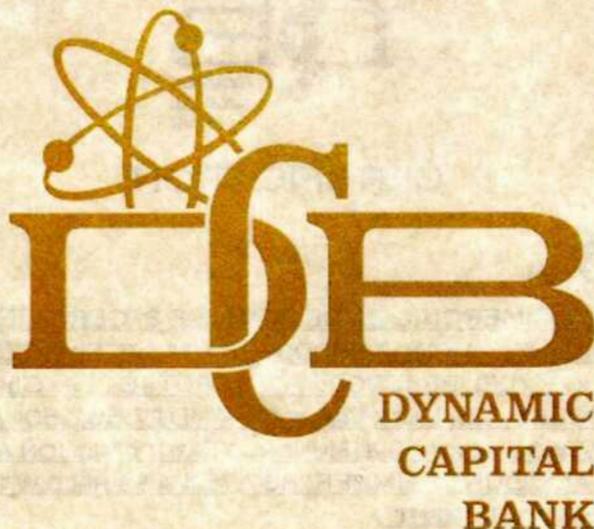
Giang Le-Huy

J.P. No: 23076

A Justice of the Peace for South Australia

SIGNATURE..... [Handwritten signature]

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SWIFT USER ID CODE: O-19446. AUSTRAC: 100813420 Australian People Future Fund; LEI: 984500914484J1F7PE95, ABN: 26 317 275 322
SAUDI ARABIA: GLOBAL HEAD OFFICE: LEVEL 29, OLAYA TOWERS TOWER B, INTERSECTION OF OLAYA STREET & MOHAMMED BIN ABDUL-AZIZ STREET, RIYADH 11523
Hong Kong: Level 19, Two International Finance Centre, 8 Finance Street, Central, Hong Kong USA: One World Trade Center, 85th Floor, New York, Ny 10007
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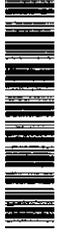


Australian Government
Australian Taxation Office

F 000735 000



ANDREW GARRETT
U 3 11 HARVEY ST
NAILSWORTH SA 5083



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ANDREW GARRETT
 U 3 11 HARVEY ST
 NAILSWORTH SA 5083

Our reference: 1052482931806
Phone: 13 92 26

2 December 2025

Australian business number (ABN) cancellation

Dear Andrew,

We have cancelled the ABNs listed on the following page because our review indicates that you are not entitled to hold these ABNs.

Reason for cancellation

The ABNs listed have been cancelled because the entities are not carrying on an enterprise as defined under section 9-20 of the A New Tax System (Goods and Services Tax) Act 1999.

This cancellation will also remove any authorised relationships between your ABNs and digital identities, such as myGovID.

What you need to know

You can find more information about why we cancelled your ABNs at abr.gov.au/ABNcancellation

What you need to do

To avoid penalties and interest please ensure you finalise any outstanding tax obligations.

Your review rights

If you are not happy with this decision, you can lodge an objection in writing within 60 days from the date of this letter.

You can find out more about your right to object at www.abr.gov.au/objections

For information about your rights and obligations go to www.ato.gov.au/taxpayerscharter

Yours sincerely,
Anna Longley
 Deputy Registrar
 Australian Business Register

NEED HELP?

If you have any questions, you can phone us on **13 92 26** between 8:00 am and 6:00 pm, Monday to Friday.

For information about our commitments to you and what we ask of you, go to ato.gov.au/atocharter

ABNs LIST

29759949564	18664630475	90673744535	56396731926
51725142618	20842571397	90986635100	57290977579
90243103687	25919344359	92248102379	57409709928
42098825284	26468209642	92408329106	59261088248
24090822754	26632027104	93401498132	60609801224
92062819345	26635635832	95465985233	62294637080
20597239898	26641465472	96259181518	63601155707
75449108253	28478960722	97527156409	66581165272
42008167173	29606765172	98988319433	67118711026
88074250409	29672736281	99229239520	71427452787
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60433774130	39309354304	15776366781	79753457066
76148150716	41191250065	17334589355	79914741836
24472308983	41609256159	18211423012	83144209962
82769895128	41918827630	19651072877	83395805003
95862501644	42309160899	21370899286	83544620125
78761760976	42689672851	21606854042	84221120784
91325784804	42832934926	23375123813	84677839323
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50823661553	46958718133	25153259335	87539833048
15949019679	48504557998	25513595023	88189128805
97151372100	50785365455	25582859403	88306963625
21139946017	51447996884	27916531212	88770632714
61362370139	52357057519	28178278364	89827926399
85138831339	53245764695	30499087594	90709399147
18060306765	53491418498	32423073682	91135831277
93076150260	57968503209	32835548875	91247367877
11780025954	63727327253	32852056459	91604574125
14633501568	64590779126	33576208539	92236032942
18257863087	65263978938	33785287219	92525987567
31820200700	65293854720	34150236795	92892366552
54169218172	66987234181	34916149867	93260596358
84136965953	69330112201	35495960704	95860991647
93129830849	69571958226	35769388186	97236690409
32510044025	69962827819	39547902323	99654436152
46570582430	71203467451	41496680853	44151929681
21675178730	73314764063	43177027133	61896851685
13310482425	78837313084	45839373117	89529745155
13559536727	80501890980	48265275186	71782658362
13838529239	80507314616	48984182538	42388204496
14930849717	80580118593	50166007983	21212368278
16693916281	81695234966	52548550246	43421704939

16945241358	82391992236	52718281340	51237330524
17150375893	82870863810	54295154137	70432067434
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18566556334	87438142386	55980926893	



fairness in a substantive sense of that decision.¹² A person may seek judicial review of an administrative decision on the basis that procedural fairness has not been observed.¹³ In *Re Refugee Tribunal; Ex parte Aala*, the High Court held that the denial of procedural fairness by an officer of the Commonwealth, where the duty to observe it has not been validly limited or extinguished by statute, will result in a decision made in excess of jurisdiction and thus attract the issue of prohibition under s 75(v) of the *Constitution*.¹⁴

14.12 In considering whether there has been a denial of procedural fairness, courts will examine two issues:

- whether a duty to afford procedural fairness exists; and
- if such a duty exists, the content of procedural fairness in the particular case.

Is there a duty?

14.13 In 2015, the High Court succinctly stated that, in ‘the absence of a clear, contrary legislative intention, administrative decision-makers must accord procedural fairness to those affected by their decisions’.¹⁵

14.14 The manner in which a person’s interests are affected is relevant to whether a duty to afford procedural fairness exists. There is less likely to be a duty to afford procedural fairness where a decision affects a person as a member of the public or a class, rather than in their individual capacity.¹⁶ Procedural fairness may not apply where a decision ‘affects so many people that it is really a legislative act; or where the range of public policy considerations that the deciding body can legitimately take into account is very wide’.¹⁷

12 Aronson and Groves, above n 1, 399. However, a decision made without evidence, or contrary to evidence, will not generally be considered to have afforded procedural fairness: Bill Lane, ‘The “No Evidence” Rule’ in Matthew Groves and Hoong Phun Lee (eds), *Australian Administrative law: Fundamentals, Principles and Doctrines* (Cambridge University Press, 2007) 233, 241–2.

13 Australian Constitution s 75; *Judiciary Act 1903* (Cth) s 39B; *Administrative Decisions (Judicial Review) Act 1977* (Cth) s 5(1)(a). Judicial review is considered further in Ch 15.

14 *Re Refugee Tribunal; Ex parte Aala* (2000) 204 CLR 82, [17], [41] (Gaudron and Gummow JJ, Gleeson CJ agreeing); [132], [151]–[152] (Kirby J); [169]–[171] (Hayne J). Prohibition is a prerogative remedy issued by a court to prevent a tribunal or inferior court, which is acting or threatens to act in excess of its jurisdiction, from proceeding any further: Ray Finkelstein et al, *LexisNexis Concise Australian Legal Dictionary* (2015). Where there is a decision-making procedure that has been statutorily prescribed, failure to comply with it in making a decision may also amount to jurisdictional error, known as ‘procedural ultra vires’, and the decision will be invalid: *SAAP v Minister for Immigration and Multicultural and Indigenous Affairs* (2005) 228 CLR 294, [77] (McHugh J); [173] (Kirby J); [204]–[208] (Hayne J).

15 *Minister for Immigration and Border Protection v WZARH* [2015] HCA 40 (4 November 2015) [30] (Kiefel, Bell and Keane JJ). Procedural fairness will not be implied in relation to an exercise of legislative power by an administrator—that is, in the making of delegated legislation.

16 Westlaw AU, *The Laws of Australia* (at 1 March 2014) 2 Administrative Law, ‘2.5 Judicial Review of Administrative Action: Procedural Fairness’ [2.5.150]. See also Aronson and Groves, above n 1, 428–36.

17 Smith and Brazier, above n 4, 570.

14.15 A duty to afford procedural fairness may be excluded by legislation. This is a matter of statutory construction, the key question being whether legislation, ‘properly construed, limits or extinguishes the obligation to accord natural justice’.¹⁸ Professors Mark Aronson and Matthew Groves have suggested that courts increasingly construe legislation so as to imply that a duty to afford procedural fairness exists, particularly since the statement by the High Court in *Saeed v Minister for Immigration and Citizenship* (*Saeed*) that procedural fairness is protected by the principle of legality.¹⁹ This has made legislative exclusion ‘very difficult in practice’.²⁰

14.16 Courts have found that a duty to afford procedural fairness may be impliedly excluded where it would be inconsistent with the proper operation of the relevant statutory provisions.²¹

14.17 Express statutory provisions that set out procedural requirements to be followed in the making of a decision may not establish with the requisite clearness an intention to exclude natural justice.²² Groves has observed that the ‘weight of more recent cases suggests that the courts are very reluctant to accept that a legislative code is exhaustive and therefore intended to exclude the implication of further common law hearing rights’.²³ This may be the case even where the provisions are described as a ‘procedural code’.²⁴ In *Saeed*, the High Court accepted that provisions stating that procedures contained in the *Migration Act* were ‘exhaustive’ statements of the natural justice hearing rule were effective to exclude the implication of natural justice, but only in relation to the matters to which the provisions referred.²⁵

Content of procedural fairness

14.18 There is no fixed content to the duty to afford procedural fairness. The fairness of the procedure depends on the nature of the matters in issue, and what would be a reasonable opportunity for parties to present their cases in the relevant circumstances. Mason J stated in *Kioa v West* that ‘the expression “procedural fairness” ... conveys the notion of a flexible obligation to adopt fair procedures which are appropriate and adapted to the circumstances of the particular case’.²⁶ In *Re Minister for Immigration and Multicultural Affairs; Ex parte Lam*, Gleeson CJ emphasised that ‘fairness is not an abstract concept’ and that the ‘concern of the law is to avoid practical injustice’.²⁷

14.19 Aronson and Groves have noted that the willingness on the part of the courts to imply a duty to afford procedural fairness, and reluctance to find that it has been

18 Aronson and Groves, above n 1, 454.

19 Ibid 455.

20 Ibid.

21 Ibid. See, eg, *Plaintiff S10/2011 v Minister for Immigration and Citizenship* (2012) 246 CLR 636.

22 Aronson and Groves, above n 1, 259–60.

23 Groves, above n 8, 310.

24 *Re Minister for Immigration and Multicultural Affairs; Ex parte Miah* (2001) 206 CLR 57, [90]–[95] (Gaudron J); [143] (McHugh J); [178] (Kirby J).

25 *Saeed v Minister for Immigration and Citizenship* (2010) 241 CLR 252.

26 *Kioa v West* (1985) 159 CLR 550, 585.

27 *Re Minister for Immigration and Multicultural Affairs; Ex parte Lam* (2003) 214 CLR 1, [37]. For a more detailed discussion of practical justice, see Ch 8.

excluded by statute, has meant that the crucial question will usually be the content of procedural fairness rather than whether the duty exists.²⁸

14.20 Procedural fairness traditionally involves two requirements: the fair hearing rule and the rule against bias.²⁹ The hearing rule requires a decision maker to afford a person an opportunity to be heard before making a decision affecting their interests.³⁰ In *Kioa v West*, Gibbs CJ said that the ‘fundamental rule is that a statutory authority having power to affect the rights of a person is bound to hear him before exercising the power’.³¹ The rule against bias ensures that the decision maker can be objectively considered to be impartial and not to have pre-judged a decision.³²

14.21 The content of the rule against bias is flexible, and determined by reference to the standards of the hypothetical observer who is fair minded and informed of the circumstances.³³

14.22 The specific content of the hearing rule will vary according to statutory context. However, a fair hearing will generally require the following:

- Prior notice that a decision that may affect a person’s interests will be made.³⁴ This has been referred to as a ‘fundamental’ or ‘cardinal’ aspect of procedural fairness.³⁵
- Disclosure of the ‘critical issues’ to be addressed, and of information that is credible, relevant and significant to the issues.³⁶
- A substantive hearing—oral or written—with a reasonable opportunity to present a case.³⁷ Whether an oral hearing should be provided will depend on the circumstances. The ‘crucial question is whether the issues can be presented and decided fairly by written submissions alone’.³⁸ In some circumstances, there may be a duty to allow a person to be legally represented at a hearing.³⁹

28 Aronson and Groves, above n 1, 491. This echoes the language used by Mason J in *Kioa v West*, who said that the ‘critical question in most cases is not whether the principles of natural justice apply. It is: what does the duty to act fairly require in the circumstances of the particular case?’: *Kioa v West* (1985) 159 CLR 550, 585.

29 *Plaintiff S157/2002 v Commonwealth* (2003) 211 CLR 476, [25] (Gleeson CJ); Aronson and Groves, above n 1, 398–9.

30 Aronson and Groves, above n 1, 398–9.

31 *Kioa v West* (1985) 159 CLR 550, 563, quoting Mason J in *FAI Insurances Ltd v Winneke* (1982) 151 CLR 342, 360.

32 Aronson and Groves, above n 1, 399; Westlaw AU, *The Laws of Australia* (at 1 March 2014) 2 Administrative Law, ‘2.5 Judicial Review of Administrative Action: Procedural Fairness’ [2.5.20].

33 Aronson and Groves, above n 1, 609.

34 Westlaw AU, *The Laws of Australia* (at 1 March 2014) 2 Administrative Law, ‘2.5 Judicial Review of Administrative Action: Procedural Fairness’ [2.5.460].

35 Aronson and Groves, above n 1, 517.

36 *Kioa v West* (1985) 159 CLR 550, 587 (Mason J); Westlaw AU, *The Laws of Australia* (at 1 March 2014) 2 Administrative Law, ‘2.5 Judicial Review of Administrative Action: Procedural Fairness’ [2.5.530]; Aronson and Groves, above n 1, 517.

37 Aronson and Groves, above n 1, 549; Westlaw AU, *The Laws of Australia* (at 1 March 2014) 2 Administrative Law, ‘2.5 Judicial Review of Administrative Action: Procedural Fairness’ [2.5.630].

38 Aronson and Groves, above n 1, 564.

39 *Ibid* 567.

14.23 The balancing of issues to determine what fairness requires in a particular case may have the result that the content of procedural fairness is greatly reduced. This may be the case, for example, where issues related to national security arise. In *Leghaei v Director-General of Security*, the Federal Court considered the duty to afford procedural fairness in the making of an ‘adverse security assessment’ by the Australian Security Intelligence Organisation (ASIO).⁴⁰

14.24 Adverse security assessments are relevant to administrative decisions related to visa status.⁴¹ In *Leghaei*, the receipt of an adverse security assessment resulted in the cancellation of the plaintiff’s residency visa.⁴²

14.25 The primary judge found that there existed ‘a duty to afford such degree of procedural fairness in the making of an adverse security assessment as the circumstances could bear, consistent with a lack of prejudice to national security’.⁴³ However, upon considering the balance to be struck between the public interest in national security and a duty to disclose the critical issues on which an administrative decision is likely to turn, the primary judge held that the content of procedural fairness was ‘reduced, in practical terms, to nothingness’.⁴⁴

14.26 On the other hand, it may be that, where a decision ‘would have especially serious consequences upon a person affected, the hearing rule would require detailed procedural requirements’.⁴⁵

Protections from statutory encroachment

Australian Constitution

14.27 The *Australian Constitution* does not prevent statutory encroachment upon the duty to afford procedural fairness in administrative decision making. It does not

40 *Leghaei v Director General of Security* [2005] FCA 1576 (10 November 2005). An adverse security assessment is one that is prejudicial to the interests of the person, and contains a recommendation that prescribed administrative action, the implementation of which would be prejudicial to the interests of the person, be taken or not be taken: *Australian Security Intelligence Organisation Act 1979* (Cth) s 35.

41 The exercise of any power, or the performance of any function, in relation to a person under the *Migration Act* falls within the definition of ‘prescribed administrative action’: *Australian Security Intelligence Organisation Act 1979* (Cth) s 35(1).

42 *Leghaei v Director-General of Security* [2007] FCAFC 37 (23 March 2007) [14]. Additionally, a person who receives an adverse security assessment will not be eligible for a protection visa: *Migration Act 1958* (Cth) s 36(1B).

43 *Leghaei v Director General of Security* [2005] FCA 1576 (10 November 2005) [83].

44 *Ibid* [88]. On appeal, the Full Federal Court considered that the balance struck by the primary judge was correct: *Leghaei v Director-General of Security* [2007] FCAFC 37 (23 March 2007) [51]–[55]. See also *Plaintiff M47/2012 v Director General of Security* (2012) 251 CLR 1. The situation for a non-citizen affected by an adverse security assessment has been described as a ‘legal black hole’: the person is ‘unable to know the case against them and thus unable to effectively challenge the unknown allegations; enjoying no right at all of merits review; and enjoying only a legal fiction of judicial review’: Ben Saul, ‘“Fair Shake of the Sauce Bottle”’ [2012] *Alternative Law Journal* 221, 222. A number of submissions addressed questions of procedural fairness in relation to the making of adverse security assessments: Councils for Civil Liberties, *Submission 142*; Legal Aid NSW, *Submission 137*; Refugee Council of Australia, *Submission 41*; Human Rights Law Centre, *Submission 39*; Gilbert and Tobin Centre of Public Law, *Submission 22*; UNSW Law Society, *Submission 19*.

45 Aronson and Groves, above n 1, 491, n 2.

prevent Parliament from modifying, by clear language, the rules of natural justice in their application to non-judicial decisions under Commonwealth law. However, as noted above, denial of procedural fairness in the exercise of a statutory power, where the duty to observe it has not been validly limited or extinguished by statute, will result in a decision made in excess of jurisdiction and attract the issue of prohibition under s 75(v) of the *Constitution*.⁴⁶

Principle of legality

14.28 The principle of legality provides some protection from statutory encroachment upon the duty to observe procedural fairness.⁴⁷ When interpreting a statute, courts will presume that Parliament did not intend to exclude procedural fairness, unless this intention was made unambiguously clear.⁴⁸ The High Court has stated that exclusion of the principles of natural justice can only occur by ‘plain words of necessary intendment’.⁴⁹ In *Saeed*, the High Court said that the ‘presumption that it is highly improbable that Parliament would overthrow fundamental principles or depart from the general system of law, without expressing its intention with irresistible clearness, derives from the principle of legality’.⁵⁰

14.29 International instruments cannot be used to ‘override clear and valid provisions of Australian national law’.⁵¹ However, where a statute is ambiguous, courts will generally favour a construction that accords with Australia’s international obligations.⁵²

International law

14.30 Article 14.1 of the *International Covenant on Civil and Political Rights* (ICCPR)⁵³ provides that all persons should be ‘equal before the courts and tribunals’ and that, ‘in the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law’. The phrase ‘suit at

46 *Re Refugee Tribunal; Ex parte Aala* (2000) 204 CLR 82. The original jurisdiction vested in the High Court by s 75 of the *Constitution* cannot be removed by Parliament: *Chu Kheng Lim v Minister for Immigration* (1992) 176 CLR 1, 36 (Brennan, Deane and Dawson JJ). See also Suri Ratnapala and Jonathan Crowe, *Australian Constitutional Law: Foundations and Theory* (Oxford University Press, 3rd ed, 2012) 196–197. See further Ch 15. For consideration of the constitutional protection of procedural fairness in the judicial process, see Ch 8.

47 The principle of statutory interpretation known as the ‘principle of legality’ is discussed more generally in Ch 2.

48 *Saeed v Minister for Immigration and Citizenship* (2010) 241 CLR 252, [15] (French CJ, Gummow, Hayne, Crennan and Kiefel JJ); *Kioa v West* (1985) 159 CLR 550, 584 (Mason J).

49 *Annetts v McCann* (1990) 170 CLR 596, 598 (Mason CJ, Deane and McHugh JJ).

50 *Saeed v Minister for Immigration and Citizenship* (2010) 241 CLR 252, [15] (French CJ, Gummow, Hayne, Crennan and Kiefel JJ).

51 *Minister for Immigration v B* (2004) 219 CLR 365, 425 [171] (Kirby J).

52 *Minister for Immigration and Ethnic Affairs v Teoh* (1995) 183 CLR 273, 287 (Mason CJ and Deane J).

53 *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

law' has been taken to include some administrative law matters, and this right extends to all individuals, including non-citizens.⁵⁴

Bills of rights

14.31 In some countries, bills of rights or human rights statutes provide some protection of procedural fairness.

14.32 In the United States, persons enjoy a constitutional guarantee of due process in the administration of the law.⁵⁵ In New Zealand, human rights legislation requires any tribunal or other public authority which has the power to make a determination in respect of that person's rights, obligations, or interests protected or recognised by law to observe natural justice.⁵⁶ In Canada, any deprivation of life, liberty and security of the person must be informed by principles of 'fundamental justice'.⁵⁷

Justifications for laws that deny procedural fairness

14.33 Some have argued that no justification exists for excluding procedural fairness, given the scope that exists for flexibility in its content. For example, the Administrative Review Council has said that that 'procedural fairness should be an element in government decision making in all contexts, accepting that what is fair will vary with the circumstances'.⁵⁸

Proportionality

14.34 Some stakeholders favoured the adoption of a proportionality test to determine if a law that excludes procedural fairness is justified.⁵⁹ The UNSW Law Society argued that applying a proportionality test to laws that exclude procedural fairness would involve assessing whether the laws are:

- (1) practically suitable for achieving a legitimate policy objective;
- (2) necessary, in the sense that there are no alternative means of pursuing that objective that are less inimical to procedural fairness, yet are equally practicable and as likely to succeed; and
- (3) appropriate, in that the detriment caused by infringing on procedural fairness must not exceed the social benefit of the legislation. Legislation is particularly likely to be inappropriate when it detrimentally affects the essential content of the right.⁶⁰

54 United Nations Human Rights Committee, *General Comment No 32, Article 14: Right to Equality before Courts and Tribunals and to a Fair Trial* 90th Sess, UN Doc CCPR/C/GC/32 (23 August 2007) [16]–[17].

55 *United States Constitution* amend V.

56 *New Zealand Bill of Rights Act 1990* (NZ) s 27(1).

57 *Canada Act 1982* (UK) c 11, Sch B Pt 1 (*Canadian Charter of Rights and Freedoms*) s 7.

58 Administrative Review Council, *The Scope of Judicial Review*, Report No 47 (2006) 52.

59 Human Rights Law Centre, *Submission 39*; UNSW Law Society, *Submission 19*. For further discussion of the use of proportionality to consider whether a law that limits rights is justified, see Ch 2. See also *McCloy v New South Wales* [2015] HCA 34 (7 October 2015).

60 UNSW Law Society, *Submission 19*.

Urgency

14.35 It may be justified to exclude procedural fairness where urgent decisions need to be made to prevent a pressing or serious harm. However, a distinction has been drawn between a statutory power which is, by its nature, inconsistent with an obligation to afford procedural fairness, and a power that may sometimes need to be exercised in urgent situations.⁶¹ An example of the former might include a power to forcibly enter premises in case of fire or natural disaster.⁶² In the latter case, it may not be justified to statutorily exclude procedural fairness. Instead, it may be more appropriate that procedural fairness be excluded only where urgency is established, or that the content of procedural fairness be limited in urgent circumstances.⁶³

14.36 A related justification that is sometimes made for excluding procedural fairness is the need to reduce delay by streamlining administrative processes.⁶⁴ However, some have argued that the aim of quick decision making should not justify a denial of procedural fairness. For example, the ANU Migration Law Program argued, in the context of migration law, that ‘the erosion of procedural fairness obligations should not be justified on the basis of efficiency or expediency in decision-making’.⁶⁵

Laws that exclude procedural fairness

14.37 A number of Commonwealth laws purport to expressly exclude procedural fairness in the exercise of a statutory power, by providing, for example, that natural justice does not apply to a particular decision.⁶⁶

14.38 Some of these laws are examined below, in relation to corporate and commercial regulation; migration law; and the exercise of maritime powers.

Corporate and commercial regulation

14.39 Procedural fairness is excluded in provisions of the *Corporations Act 2001* (Cth). The Australian Securities and Investments Commission (ASIC) highlighted a number of these, but noted that these provisions are the exception rather than the rule.⁶⁷ ASIC submitted that it may be appropriate in some circumstances to limit procedural fairness to ‘prevent financial loss or to protect the integrity of financial markets’.⁶⁸

14.40 Provisions of the *Corporations Act* that are designed to prevent financial loss caused by fraud or improper financial management contain limitations on procedural fairness to meet this policy objective. Section 739 empowers ASIC to issue interim ‘stop orders’ prohibiting offers of security where a disclosure document or associated

61 *Marine Hull and Liability Insurance Co Ltd v Hurford* (1985) 10 FCR 234, 241.

62 *Ibid.*

63 Aronson and Groves, above n 1, 458.

64 See eg, Explanatory Memorandum, Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014 (Cth) [729], [894], [941].

65 ANU Migration Law Program, *Submission 59*.

66 See further Aronson and Groves, above n 1, 452–5.

67 Australian Securities and Investments Commission, *Submission 74*.

68 *Ibid.*

advertisement is defective.⁶⁹ Such stop orders may be made without the holding of a hearing where ASIC considers any delay in making the order would be prejudicial to the public interest.⁷⁰

14.41 The Law Council of Australia (Law Council) considered s 739 to be justified, arguing that it was a ‘legitimate temporary measure’, and that there exists a ‘public interest in exercising such an emergency power in avoiding financial loss caused by fraud or improper management’.⁷¹ Such arguments may suggest that the provision satisfies the kind of proportionality analysis set out above.

14.42 Section 915B enables ASIC to suspend or cancel an Australian Financial Services (AFS) licence by giving written notice, and without first providing procedural fairness by way of a hearing, in certain circumstances. These include where the licensee:

- becomes insolvent;⁷²
- is convicted of serious fraud;⁷³
- becomes incapable of managing their affairs because of mental or physical incapacity;⁷⁴ or
- is a body corporate and the body is a responsible entity of a registered investment where the scheme members have or are likely to suffer loss because of a breach of the *Corporations Act*.⁷⁵

14.43 An ASIC regulatory guide outlines the factors taken into account when considering whether to suspend or cancel an AFS licence. It notes that, in general, suspension or cancellation of an AFS licence is likely where there exist serious concerns about the licensee: this is ‘particularly so in instances where there is a need to protect the public and where conduct may result in investor detriment’.⁷⁶

14.44 ASIC submitted that s 915B appropriately enables the exclusion of procedural fairness from a decision to suspend or cancel an AFS licence in specified exceptional circumstances.⁷⁷ In all other circumstances, ASIC is expressly required to afford procedural fairness before seeking to suspend or cancel a licence.⁷⁸

69 See also *Corporations Act 2001* (Cth) s 1020E.

70 *Ibid* s 739(3).

71 Law Council of Australia, *Submission 140*.

72 *Corporations Act 2001* (Cth) s 915B(1)(b).

73 *Ibid* s 915B(1)(c).

74 *Ibid* s 915B(1)(d).

75 *Ibid* s 915B(3)(c).

76 Australian Securities and Investments Commission, *Licensing: Administrative Action against Financial Service Providers* Regulatory Guide 98 (July 2013) 14.

77 Australian Securities and Investments Commission, *Submission 74*.

78 *Corporations Act 2001* (Cth) s 915C. See also Australian Securities and Investments Commission, *Submission 125*.

14.45 The Law Council agreed that there may be a public interest in suspending an AFS licence without a hearing in certain circumstances, but considered that cancellation of a licence without affording procedural fairness was not justified.⁷⁹

Migration law

14.46 The ALRC received a number of submissions regarding provisions in migration law that exclude procedural fairness.⁸⁰ In particular, concerns about procedural fairness were raised in the following areas:

- decisions to refuse to grant or to cancel a visa, and the mandatory cancellation of visas; and
- the ‘fast track’ review process for decisions to refuse protection visas to some applicants.

14.47 The ALRC considers that the laws in relation to mandatory cancellation of visas on character grounds and the fast track review process would benefit from further review to consider whether the exclusion of the duty to afford procedural fairness is proportionate, given the gravity of the consequences for those affected by the relevant decision. The Law Council has suggested that the question of whether laws disproportionately encroach upon the duty to observe procedural fairness would most effectively be considered by an independent monitor of migration legislation, akin to the Independent National Security Legislation Monitor.⁸¹ The Senate Legal and Constitutional Affairs Committee recommended that changes made to the *Migration Act* in 2014, including the establishment of the fast track review process, should be reviewed three years after their enactment.

Decisions to refuse to grant or to cancel a visa

14.48 A visa may, or in some circumstances, must, be cancelled or not granted if the visa holder does not satisfy the Minister that they pass a ‘character test’.⁸² A person does not pass the character test if, among other things, the person has a ‘substantial’ criminal record; has been convicted of certain offences; or is reasonably suspected of being a member of, or having an association with, a group or organisation involved in criminal conduct.⁸³

79 Law Council of Australia, *Submission 140*.

80 National Association of Community Legal Centres, *Submission 143*; Councils for Civil Liberties, *Submission 142*; Law Council of Australia, *Submission 140*; Legal Aid NSW, *Submission 137*; Andrew & Renata Kaldor Centre for International Refugee Law, *Submission 91*; Law Council of Australia, *Submission 75*; ANU Migration Law Program, *Submission 59*; Institute of Public Affairs, *Submission 49*; Australian Lawyers for Human Rights, *Submission 43*; Refugee Council of Australia, *Submission 41*; Human Rights Law Centre, *Submission 39*; Refugee Advice and Casework Service, *Submission 30*; Kingsford Legal Centre, *Submission 21*; Gilbert and Tobin Centre of Public Law, *Submission 22*; UNSW Law Society, *Submission 19*.

81 Law Council of Australia, *Submission 140*; *Independent National Security Legislation Monitor Act 2010* (Cth).

82 *Migration Act 1958* (Cth) s 501.

83 *Ibid* s 501(6).

14.49 Section 501(3) excludes natural justice from the Minister's discretionary power to refuse to grant or to cancel a visa if the Minister reasonably suspects that a person does not satisfy the character test and is satisfied that the decision is in the national interest. Decisions made under s 501(3) may only be made by the Minister personally.⁸⁴

14.50 The rules of natural justice are excluded from a decision made under s 501(3A) of the *Migration Act*,⁸⁵ which compels the Minister to cancel a non-citizen's visa if the Minister is satisfied that:

- the person has been sentenced to death, or imprisonment for life or to a term of imprisonment of 12 months or more;⁸⁶ or
- an Australian or foreign court has convicted the person of one or more sexually-based offences involving a child, or found the person guilty of such an offence, or found a charge proved for such an offence, even if the person was discharged without conviction;⁸⁷ and
- the person is serving a sentence of imprisonment, on a full time basis in a custodial institution, for an offence against a law of the Commonwealth, a state or a territory.⁸⁸

14.51 The mandatory visa cancellation power was introduced in 2014. The Explanatory Memorandum to the Bill containing the proposed amendment stated that the intention of the provision is that

a decision to cancel a person's visa is made before the person is released from prison, to ensure that the non-citizen remains in criminal detention or, if released from criminal custody, in immigration detention while revocation is pursued.⁸⁹

14.52 A number of submissions raised concerns about the Minister's visa cancellation powers.⁹⁰ There was particular concern about the mandatory visa cancellation under s 501(3A). Prior to 2014, visas were not subject to mandatory cancellation on character grounds. A decision maker was able to consider a range of factors when exercising the discretion to cancel a visa. Kingsford Legal Centre argued that, 'in removing the Minister's discretion to consider these factors, the person whose visa is to be cancelled is denied due process'.⁹¹ Councils for Civil Liberties observed that the 'exclusion of

84 Ibid s 501(4).

85 Ibid s 501(5). Section 501(3A) was introduced in 2014 by the *Migration Amendment (Character and General Visa Cancellation) Act 2014* (Cth).

86 Ibid s 501(3A)(a)(i).

87 Ibid s 501(3A)(a)(ii).

88 Ibid s 501(3A)(b).

89 Explanatory Memorandum, Migration Amendment (Character and General Visa Cancellation) Bill 2014 (Cth).

90 National Association of Community Legal Centres, *Submission 143*; Councils for Civil Liberties, *Submission 142*; Law Council of Australia, *Submission 140*; Kingsford Legal Centre, *Submission 110*; ANU Migration Law Program, *Submission 59*; Refugee Council of Australia, *Submission 41*; Refugee Advice and Casework Service, *Submission 30*; Kingsford Legal Centre, *Submission 21*. Concerns about the impact of these powers on freedom of association are considered in Ch 6.

91 Kingsford Legal Centre, *Submission 21*.

natural justice in these circumstances does not appear to serve any legitimate purpose'.⁹²

14.53 Some stakeholders argued that the seriousness of a decision to cancel a visa necessitates the application of procedural fairness to the decision-making process.⁹³ Cancellation of a visa may have implications for a person's liberty: a non-citizen in Australia without a valid visa is subject to mandatory detention.⁹⁴ Where a person cannot be removed from Australia,⁹⁵ that person may be detained indefinitely.⁹⁶

14.54 The Law Institute of Victoria argued, in relation to mandatory visa cancellation, that

[t]he provision denies natural justice which can only be justified where a decision must be made urgently to preserve a position or prevent something happening. This clearly would not be the case when an individual is incarcerated for more than 12 months and a decision could be made earlier in their period of detention.⁹⁷

14.55 They further argued that other existing provisions allowing for cancellation of a visa on character grounds were

already sufficient to ensure that the visa of a person who poses a real risk of harm to the Australian community can be cancelled before their release from prison and to ensure that they are detained in immigration detention while merits appeals are being conducted. The mandatory cancellation provisions are, in our view, unnecessary to achieve the stated policy intention.⁹⁸

14.56 A mandatory decision to cancel a visa is not reviewable by the Administrative Appeals Tribunal (AAT). However, a person is able to seek revocation of the decision,⁹⁹ and a decision of a delegate of the Minister not to revoke the visa cancellation will be reviewable by the AAT.¹⁰⁰

14.57 The Minister, acting personally, is empowered to set aside a decision of the AAT to revoke the cancellation of a visa under s 501(3A), and the rules of natural justice do not apply to the Minister's decision.¹⁰¹ The Explanatory Memorandum to the

92 Councils for Civil Liberties, *Submission 142*.

93 ANU Migration Law Program, *Submission 59*; Institute of Public Affairs, *Submission 49*; Refugee Advice and Casework Service, *Submission 30*. The Institute of Public Affairs commented specifically on the refusal or cancellation of visas under s 500A of the *Migration Act*.

94 *Migration Act 1958* (Cth) s 189. The cancellation of a person's visa, in certain circumstances, may also affect the rights of others such as family members.

95 Because, for example, they are a refugee or a stateless person: *Plaintiff M47/2012 v Director General of Security* (2012) 251 CLR 1; *Al-Kateb v Godwin* (2004) 219 CLR 562.

96 *Migration Act 1958* (Cth) s 196. See also Refugee and Immigration Legal Centre Inc, Submission No 13 to the Senate Legal and Constitutional Affairs Legislation Committee, Parliament of Australia, *Migration Amendment (Character and General Visa Cancellation) Bill 2014*, 15 October 2014.

97 Law Institute Victoria, Submission No 12 to the Senate Legal and Constitutional Affairs Legislation Committee, Parliament of Australia, *Migration Amendment (Character and General Visa Cancellation) Bill 2014*, 3 November 2014.

98 *Ibid*.

99 *Migration Act 1958* (Cth) s 501CA. A person may also seek revocation of a decision to cancel a visa made under s 501(3): *Ibid* s 501C.

100 *Migration Act 1958* (Cth) s 500(1)(ba).

101 *Ibid* s 501BA(2)-(4).

Migration Amendment (Character and General Visa Cancellation) Bill 2014 (Cth) justified this by stating that ‘natural justice will have already been provided to the non-citizen through the revocation process’.¹⁰²

14.58 The Refugee and Immigration Legal Centre Inc (RILC) was concerned about the Minister’s power to set aside AAT decisions regarding visa cancellations, considering that this was ‘an unwarranted and unprecedented expansion of personal powers of the Minister [which] would also lead to persons being denied a real and meaningful opportunity to present and explain their case before a decision is made on it’.¹⁰³

14.59 The *Migration Act* also makes provision for mandatory cancellation of a visa on security grounds. If ASIO makes an assessment containing advice that it suspects that the person might be, directly or indirectly, a risk to security, recommends that the person’s visa be cancelled, and the person is outside Australia, the Minister must cancel that person’s visa.¹⁰⁴ The rules of natural justice do not apply to this decision.¹⁰⁵

14.60 Where a visa is cancelled under s 134B, the Minister must revoke the cancellation as soon as reasonably practicable after 28 days from the date of cancellation, or where ASIO makes an assessment recommending that the cancellation be revoked.¹⁰⁶ However, cancellation must not be revoked if ASIO makes an assessment containing advice that the former visa holder is a risk to security and recommending that the cancellation not be revoked.¹⁰⁷ These provisions were introduced into the *Migration Act* in 2014.¹⁰⁸

14.61 The Explanatory Memorandum to the Bill containing the proposed amendments explained that the power to cancel a visa under s 134B could be used in circumstances where ASIO suspects that a person who applies for a visa from outside Australia may pose a risk to national security, but ASIO either has insufficient information or lacks time to furnish a security assessment in advance of the person’s anticipated arrival in Australia.¹⁰⁹

14.62 ASIO argued that the provisions were justified. It stated that the regime prior to the amending Act was

effective where ASIO has the time and information available to conduct an assessment as to whether a person is directly or indirectly a risk to security, or a danger to the Australian community. However, scenarios can arise where the travel of a non-citizen to Australia is imminent, but assessing whether that person presents a direct or indirect risk to security on the basis of new information is not feasible before

102 Explanatory Memorandum, Migration Amendment (Character and General Visa Cancellation) Bill 2014 (Cth).

103 Refugee and Immigration Legal Centre Inc, Submission No 13 to the Senate Legal and Constitutional Affairs Legislation Committee, Parliament of Australia, *Migration Amendment (Character and General Visa Cancellation) Bill 2014*, 15 October 2014. See also Kingsford Legal Centre, *Submission 110*.

104 *Migration Act 1958* (Cth) s 134B.

105 *Ibid* s 134A.

106 *Ibid* s 134C(2), (4)–(5).

107 *Ibid* s 134C(3).

108 *Counter-Terrorism Legislation Amendment (Foreign Fighters) Act 2014* (Cth).

109 Explanatory Memorandum, Counter-Terrorism Legislation Amendment (Foreign Fighters) Bill 2014 (Cth).

the person travels. ... Depending on the gravity of the potential threat, it may be appropriate to delay that non-citizen's travel to Australia while further investigation is undertaken.¹¹⁰

14.63 The Inspector-General of Intelligence and Security (IGIS) noted that the Act provides 'no express provision allowing or preventing ASIO from making multiple temporary cancellation requests'.¹¹¹ It further noted that such cancellation requests are not subject to AAT review, and that such requests, particularly any cases of multiple requests, will be subject to IGIS scrutiny.¹¹²

14.64 A number of other provisions of the *Migration Act* explicitly provide that natural justice does not apply in decisions to revoke, not to grant or cancel a visa. The rules of natural justice are excluded from a decision of the Minister, acting personally:

- To cancel a visa when satisfied that information provided for the purpose of obtaining that visa was incorrect or bogus, and that it would be in the public interest.¹¹³
- To cancel a visa when satisfied that a ground for cancellation of the visa exists under s 116 and that it would be in the public interest.¹¹⁴ Section 116 provides the Minister with a power to cancel visas for a range of reasons, including that the holder has not complied with a condition of the visa;¹¹⁵ or that the presence of its holder in Australia is or may be, or would or might be, a risk to the health, safety or good order of the Australian community or a segment of the Australian community, or a risk to the health or safety of an individual or individuals.¹¹⁶
- To refuse to grant to a person a temporary safe haven visa, or to cancel a person's temporary safe haven visa.¹¹⁷

Fast track review process

14.65 In 2014, the *Migration Act* was amended¹¹⁸ to create a new 'fast track' review process for decisions to refuse protection visas to some applicants, including 'unauthorised maritime arrivals'¹¹⁹ who entered Australia between prescribed times.¹²⁰ Those applicants are described in the Act as 'fast track review applicants'.¹²¹ Several

110 ASIO, Submission No 11 to the Parliamentary Joint Committee on Intelligence and Security, *Advisory Report on the Counter-Terrorism Legislation Amendment (Foreign Fighters Bill 2014)* (2014).

111 IGIS, Submission No 1 to the Parliamentary Joint Committee on Intelligence and Security, *Advisory Report on the Counter-Terrorism Legislation Amendment (Foreign Fighters Bill 2014)* (2014).

112 Ibid.

113 *Migration Act 1958* (Cth) s 133A(3)–(4),(7), 101–109. See also Andrew & Renata Kaldor Centre for International Refugee Law, *Submission 91*.

114 *Migration Act 1958* (Cth) s 133C(3)–(4), (7).

115 Ibid s 116(1)(b).

116 Ibid s 116(1)(e).

117 Ibid s 500A(1), (3), (6), (11).

118 *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014* (Cth).

119 'Unauthorised maritime arrival' is defined in *Migration Act 1958* (Cth) s 5AA.

120 Ibid s 473BA.

121 Ibid s 5(1), 473BB.

stakeholders argued that this new process arbitrarily and unfairly excludes procedural fairness from protection visa application processes for those subject to it.¹²²

14.66 Under pt 7AA of the *Migration Act*, the Minister must refer decisions to refuse protection visas to fast track review applicants to a new body, the Immigration Assessment Authority (IAA).¹²³ The fast track review process confines the obligation for the IAA to observe the rules of natural justice by way of an exhaustive statement of the natural justice hearing rule that applies to its reviews.¹²⁴

14.67 The obligation to provide a visa applicant with a hearing is excluded in the fast track review process.¹²⁵ Unless there are exceptional circumstances, the IAA must review decisions referred to it without accepting or requesting new information and without interviewing the referred applicant.¹²⁶

14.68 Additionally, some applicants for protection visas will not be eligible to have a refusal reviewed by the IAA. These applicants include persons who, in the opinion of the Minister, have made a claim for protection in another country that was refused; give or present a bogus document in support of their application; or make a claim that is manifestly unfounded.¹²⁷ The Minister may expand both the class of persons subject to the fast track review process, and the class of persons excluded from this process, by legislative instrument.¹²⁸

14.69 The Explanatory Memorandum for the Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014 (Cth) emphasised the importance of the fast resolution of the visa application process:

The Government believes the faster a case can be finally determined, the better outcomes it can deliver for both the applicant and those who support them in the Australian community—eliminating long periods of uncertainty and allowing people to move on and make decisions about the next stage of their lives.

...

[The IAA] will deliver the Government’s policy outcome of improving the efficiency and cost effectiveness of merits review currently experienced by refused protection visa applicants in Australia and ensure timely progress of their cases towards a final and accurate determination regarding their immigration status.¹²⁹

122 Law Council of Australia, *Submission 75*; Law Society of NSW Young Lawyers, *Submission 69*; ANU Migration Law Program, *Submission 59*; Refugee Council of Australia, *Submission 41*; Refugee Advice and Casework Service, *Submission 30*.
123 *Migration Act 1958* (Cth) s 473CA, 473JA.
124 *Ibid* pt 7AA, div 3; ss 473GA, 473GB.
125 *Ibid* s 473DB.
126 *Ibid* s 473DB, 473DC, 473DD.
127 *Ibid* s 5(1) (definition of ‘excluded fast track review applicant’).
128 *Ibid* s 5(1AA).
129 Explanatory Memorandum, Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014 (Cth). The *Tribunals Amalgamation Act 2015* (Cth) amalgamated the AAT with other tribunals including the Refugee Review Tribunal. The RRT’s functions are now carried out by the Migration and Refugee Division of the AAT.

14.70 A number of criticisms of this process were made on procedural fairness grounds.¹³⁰ The Refugee Council of Australia (RCOA) argued that the new fast track system administered by the IAA fails to provide ‘an adequate framework for ensuring accuracy and procedural fairness in decision-making’.¹³¹

14.71 The ANU Migration Law Program noted that ‘there is no provision to require a fast track applicant to be notified that the primary decision has been referred by the minister to the IAA’.¹³² The lack of provision for a hearing, except in exceptional circumstances, was also a cause of concern. The RCOA argued that:

Through denying asylum seekers the opportunity to put forward or respond to information relevant to their claims and, in some cases, blocking access to review altogether, the fast-track process will create a much higher risk of inaccuracy in decision-making. This in turn increases the danger of asylum seekers being erroneously returned to situations where they could face persecution or other forms of serious harm.¹³³

14.72 RACS queried the proportionality of the fast track process, ‘in light of the gravity of what is at stake in the context of refugee status determination—not only the deprivation of a person’s liberty under the Migration Act but potential for the exposure of a person to a risk of persecution’.¹³⁴ The Law Council similarly ‘considered that the objective of administrative efficiency is not sufficient to deny procedural fairness’.¹³⁵ Councils for Civil Liberties said that

while protecting the Australian community from threats posed to their safety and security is a laudable objective that is justified in a free and democratic society, the Fast Track Assessment Process has nothing to do with making Australians safer. ... The real purpose of the Fast Track Assessment Process appears more clearly targeted at ensuring that those who have come to Australia by boat and remain in Australian detention centers are not granted protection by being processed quickly with limited access to review. Further, it is part of a broader aim to deter others from coming to Australia by boat. ... [T]his purpose is not justified and should have no place in a free and democratic society.¹³⁶

14.73 The ANU Migration Law Program suggested that the end of processing claims expeditiously could be met by other means with less impact on procedural fairness:

There is no reason why the review of primary ‘fast track’ decisions of applicants who form part of the ‘asylum legacy caseload’ cannot and should not be undertaken by the RRT ... and prioritised ahead of other on-shore protection cases. This would ensure that reviews of ‘fast track’ decisions are finalised efficiently and expeditiously in

130 Councils for Civil Liberties, *Submission 142*; Law Council of Australia, *Submission 140*; Legal Aid NSW, *Submission 137*; Refugee Council of Australia, *Submission 109*; Andrew & Renata Kaldor Centre for International Refugee Law, *Submission 91*; Law Council of Australia, *Submission 75*; Law Society of NSW Young Lawyers, *Submission 69*; ANU Migration Law Program, *Submission 59*; Refugee Council of Australia, *Submission 41*; Refugee Advice and Casework Service, *Submission 30*.

131 Refugee Council of Australia, *Submission 41*.

132 ANU Migration Law Program, *Submission 59*.

133 Refugee Council of Australia, *Submission 41*.

134 Refugee Advice and Casework Service, *Submission 30*.

135 Law Council of Australia, *Submission 75*.

136 Councils for Civil Liberties, *Submission 142*.

accordance with Government policy, and without sacrificing the procedural fairness safeguards guaranteed by the RRT's statutory processes and procedures.¹³⁷

14.74 In 2015, the England and Wales Court of Appeal found that a fast-track appeal process for review of applications for asylum in the United Kingdom was 'structurally unfair and unjust'.¹³⁸ Lord Dyson stated that

in view of (i) the complex and difficult nature of the issues that are often raised; (ii) the problems faced by legal representatives of obtaining instructions from individuals who are in detention; and (iii) the considerable number of tasks that they have to perform ... the timetable for the conduct of these appeals is so tight that it is inevitable that a significant number of appellants will be denied a fair opportunity to present their cases under the [Fast Track Rules] regime.¹³⁹

Maritime Powers Act 2013 (Cth)

14.75 The *Maritime Powers Act* provides a broad set of enforcement powers, exercisable by maritime officers, for use in, and in relation to, maritime areas.¹⁴⁰ The Act was amended in 2014¹⁴¹ to exclude the rules of natural justice as they relate to the exercise of a number of maritime powers:

- s 22B provides that the rules of natural justice do not apply to authorisations of the exercise of maritime powers made under pt 2 div 2 of the Act; and
- s 75B excludes the rules of natural justice from a number of provisions, which largely relate to maritime officers' powers to detain vessels and aircraft, as well as to place, detain and move persons aboard detained vessels or aircrafts.¹⁴²

14.76 The Scrutiny of Bills Committee, when examining the amending Bill, was concerned by the proposed exclusion of natural justice:

The *Maritime Powers Act* contains a number of significant and coercive 'maritime powers' and the explanatory memorandum does not provide sufficient justification for the exclusion of natural justice ... Not all the powers are the same or require the same considerations in relation to their exercise. For example, different considerations may arise in relation to powers which enable a person or vessel to be detained than in relation to powers which enable a person or vessel to be transported to a destination (which may be outside of Australia). Without further details and analysis, the claim that application of the rules of natural justice is not consistent with the 'unique circumstances ... in a maritime environment' does not enable the committee to properly consider the appropriateness of the proposed exclusion of natural justice.¹⁴³

137 ANU Migration Law Program, *Submission 59*.

138 *Lord Chancellor v Detention Action* [2015] EWCA Civ 840 [45].

139 *Ibid* [38].

140 *Maritime Powers Act 2013 (Cth)* s 7.

141 *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Act 2014 (Cth)*.

142 *Maritime Powers Act 2013 (Cth)* ss 9, 69A, 71–72, 72A, 74, 75D, 75F, 75G, 75H.

143 Senate Standing Committee for the Scrutiny of Bills, Parliament of Australia, *15th Report of 2014* (November 2014) 909–10.

14.77 In light of these concerns, the Committee sought the Minister's advice as to why the exclusion of natural justice was considered reasonable.¹⁴⁴ The Minister replied that 'in the operational context in which these powers are to be exercised, any formal requirement for natural justice would not be practicable', and provided a detailed explanation of the effect of each new provision.¹⁴⁵ The Committee reiterated its concerns about the exclusion of the rules of procedural fairness and referred the provisions to the Senate for further consideration.¹⁴⁶

14.78 In *CPCF v Minister for Immigration and Border Protection*, the High Court considered s 72(4) as it was prior to the 2014 amendments that specifically excluded the application of natural justice from the provision. The High Court found that the power under s 72(4) to take the plaintiff to a place outside Australia was not subject to an obligation to give the plaintiff an opportunity to be heard about the exercise of that power.¹⁴⁷

14.79 A number of submissions to this Inquiry raised concerns about the exclusion of natural justice from the *Maritime Powers Act*.¹⁴⁸

14.80 The Human Rights Law Centre contested the claim that affording fairness at sea can be impracticable, arguing that

'impracticability' does not justify completely excluding the duty to act fairly. It is a factor relevant to what fairness practically requires in the particular circumstances. More fundamentally, to the extent that acting fairly at sea could carry practical challenges, administrative inconvenience is a necessary and reasonable price to pay to ensure important decisions affecting people's rights and liberties are properly made.¹⁴⁹

14.81 The Law Council argued that the exclusion of the rules of procedural fairness cannot be justified in light of the seriousness of the consequences for persons removed from Australian waters—for example, 'the relocation of affected individuals to a place where they face a real risk of persecution'.¹⁵⁰

144 Senate Standing Committee for the Scrutiny of Bills, Parliament of Australia, *14th Report of 2014* (October 2014) 910.

145 Senate Standing Committee for the Scrutiny of Bills, Parliament of Australia, *15th Report of 2014* (November 2014) 911–13.

146 Senate Standing Committee for the Scrutiny of Bills, Parliament of Australia, *14th Report of 2014* (October 2014) 914.

147 *CPCF v Minister for Immigration and Border Protection* (2015) 316 ALR 1, [52]–[53] (French CJ); [226]–[227] (Crennan J); [305]–[310] (Kiefel J); [366]–[372] (Gageler J); [497]–[503] (Keane J). The Court considered it unnecessary to answer whether the non-statutory executive power of the Commonwealth authorised a Commonwealth officer to detain the plaintiff for the purposes of taking him to India and to take steps associated with this. The Court also considered it unnecessary to answer whether any such non-statutory executive power was subject to an obligation to give the plaintiff an opportunity to be heard about the exercise of that power. For consideration of the existence of any common law right of non-citizens to enter Australia, see Ch 7.

148 Councils for Civil Liberties, *Submission 142*; Law Council of Australia, *Submission 140*; Law Council of Australia, *Submission 75*; Law Society of NSW Young Lawyers, *Submission 69*; Australian Lawyers for Human Rights, *Submission 43*; Human Rights Law Centre, *Submission 39*.

149 Human Rights Law Centre, *Submission 39*. See also Councils for Civil Liberties, *Submission 142*; Law Society of NSW Young Lawyers, *Submission 69*.

150 Law Council of Australia, *Submission 75*.

14.82 The Senate Legal and Constitutional Affairs Committee has recommended that changes made to the *Maritime Powers Act* in 2014 be reviewed three years after their enactment.¹⁵¹

Conclusion

14.83 A number of migration laws encroach on the duty to afford procedural fairness. The ALRC concludes that some of these laws would benefit from further review to consider whether they unjustifiably exclude the duty to afford procedural fairness, given the gravity of the consequences for those affected by the relevant decision. Migration laws that might be further scrutinised include those in the *Migration Act* relating to:

- the mandatory cancellation of visas; and
- the fast track review process for decisions to refuse protection visas.

151 Senate Legal and Constitutional Affairs Legislation Committee, Parliament of Australia, *Migration and Maritime Powers Legislation Amendment (Resolving the Asylum Legacy Caseload) Bill 2014 [Provisions]* (2014).

15. Judicial Review

Contents

Summary	413
A common law principle	414
Judicial review in Australia	416
Protections from statutory encroachment	417
Australian Constitution	417
Principle of legality	420
International law	422
Bills of rights	422
Justifications for limits on judicial review	422
Laws that restrict access to the courts	423
Migration Act 1958 (Cth)	423
General corporate regulation	426
Taxation	427
Other issues	427
Conclusion	428

Summary

15.1 Access to the courts to challenge administrative action is an important common law right. Judicial review of administrative action is about setting the boundaries of government power.¹ It is about ensuring government officials obey the law and act within their prescribed powers.²

15.2 This chapter discusses access to the courts to challenge administrative action or decision making.³ It is about judicial review, rather than merits review by administrators or tribunals. It does not focus on judicial review of primary legislation

1 ‘The position and constitution of the judicature could not be considered accidental to the institution of federalism: for upon the judicature rested the ultimate responsibility for the maintenance and enforcement of the boundaries within which government power might be exercised and upon that the whole system was constructed’: *R v Kirby; Ex parte Boilermakers’ Society of Australia* (1956) 94 CLR 254, 276 (Dixon CJ, McTiernan, Fullagar and Kitto JJ).

2 ‘The reservation to this Court by the *Constitution* of the jurisdiction in all matters in which the named constitutional writs or an injunction are sought against an officer of the Commonwealth is a means of assuring to all people affected that officers of the Commonwealth obey the law and neither exceed nor neglect any jurisdiction which the law confers on them’: *Plaintiff S157/2002 v Commonwealth* (2003) 211 CLR 476, [104] (Gaudron, McHugh, Gummow, Kirby and Hayne JJ).

3 Not every administrative decision is subject to judicial review. Administrative action which does not affect an individual’s liberties, vested rights or legitimate expectations is not subject to judicial review. Similarly, policy decisions of government are not subject to judicial review.

on constitutional grounds or judicial review of lower court decisions by way of appeal or prerogative writ.

15.3 At common law, superior courts of record have an inherent jurisdiction to conduct judicial review. In the 1970s, the government introduced the *Administrative Decisions (Judicial Review) Act 1977* (Cth) (*ADJR Act*) as part of wide-ranging reforms to federal administrative law in Australia. The Act seeks to simplify, codify, and in some cases, expand common law judicial review. However, limitations imposed on the *ADJR Act* have affected its capacity to operate as a simpler, more streamlined avenue for judicial review.

15.4 A number of stakeholders submitted that limits on access to the *ADJR Act* in the form of the list of decisions exempted from review under the Act should be considered as part of this Inquiry. While consideration has been given to this issue, it is important to note that under s 39B(1A)(c) of the *Judiciary Act 1901* (Cth) (*Judiciary Act*) a person still has access to the courts to review a decision exempted under sch 1 of the *ADJR Act*. Accordingly, this chapter does not focus on decisions exempted from review under the *ADJR Act*.

15.5 This chapter is focused on privative clauses, which are ‘essentially a legislative attempt to limit or exclude judicial intervention in a certain field’.⁴ However, statutory attempts to oust the jurisdiction of the court have largely failed. Section 75(v) of the *Constitution* protects access to the courts, as it includes an ‘entrenched minimum provision of judicial review’.⁵ Further, the principle of legality operates to protect access to the courts by construing privative clauses so narrowly that they have little to no effect.

15.6 The Australian Government should consider a review of privative clauses in Commonwealth laws. Where the underlying policy rationale is considered warranted, the Australian Government should explore whether alternative solutions, which do not restrict access to the courts, and are more targeted and effective in addressing the underlying policy issue, may be implemented.

A common law principle

15.7 Access to the courts for the purpose of judicial review is an important common law right. Sir William Wade stated that ‘to exempt a public authority from the jurisdiction of the courts of law is, to that extent, to grant dictatorial power’.⁶

15.8 In *Church of Scientology v Woodward*, Brennan J said:

Judicial review is neither more nor less than the enforcement of the rule of law over executive action; it is the means by which executive action is prevented from

4 Simon Young, ‘Privative Clauses: Politics, Legality and the Constitutional Dimension’, in Matthew Groves (ed), *Modern Administrative Law in Australia: Concepts and Context* (Cambridge University Press, 2014) 277.

5 *Plaintiff S157/2002 v Commonwealth* (2003) 211 CLR 476, [103].

6 Sir William Wade, above n 3.

exceeding the powers and functions assigned to the executive by law and the interests of the individual are protected accordingly.⁷

15.9 In his *Introduction to Australian Public Law*, Professor David Clark gives a brief history of judicial review of administrative action:

Judicial review in the administrative law sense originated in the 17th century when various prerogative writs, so called because they issued in the name of the Crown, began to be issued against administrative bodies. These writs, such as certiorari, prohibition and mandamus originated in the 13th century, but were originally confined to review of the decisions of inferior courts ... By the late 17th century the writs began to be used against administrative agencies such as the Commissioners of Sewers, and the Commissioners for Bridges and Highways. With the dramatic expansion of State functions in the 19th century and the emergence of innumerable statutory bodies, committees, commissions, and other administrative agencies, the way was open for the expansion of judicial review in this sense.

The power to judicially review what were once called inferior jurisdictions (lower courts and administrative agencies) arrived in Australia with the opening of the first Supreme Courts in Van Diemen’s Land and New South Wales in 1824 ... The power to review by certiorari, prohibition and mandamus was, in origin, a common law power and was, therefore, a power of jurisdiction created by the courts through their judicial decisions.⁸

15.10 It is widely recognised that the right to judicial review is not absolute. Judicial review is available to test the legality of a decision, and not its merits—the courts are not authorised to ask whether a decision was a ‘good’ decision. It asks only whether the decision has been properly made, in accordance with the law.

15.11 At common law, the availability and scope of judicial review is a consequence of the judicial remedy sought. These remedies are the prerogative writs of habeas corpus,⁹ quo warranto,¹⁰ mandamus,¹¹ certiorari,¹² and prohibition,¹³ as well as the equitable remedies of injunction and declaration. The standing rules relating to the availability of common law remedies and time limits which apply in relation to each of these differ.¹⁴ While some of these requirements have relaxed over time,¹⁵ access to

7 *Church of Scientology v Woodward* (1982) 154 CLR 25, 70 (Brennan J).
8 David Clark, *Introduction to Australian Public Law* (Lexis Nexis Butterworths, 4th ed, 2013) 247.
9 The writ of habeas corpus demands that a person incarcerated be brought before the court to determine whether there is lawful authority to detain the person.
10 The writ of quo warranto requires the decision maker to show by what authority they exercise a power.
11 Mandamus is an order compelling or directing a lower court or administrative decision maker to perform mandatory duties correctly. A writ of procedendo sends a case to a lower court with an order to proceed to judgment.
12 A writ of certiorari sets aside a decision made contrary to the law.
13 A writ of prohibition forbids a decision maker from commencing or continuing to perform an unlawful act.
14 Matthew Groves and Janina Boughey, ‘Administrative Law in the Australian Environment’ in Matthew Groves (ed), *Modern Administrative Law in Australia: Concepts and Context* (Cambridge University Press, 2014) 3, 6.
15 The tests for standing to sue at common law are converging: Mark Aronson and Matthew Groves, *Judicial Review of Administrative Action* (Thomson Reuters Australia, 2013) 723.

judicial review at common law remains technical and complex. The Kerr Committee¹⁶ recognised that the rules that apply to judicial review at common law were ‘both unwieldy and unnecessary’.¹⁷ It noted that ‘a case can be lost or won on the basis of choice of remedy’.¹⁸

15.12 At common law, the following are subject to judicial review: a rule-maker’s power to make delegated legislation;¹⁹ decisions of the Governor-General; recommendations and findings contained in coronial reports; Royal Commission reports; and the reports of other formal advisory bodies. Judicial review is also available in relation to decisions made in exercise of a prerogative or executive power, intermediate decisions, and some contractual decisions.²⁰

Judicial review in Australia

15.13 In addition to the common law, s 75(v) of the *Constitution* provides for an ‘entrenched minimum provision’ of judicial review.²¹ Section 39B(1) of the *Judiciary Act 1903* (Cth) (*Judiciary Act*) extends the original jurisdiction of the High Court of Australia (High Court) to the Federal Court of Australia (Federal Court).²² Section 39B(1A)(c) vests the Federal Court with jurisdiction over ‘any matter arising under any laws made by the Parliament, other than a matter in respect of which a criminal prosecution is instituted or any other criminal matter’.

15.14 In 1977, the *ADJR Act* was introduced as part of wide-ranging reforms to federal administrative law in Australia.²³ The Act seeks to simplify, codify and, in some cases,

16 In 1968, the Commonwealth Administrative Review Committee, chaired by Sir John Kerr was established to consider reform of administrative law in Australia. This committee is referred to in this chapter as the ‘Kerr Committee’.

17 Commonwealth, *Report of the Administrative Review Committee*, Parliamentary Paper No 133 (1971) [58]. This report is referred to in this chapter as the *Kerr Committee Report*.

18 Ibid.

19 It is rare that an application for judicial review of delegated legislation will be successful. The courts tend to adopt a presumption of validity, and ‘a reluctance to substitute judicial opinion for that of the legislation-maker’: Dennis Pearce and Stephen Argument, *Delegated Legislation in Australia* (LexisNexis Butterworths, 3rd ed, 2005) [14.1]. However, the principles of ultra vires that apply to administrative decision making also apply to delegated legislation: Stephen Argument, ‘Delegated Legislation’ in Matthew Groves and HP Lee (eds), *Australian Administrative Law: Fundamentals, Principles and Doctrines* (Cambridge University Press, 2007) 141. For an example of a successful challenge to delegated legislation, see: *Paradise Projects Pty Ltd v Gold Coast City Council* [1994] 1 Qd R 314, 321. For a more in-depth discussion of inappropriate delegations of legislative power, see Chapter 17.

20 For an example of review at common law of a decision to enter a contract, see *Cubic Transportation Systems Inc v New South Wales* [2002] NSWSC 656 (26 July 2002). Further, the High Court has held that injunctive and declaratory relief were available for legal errors made by contractors in written advice to the Minister, even where the Minister had no obligation to consider the advice: *Plaintiff M61/2010E v Commonwealth* (2010) 243 CLR 319, [51]–[53], [99]–[104].

21 This is discussed further below. The ‘entrenched minimum provision’ of judicial review extends to State Supreme Courts, and thus, the decisions of state administrative bodies: *Kirk v Industrial Relations Commission (NSW)* (2010) 239 CLR 531. Section 75(iii) of the *Constitution* also protects access to the courts. It states that the High Court shall have original jurisdiction in any matter in which the Commonwealth, or a person suing or being sued on behalf of the Commonwealth, is a party.

22 This jurisdiction is modified to exclude the justiciability of certain criminal justice process decisions before the High Court.

23 In addition to introducing the *Administrative Decisions (Judicial Review) Act 1977*, the government established the Administrative Appeals Tribunal as a general merits review body, introduced freedom of

expand common law judicial review. It established: a single, simple procedure for review, which applies regardless of the grounds argued, or the remedy sought; codified the grounds for review; and established a right to reasons for a decision where a person has standing to seek review, with certain exceptions. However, limitations imposed on the *ADJR Act* have affected its capacity to operate as a simpler, more streamlined avenue for judicial review.²⁴

15.15 This chapter discusses how access to the courts is protected from statutory encroachment; laws which restrict access to the courts; and when laws that restrict access to the courts may be justified. It is about judicial review, rather than merits review.²⁵ However, judicial review has been characterised as ‘inevitably sporadic and peripheral’.²⁶ The availability of merits review has been described as ‘in a way more important than judicial review because it can offer a complete answer, not available through the courts, to a person affected by a decision’.²⁷

Protections from statutory encroachment

Australian Constitution

15.16 The *Constitution* has an ‘entrenched minimum provision of judicial review’,²⁸ which cannot be removed by statute, even where it may purport to do so. Section 75(v) of the *Constitution* provides that the High Court shall have original jurisdiction in all

information legislation, and established the Commonwealth Ombudsman: John McMillan, ‘Parliament and Administrative Law’ (Research Paper 13 2000-01, 7 November 2000).

- 24 Decisions of the *Governor-General*, and findings and recommendations in official reports are excluded from review under the *ADJR Act*. Reviews under the *ADJR Act* are only available for decisions made under an enactment, thus, excluding challenges to delegated legislation, decisions made in exercise of executive or prerogative power and contractual decisions. The courts have interpreted the term “decision” in the *ADJR Act* to generally mean a ‘final, or operative and determinative’ decision. An intermediate step does not ordinarily constitute a decision. Intermediate decisions were considered to be a decision in their own right if a statute made separate provision for it, and it was substantive: *Kirk v Industrial Relations Commission (NSW)* (2010) 239 CLR 531.
- 25 Merits review is concerned with a person or body—other than the primary decision maker—considering the facts, law and policy underlying the original decision, and substituting a fresh decision where the new decision is correct or preferable. By contrast, judicial review is concerned with the lawfulness of a decision, whether by reference to whether the decision maker had the power to make the decision, a legal error has occurred in making the decision or, where necessary, whether the rules of procedural fairness were complied with. However, where the tribunal conducting merits review makes a legal or procedural error, that decision may be subject to judicial review.
- 26 *Re McBain; Ex Parte Australian Catholic Bishops Conference* (2002) 209 CLR 372, [471]–[472]; *Plaintiff S157/2002 v Commonwealth* (2003) 211 CLR 476, [522]–[523].
- 27 Justice Robert French, ‘Administrative Law in Australia: Themes and Values’ in Matthew Groves and HP Lee (eds), *Australian Administrative Law: Fundamentals, Principles and Doctrines* (Cambridge University Press, 2007) 22. See also Justice Janine Pritchard, ‘The Rise and Rise of Merits Review: Implications for Judicial Review and for Administrative Law’ (2015) 79 *Australian Institute of Administrative Law Forum* 14; Commonwealth, *Report of the Administrative Review Committee*, Parliamentary Paper No 133 (1971) [58].
- 28 *Plaintiff S157/2002 v Commonwealth* (2003) 211 CLR 476, [103]. This was extended to review by state Supreme Courts, and thus, in relation to decisions by State administrative bodies in *Kirk v Industrial Relations Commission (NSW)* (2010) 239 CLR 531. The High Court has long held that the original jurisdiction granted under s 75(v) of the *Constitution* is unalienable. See: *Bank of New South Wales v Commonwealth* (1948) 76 CLR 1; *Chu Kheng Lim v Minister for Immigration* (1992) 176 CLR 1; *R v Commonwealth Court of Conciliation and Arbitration; Ex parte Brisbane Tramways Co Ltd (No 1) (Tramways Case No 1)* (1914) 18 CLR 54.

matters ‘in which a writ of mandamus or prohibition or an injunction is sought against an officer of the Commonwealth’. Gleeson CJ said that this provision ‘secures a basic element of the rule of law’:

The jurisdiction of the Court to require officers of the Commonwealth to act within the law cannot be taken away by Parliament. Within the limits of its legislative capacity, which are themselves set by the Constitution, Parliament may enact the law to which officers of the Commonwealth must conform. If the law imposes a duty, mandamus may issue to compel performance of that duty. If the law confers power or jurisdiction, prohibition may issue to prevent excess of power or jurisdiction. An injunction may issue to restrain unlawful behaviour. Parliament may create, and define, the duty, or the power, or the jurisdiction, and determine the content of the law to be obeyed. But it cannot deprive this Court of its constitutional jurisdiction to enforce the law so enacted.²⁹

15.17 The High Court defined its entrenched minimum provision of judicial review in the following terms:

First, the jurisdiction of this Court to grant relief under s 75(v) of the Constitution cannot be removed by or under a law made by the Parliament. Specifically, the jurisdiction to grant s 75(v) relief where there has been jurisdictional error by an officer of the Commonwealth cannot be removed. Secondly, the judicial power of the Commonwealth cannot be exercised otherwise than in accordance with Ch III. The Parliament cannot confer a non-judicial body the power to conclusively determine the limits of its own jurisdiction.³⁰

15.18 What constitutes jurisdictional error is uncertain. It depends on the statutory context.³¹ Drawing from the leading cases, Professors Mark Aronson and Matthew Groves list some examples of instances of jurisdictional error:

- a mistaken assertion or denial of the existence of jurisdiction;
- a misapprehension or disregard of the nature or limits of the functions and powers of a decision maker;
- entertaining issues or making the types of decisions or orders which are forbidden under any circumstances (for example, a civil court trying a criminal charge);
- mistakes as to the existence of a jurisdictional fact or other requirement—that is, the relevant Act treats the fact or requirement as a condition precedent to the validity of the challenged decision.

29 *Plaintiff S157/2002 v Commonwealth* (2003) 211 CLR 476, [5] (Gleeson CJ).

30 *Ibid* [98]. However, it is important to note that the government retains, in large part, the power to define what constitutes jurisdictional error. A key example is the statutory removal of procedural fairness obligations (discussed in Ch 14). No invalidity clauses are another example, as are provisions which provide that there are no irrelevant considerations.

31 What is jurisdictional error in one statutory context may not be so in another: Mark Aronson, ‘Jurisdictional Error and Beyond’ in Matthew Groves (ed), *Modern Administrative Law in Australia: Concepts and Context* (Cambridge University Press, 2014) 248, 250.