PRINCIPALS, ALTERNATIVE DISPUTE RESOLUTION, AND PROCEDURAL FAIRNESS IN AUSTRALIAN PUBLIC SCHOOLS

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ABSTRACT

This article discusses whether public school principals in Australia can undertake alternative dispute resolution (ADR) to resolve conflicts in accordance with the rules of procedural fairness at the school level. The article discusses the situations within which public school principals may be able to undertake the process of mediation whilst still complying with the statutory obligation of the rules of procedural fairness which may be at odds with the mediation process. The premise of procedural fairness and undertaking the task of in-school mediation may provide an avenue for parties to have voices in the mediation process resulting in possible outcomes in which both parties can agree. A general summary from preliminary interview data with in-house Department of Education New South Wales lawyers provides examples of situations where mediation may be possible in the resolution of conflict where mediation is appropriate. The article concludes with a general suggestion as to why ADR may be able to assist public school-based administrators.

I INTRODUCTION

Mediation is a structured negotiation process, a form of alternative dispute resolution (ADR), wherein an independent third party assists the parties to reach their own resolutions of disputes. Mediation is appropriate for consideration in school disputes involving students, parents, employees, contractors and stakeholders such as community groups and school boards. There are likely many situations where mediation is appropriate, but others also exist where mediation is inappropriate to resolve these matters. In mediation at the school level, facilitated by a principal and an external mediator who understands the school context may suit the following types of matters;[1]

- Industrial disputes, such as class timetables and number of classes taught, and types of classes taught;
- Commercial disputes, such as in the provision of swimming lessons for students in primary schools or the contracting of bus services;

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- Personal injury matters; even so, most of these would be handled by the legal directorate;
- Defamation matters such as parents talking about teachers' performances or their perceived teaching pedagogies;
- Discrimination disputes involving students with disabilities, students from ethnic backgrounds and Indigenous students;
- Disputes concerning the quality of teaching, assessment or discipline of students; and
- Disputes between students.

In the initial stages of any investigation, consideration should be given as to whether there is a suitable ADR process available, such as direct negotiation, conciliation, or mediation. Direct negotiation is a process in which the original decision-maker is involved to resolve the dispute at an initial stage, without formal processes. However, as government schools are bound by the rules of procedural fairness, this process is more rigid than what might apply in the private sector. Statutory bodies, such as the Ombudsman and Human Rights Commission, when dealing with education matters rely heavily on conciliation outcomes as they do not have the power to make determinative orders in response to complaints from parents and teachers.

II WHAT IS THE NSW DEPARTMENT OF EDUCATION'S POLICY SURROUNDING CONFLICT MANAGEMENT?

On 08 July 2008 the State of NSW developed the *Model Litigant Policy for Civil Litigation*[2] ascertaining an obligation on the State and its agencies to act as model litigants when conducting litigation. It requires that the State and its agencies act with complete propriety, fairly and in accordance with the highest professional standards. Public NSW schools are therefore required to: deal with claims promptly; not take advantage of a claimant who lacks the resources to litigate a legitimate claim; pay legitimate claims; avoid litigation; keep costs to a minimum; and apologise where the State has acted inappropriately.

The Joint Committee of Public Accounts, Parliament of Australia, Social Responsivities of Commonwealth Statutory Authorities and Government Business Enterprises[3] explained why Commonwealth statutory authorities, in this case the provision of education under the *Education Act 1990* (NSW), should show a greater degree of social responsibility than other organisations, even if there were no legal obligations for it to do so:

> For leadership in a democratic society to be effective it should be based on setting a good example. Or to put it another way, if public sector agencies are not prepared to do so, how can private sector entities be expected to maintain the desired standards. Hence government authorities must… be model corporate citizens.[4]

In *Australian Securities Investments Commission v Hellicar*[5] the majority of the High Court stated that the government has a duty to conduct litigation fairly. Justice Heydon accepted that:

> The duty to act as a model litigant requires the Commonwealth and its agencies, as parties to litigation, to act fairly, with complete propriety and in accordance with the highest professional standards, but within the same procedural rules as govern all litigants. But the procedural rules are not modified against model litigants – they apply uniformly.[6]

Further, in *Australian Competition and Consumer Commission v Leahy Petroleum Pty Ltd*, [7] Gary J explained that the adoption of the model litigant rules by the Commonwealth government 'is of significant value to the parties against whom the Commonwealth is involved in litigation, and to the courts in which that litigation is conducted.'[8]

The NSW Department of Education has a complaints handling policy that states: 'the complaint handling in the Department of Education is fair, efficient and accessible.'[9] This is in relation to all complaints received by the NSW Department of Education including parent, student and employee. Section one of the School Community and Consumer Complaint Procedure states that the NSW Department of Education's complaint procedure intends to:

> Enable [the Department of Education] to respond well to complains; resolve complaints in a timely, fair and helpful manner; give the public confidence in our administrative processes; provide information to enhance our services, systems and complaint handling, and prevent complainants or students from suffering detriment because a complaint has been made by them or on their behalf.[10]

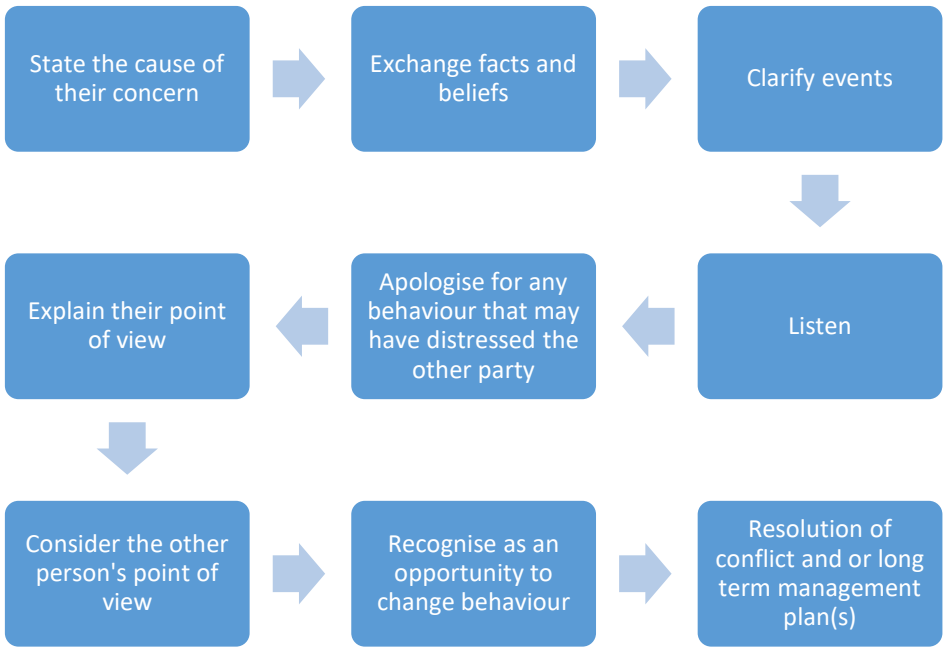
In addition to the above, complaints must be handled according to the rules of procedural fairness because the Department of Education is a government agency and complies with the elements of accessibility, transparency, responsiveness, accountability and constructiveness. The Complaint Handling Policy set out how school principals should handle complaints. If complaints are escalated from being informal, depending on the nature of the complaints or grievances, the following procedures may be used: remedy and system improvement, negotiation (including mediation) and investigation. For the purpose of informally resolving matters at the school level, only mediation and negotiation will be discussed in this paper, as a tool that a principal could use to resolve suitable (e.g. homework, learning environment, conduct of staff, learning program issue, student discipline, etc) complaints involving the school community.

In accordance with the *Complaints Handling Policy Procedures*[11] there are at least six legitimate expectations that are required, namely, the complaint process needs to be explained to the complainant; if a matter is to be referred, information surrounding the referral should be given; identify that the recipients of the complaints understand the complaints and the remedies sought by the complainants; outline the possible outcomes,

including whether those sought by the complainants are reasonable and possible; identify realistic timeframes for the resolution of the complaints; and ensure that case management is undertaken.

The NSW Department of Education identifies various procedures that are available for the resolution of complaints. In the context of persons (parents, students, guardians, employees and other aggrieved persons) the negotiation procedure is used for complaints about person that are not alleged serious breaches of legislation such as child sex offences and/or criminal charges, policy, procedure, or contract. It applies to less serious complaints that have failed to be resolved informally. However, provisions are made for cases where one party may be fearful or intimidated by the other.

A mediation service might be considered in the process of resolution of conflict at the school level and is listed in the *Complaints Handling Policy Guidelines*.[12] The NSW Department of Education has identified the following suggested flowchart that may be considered by the mediator:



Adapted from *Complaint Handling Policy Guidelines* p. 19.[13]

The complaints, compliments and suggestions website does not clearly define the term complaint but rather states that complaints can be about 'any aspect of the services

we provide; any decision, including those about enrolment; any practice, policy or procedure; and staff behaviour or conduct.'[14] The Complaints Handling Policy is very generalist, and goes into significant detail regarding recommended procedures to be followed in handling a complaint from all stakeholder groups such as parents, students, contractors, and/or employees.

The policy guidelines are very broad, attempting to address any number or types of complaint that the NSW Department of Education is likely to receive. These complaints may be internal or external from the NSW Department of Education. The policy document does not require the NSW Department of Education or school authorities to establish systems and procedures to capture and record complaints at the level of local schools. However, the NSW system is based on the premise that complainants should first be raised at the school level and if the complainant is not satisfied with the response they receive, the process should be escalated to the Director of Educational Leadership (DEL).

It is useful to note that in its policy document the NSW Department of Education requires officials to make written records of the issues and action taken even though in many instances, mediation outcomes are private and confidential between the parties. Therefore, school principals working in the NSW Department of Education should have some understanding of the mediation process because they are required to resolve issues at the lowest possible level. If mediation is unsuccessful, then the matters would escalate to a DEL or the Directorate of Legal Services within the NSW Department of Education.

III HOW DO THE RULES OF PROCEDURAL FAIRNESS AND MEDIATION WORK IN THE SCHOOL CONTEXT?

Does the NSW Department of Education have a Duty to Provide Procedural Fairness?

There is a duty to observe procedural fairness in the exercise of a public power which is liable directly and individually to affect persons rights, interests, and/or status.[15] The presumption applies in all circumstances where public power is being exercised. In this instance, it is in the delivery of educational services by the NSW State Government unless specifically excluded by legislation.

The *Education Act 1990* (NSW) makes no provisions that procedural fairness would be excluded when dealing with individuals' rights. Therefore, it can be assumed that the principles of procedural fairness apply in NSW government schools. This is consistent with the position taken in *Waqa v Technical & Further Education Commission*[16] in that a progressive extension to the range of decisions wherein the rules of procedural fairness apply subject to clear legislative intent; this recognizes that the common law requirement of procedural fairness applies to the NSW Department of Education decision-making processes.

IV WHAT IS PERCEIVED AS FAIR IN THE SCHOOL CONTEXT?

In school contexts, decisions often need to be made quickly such as in matters of student discipline, when addressing whether students with disabilities can attend classes, or in the suspensions of staff members for misconduct. This much is clear: the term fairness cannot be defined by reference to the factual circumstances of the case and statutory framework. Gleeson CJ suggested that '[F]airness is not an abstract concept. It is essentially practical… the concern of the law is to avoid practical injustice'.[17] The term fairness is accepted when a commonly understood standard is applied.[18]

The difficulty is in determining which standard applies when there are approximately 800,000 students and 2,200 schools in the state of New South Wales. When the issue of mediation of a dispute arises, principals may have a standard to maintain in accordance with either the NSW Department of Education or a school's policies. This may, in fact, be at odds with the mediation process as principals may not be able to deviate from policies, and hence not all matters involving students would be appropriate for mediation, such as, a student having a knife at school.[19] In such an instance, in *Re Minister for Immigration and Ethnic Affairs; Ex parte Lam*,[20] Gleeson CJ balanced the relevant issues to decide whether fairness can be defined in any particular case. However, a court often balances the various factors in fairly intuitive manners without any further explanations. Considering the facts of the case is a relatively straight forward concept that balancing the elements to reach fair outcomes is a complex and challenging process.

V WHAT ARE THE PRINCIPLES OF PROCEDURAL FAIRNESS?

The term procedural fairness imposes a duty on government school decision-makers such as principals to apply fair procedures when making decisions which affect individuals' rights or interests in direct and immediate ways.[21] Fair hearings must be provided to parties, in this instance students, parents, and/or employees along with the notion they understand the proceedings before them and they have had ample opportunity to be heard.[22]

There is an inherent obligation that the processes of procedural fairness must be observed in the exercise of public education.[23] The *Education Act 1990* (NSW) is silent on displacing the presumption that the rules of procedural fairness should apply.[24] The common law will fill any omission in the legislation or rules under which decision-makers are acting in providing procedural fairness.[25] For example, in *Plaintiff S10/2011 v Minister for Immigration and Citizenship*,[26] Gummow, Hayne, Crennan and Bell JJ stated that there is a common law implication that a matter of statutory interpretation is a requirement to afford procedural fairness to persons whose interests may be adversely affected by the exercise of power.

In the exercise of public education there is almost always a duty to observe procedural fairness, taking into account all of the facts of an individual case and the limits of a school

principal's decision making power.[27] Kirby J in *Re Minister for Immigration & Multicultural Affairs; Ex Parte Miah*[28] explained that the rules of procedural fairness are 'chameleon-like' and 'adopt to all the circumstances of a particular case.'[29]

The two elements of procedural fairness are the hearing rule and the rule against bias. The hearing rule entitles persons whose interests are liable to be affected to be given notice of the relevant matters and reasonable opportunities to respond.[30] The rule against bias is designed to ensure the objective appearance of impartiality and the absence of prejudgement.[31] In the school context, the rule against bias can be difficult to maintain because decision makers have day-to-day contact with the parties. The NSW Department of Education has released a legal issues bulletin to this effect which makes the following observations:

> While it is generally preferable for the functions of investigating and decision making to be carried out by different people, in small schools this may not always be possible. If one member of staff is conducting both the investigative and decision-making stages, he or she must be particularly careful to be seen as reasonable and objective. Ultimately, the decision maker must act justly and be seen to act justly.[32]

However, because there is an internal hierarchical appeal process within the NSW Department of Education, aggrieved parties have a line of appeal that can be checked by more senior officers.

All complaints made to the NSW Department of Education are confidential and restricted to those with a genuine need-to-know. Still, because procedural fairness applies to the government sector, these complaints cannot always remain confidential. School principals must therefore be aware that when preparing documents, they may ultimately come into the possession of others through internal or external processes such as discovery in litigation and freedom of information requests. School principals should therefore be mindful of the wording used in describing facts, parties, and final decisions in a professional manner.[33]

Complainants can seek a review of a decisions made in relation to the outcomes of a complaint based on two grounds. The first reason is if the NSW Department of Education used incorrect complaint procedure to the detriment of complainants. The second reason why one can appeal is if the outcome/decision is unreasonable (Wednesbury unreasonableness[34]), inconsistent, made without obvious relationship to the facts or circumstances, or is irrational.

Complainants can request internal review from the NSW Department of Education in relation to the resolution of their complaints by directing their requests to the supervisors of the persons who made the decisions. In the case of NSW public schools, if a principal makes a decision, then the next level to request a review is the DEL. If the DEL would

be excluded based on a conflict of interest or perception of impartiality, a more senior officer or another DEL would be assigned to undertake the review.

VI MEDIATION IN THE SCHOOL CONTEXT AND PROCEDURAL FAIRNESS

The Australian National Mediator Standards[35] under Part 9 Procedural Fairness states that mediators will conduct the mediation process in procedurally fair manners:

1. A mediator will support the participants to reach any agreement freely, voluntarily, without undue influence, and on the basis of informed consent.
2. The mediator will provide each participant with an opportunity to speak and to be heard in the mediation, and to articulate his or her own needs, interests and concerns.
3. If a mediator, after consultation with a participant, believes that a participant is unable or unwilling to participate in the process, the mediator may suspend or terminate the mediation process.
4. The mediator should encourage and support balanced negotiations and should understand how manipulative or intimidating negotiating tactics can be employed by participants.
5. To enable negotiations to proceed in a fair and orderly manner or for an agreement to be reached, if a participant needs either additional information or assistance, the mediator must ensure that participants have sufficient time and opportunity to access sources of advice or information.
6. Participants should be encouraged, where appropriate, to obtain independent professional advice or information.
7. It is a fundamental principle of the mediation process that competent and informed participants can reach an agreement which may differ from litigated outcomes. The mediator, however, has a duty to support the participants in assessing the feasibility and practicality of any proposed agreement in both the long and short term, in accordance with the participant's own subjective criteria of fairness, taking cultural differences and where appropriate, the interests of any vulnerable stakeholders into account.
8. The primary responsibility for the resolution of a dispute rests with the participants. The mediator will not pressure participants into an agreement or make a substantive decision on behalf of any participant.

Therefore, being a government body, it is recommended that the NSW Department of Education comply with the Australian National Mediator Standards when attempting to resolve a dispute at the local school level.

VII NSW OMBUDSMAN AND COMPLAINTS

The NSW Ombudsman received 174 complaints in relation to the NSW Department of Education in 2013-14 of which 108 were assessment only and 66 complaints were solved by informal processes.[36]

Preliminary or Informal Investigation	**Number of Complaints**
Substantive advice, information provided without formal finding of wrong conduct	1
Advice/explanation provided where no or insufficient evidence of wrong conduct	34
Further investigation declined on grounds of resource/priority	1
Resolved to Ombudsman's satisfaction	19
Resolved by agency prior to our intervention	8
Suggestions/comment made	3

The jurisdiction of the New South Wales Civil and Administrative Tribunal Administrative and Equal Opportunity Division can review all matters dealt with under the *Education Act 1990* (NSW).

VIII WHAT COMPLAINTS DOES THE NSW DEPARTMENT OF EDUCATION DEAL WITH?

In interviews with four (4) in-house NSW Department of Education lawyers (1 interview in December 2013 and 3 interviews between July – September 2019) [SERAP: 2013075], the following general findings regarding complaints were found:

The key areas of law that school principals faced with in terms of having procedural knowledge was mandatory reporting of child sex offences, student discipline, disability discrimination law, employment law, family law, negligence, privacy, the *Education Act 1990* (NSW) and the *Teaching Service Act 1980* (NSW). Of these areas of law, those identified as being appropriate to mediate were disability discrimination law, student discipline and employment law. While it may be appropriate to mediate in negligence, this would primarily be done by internal and external lawyers rather than at the school level.

Further key findings were that there were approximately 200 personal injury cases per year involving parents, contractors, school accidents, incidences of bullying and harassment and other injuries. Of these, the NSW Department of Education settled 85-90% of these cases pre-litigation through a variety of means such as mediation, conciliation and negotiation. There are between 50-100 discrimination cases per year with

most, about 90% being settled via conciliation. Employment law cases were generally settled within 30 days with a 95% success rate pre-litigation. These promising statistics from the NSW Department of Education identifies its legal department as a model litigant to embrace the ADR process. Even so, if the process is better understood by school principals, and they have a greater ability to undertake ADR at the school level with assistance of a trained mediator, the workload of other internal directorates within the NSW Department of Education may be reduced.

IX CIVIL PROCEDURES ACT

New South Wales has provisions for the mandatory referral of proceedings to ADR processes, in Part 4 of The *Civil Procedures Act 2005* (NSW). According to this requirement, parties must engage in mediation. Section 26, gives the following provisions for court ordered mediation:

> (1) If it considers the circumstances appropriate, the court may, by order, refer any proceedings before it, or part of any such proceedings, for mediation by a mediator, and may do so either with or without the consent of the parties to the proceedings concerned.
>
> (2) The mediation is to be undertaken by a mediator agreed to by the parties or appointed by the court, who may (but need not be) a listed mediator.
>
> (2A) Without limiting subsections (1) and (2), the court may refer proceedings or part of proceedings for mediation under the *Community Justice Centres Act 1983*.
>
> (3) In this section, ***listed mediator*** means a mediator appointed in accordance with a practice note with respect to the nomination and appointment of persons to be mediators for the purposes of this Part.

Section 27 refers to the duty of the parties to participate: It is the duty of each party to proceedings that have been referred for mediation to participate, in good faith, in the mediation.

In *Lidoframe Pty Ltd v New South Wales*, despite the facts of the case, the Court referred the dispute to compulsory mediation and made the following comment:

> The experience of the Court… has been that compulsory mediation can be a useful tool for the resolution of disputes, even disputes that at first sight look intractable. Thus, there have been orders for mediation even when one of the patties is opposed to mediation.[37] There have also been orders for additional mediation where an initial mediation has failed, but there has been a material change in the circumstances.[38] Even if the parties have genuinely tried to resolve a dispute by negotiation between solicitors, and failed, that does not mean that the different dispute-resolution processes involved in mediation is unlikely to succeed.[39]

Part 20 of the *Uniform Civil Procedure Rules* 2005 (NSW) division 1 provide for court annexed mediation, meaning that the court can order a party to attempt mediation to resolve their dispute.

X SUCCESS OF MEDIATION

In *Hanna v Australian Securities and Investment Commission*, McKerracher J considered that '…a lack of consent to attend mediation is not an indication of the mediation's prospect of success. Many mediations successfully resolve disputes where the parties objected to the initial order referring proceedings in the Court to mediation.'[40] As a result, when matters involve schools, educational authorities should consider mediation of disputes as it is likely that the Federal Court in discrimination matters will first order the parties to attempt mediation to resolve the dispute. This has been seen in *Enviro Park Pty Ltd v New Horticulture Pty Ltd* (No 2) where it was observed that '…under s 53A of the [Federal Court of Australia] Act, the court may order that proceedings in the court, or any part thereof, be referred to arbitration, mediation or to a suitable person for resolution by alternative dispute resolution.'[41]

According to the NSW Community Justice Centre,[42] 4,403 cases were opened in the 2013-14 financial year with 1,512 of these cases being referred to mediation. Of those referred to mediation 79% were resolved with 65% resolved within 30 days and 85% resolved within 60 days. From these statistics, it would seem favourable that all matters involving students, parents, and/or employees, where appropriate, are first sent to mediation because the relationship between students, parents, employees, and schools needs to be maintained.

XI CONCLUSION

In education, where it is a legal requirement for students to attend schools in Australia, if disputes are allowed to fester without intervention at early stages, they can lead to major dysfunctions, thereby rendering them unproductive places for learning. Through the inclusion of ADR agreements in student enrolment papers in public school, principals and other authorities may be able to enforce participation in the ADR processes at the outset of any dispute arising. Moreover, ADR may be used in disputes involving all stakeholder groups existing within school communities. By exposing parties to the ADR processes within schools, students, parents, teachers and the wider community can develop life skills to participate in a democratic society to the extent that they are being able to resolve future disputes without third party intervention.

FURTHER READING

Robinson, Mark, *Judicial Review The Laws of Australia* (Thomson Reuters, 2014)
Sourdin, Tania, (eds), *Alternative Dispute Resolution* (Thomson Reuters, 2012)

Keywords: Alternative dispute resolution, public schools, procedural fairness, school principals.

ENDNOTES

1 CCH, Australian School Principals Legal Guide.

2 https://www.justice.nsw.gov.au/legal-services-coordination/Pages/info-for-govt-agencies/model-litigant-policy.aspx at 23 September 2019.

3 *Joint Committee of Public Accounts, Parliament of Australia, Social Responsivities of Commonwealth Statutory Authorities and Government Business Enterprises* (1992) 15.

4 Ibid at 13.

5 *Australian Securities Investments Commission v Hellicar* (2012) 247 CLR 345.

6 Ibid at 240.

7 *Australian Competition and Consumer Commission v Leahy Petroleum Pty Ltd* [2007] FCA 1844.

8 Ibid at 25.

9 NSW Department of Education Complaints Handling Policy - https://policies.education.nsw.gov.au/policy-library/policies/complaints-handling-policy at 05 May 2020.

10 NSW School Community and Consumer Complaint Procedure - https://policies.education.nsw.gov.au/policy-library/associated-documents/School-complaint-procedure_AC-1.pdf at 05 May 2020.

11 Above note 9.

12 NSW Department of Education and Training Complaints Handling Policy Guidelines.

13 Ibid at 22.

14 NSW Department of Education Complaints, compliments and suggestions – https://education.nsw.gov.au/about-us/rights-and-accountability/complaints-compliments-and-suggestions at 05 May 20.

15 *Kiao v West* (1985) 159 CLR 550.

16 *Waqa v Technical & Further Education Commission* [2009] NSWSC 213.

17 *Re Minister for Immigration and Multicultural Affairs; Ex parte Lam* (2003) 214 CLR 1 at 13-14.

18 Mark Aronson and Matthew Groves (2013), 'Judicial Review of Administrative Action' (5th Ed), p 491-2.

19 See <http://www.dec.nsw.gov.au/about-us/information-access/legal-issues-bulletins>.

20 *Re Minister for Immigration and Ethnic Affairs; Ex parte Lam* (2003) 214 CLR 1.

21 *Kiao v West* (1985) 159 CLR 550.

22 *Anderman v Secretary, Department of Families, Housing, Community Services and Indigenous* Affairs (2011) 213 FCR 345.

23 *Annetts v McCann* (1990) 170 CLR 596.

24 *Kiao v West* (1985) 159 CLR 550.

25 *Cooper v Wandsworth Board of Works* (1863) 143 ER 414.

26 *Plaintiff S10/2011 v Minister for Immigration and Citizenship* (2012) 246 CLR 636.

27 Above note 16.

28 *Re Minister for Immigration & Multicultural Affairs; Ex Parte Miah* (2001) 206 CLR 57.

29 Ibid Kirby, J at 190.

30 *Heatley v Tasmanian Racing and Gaming Commission* (1977) 137 CLR 487.

31 *Laws v Australian Broadcasting Tribunal* (1990) 170 CLR 70.

32 NSW Department of Education Legal Issues Bulletin No 3 (2012) Procedural Fairness in the NSW Department of Education available at https://education.nsw.gov.au/about-us/rights-and-accountability/media/documents/public-legal-issues-bulletins/LIB-3-Procedural-fairness-in-the-Department-of-Education.pdf accessed 23 September 2019.

33 CCH, Australian School Principals Legal Guide.

34 *Associated Provincial Pictures House Ltd v Wednesbury Corp* [1948] 1 KB 223; *Administrative Decisions Judicial Review Act (1977)* (Cth), s 5(1)(e), 5(2)(g), 6(1)(e) and 6(2)(g).

35 Australian National Mediator Standards available at - http://www.fedcourt.gov.au/services/ADR/mediation/mediation_standards.pdf accessed 05 May 2020.

36 *New South Wales Ombudsman Annual Report* 2013-2014.

37 *Singh v Singh* [2002] NSWSC 852.

38 *Unconventional Conventions Pty Ltd v Accent Oz Pty Ltd* [2004] NSWSC 1050.

39 *Lidoframe Pty Ltd v New South Wales* [2006] NSWSC 1262 at [7].

40 *Hanna v Australian Securities and Investments Commission* [2011] FAC 1077.

41 *Enviro Park Pty Ltd v New Horticulture Pty Ltd (t/as Green Pack) (No 2)* [2013] FCA 624.

42 <https://www.cjc.justice.nsw.gov.au/Pages/com_justice_publications/com_justice_policytableddocs.aspx>.