Legal Profession Admission Board
Examiner’s Comments – Administrative Law Exam

Section A
Question 1 – 60 Marks

The majority of students answered this compulsory question well, given that they were required to read Justice Dyson Heydon’s 67 page decision. There were multiple issues that could be discussed.

In his decision, Heydon criticised some of the union submissions as “imprecise” and “not altogether easy to understand”.

The relevant legal test is derived from the High Court's decision in Ebner v Official Trustee in Bankruptcy (2000) 205 CLR 337 and applies to the recusal of judges as well as commissioners.

An example for apprehended bias is In Re Pinochet [1999] 2 W.L.R 272.

Would a claim of apprehended bias against Heydon succeed?

Whether Heydon’s conduct amounts to apprehended bias will depend on a close examination of case’s circumstances.

Section B
Question 2 – 20 Marks

The students who attempted this question generally made good, quality attempts at the answer. The following issues needed to be discussed.

The test for standing is sometimes defined by relevant legislation.

This question was well answered by the students who attempted it. A discussion of the common law principles and their development over time, comparison to definition of ‘aggrieved person’ in the ADJR Act, ‘person whose interests are affected’ under section 27 of the AAT Act. Extra points were awarded for policy discussions and references to relevant documents including the Law Reform Commission proposals and the pros and cons of the ‘floodgates’ arguments.

Finally students were required to provide their view on ‘whether the courts or the legislature is best placed to bring about changes to the law on standing’. Students who did not express a view, based on their analysis of the case law and merits of reform proposals, were not awarded high marks.

Question 3 – 20 Marks

Question 3 required students to analyse recent cases on statutory interpretation. This question was well answered by the students who attempted it.

These include cases such as Saeed v Minister for Immigration and Citizenship (2010) 241 CLR 252.
Relevant arguments here mirror those relevant to policy considerations concerning the courts’ approach to privative clauses. For example, the doctrine of Parliamentary supremacy, against the courts’ role in upholding the rule of law.

Plaintiff S157/2002 v Commonwealth (2003) 211 CLR 476 – discussion setting out the presumption that legislation will not be construed as abrogating fundamental rights.

This question was well answered by the students who attempted it. The main problem was too narrow a focus on privative clauses. Students who discussed the decision about privative clauses in its broader context of ‘fundamental freedoms or rights’ scored more highly in this question.

**Question 4 – 20 marks**

This question was generally well answered by the handful of students who attempted it.

As was noted in *Re Minister for Immigration and Multicultural Affairs; Ex parte Applicant S20/2002*:

"The Tribunal was required by s 430 of the Act to prepare a written statement setting out its decision on the review, 'the reasons' for that decision and ‘the findings on any material questions of fact’, and referring to ‘the evidence or any other material’ on which those findings were based."

That is to say, where there was a conflict the Tribunal was nevertheless bound to decide between those inconsistent accounts. See the example given by Selway J referring to this alleged error.

**Question 5 – 20 marks**

Once again, the few students who attempted this question, made solid efforts and should have discussed the following issues.

Ever since the High Court dismembered privative clauses at the Federal level in Plaintiff S157/2002 v Commonwealth of Australia (2001) 211 CLR 476, there has been speculation that it might do the same for State privative clauses in their application to State Supreme Courts.

Ultimately, the questions for the High Court were:

- whether the Industrial Court's decision was affected by jurisdictional error; and, if so,
- whether the privative clause operated to prevent the Court of Appeal from issuing relief by way of certiorari.

In the course of determining those questions, the Court covered a range of interesting points, including the grounds of review for certiorari.

Was there jurisdictional error?

Was this also error of law on the face of the record?