Conducting an Administrative Law Case in New South Wales and the New Rule 59 of the *Uniform Civil Procedure Rules 2005* (NSW)

a paper delivered by Mark Robinson SC to the NSW Bar Association's
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This seminar covers the conduct of a judicial review case in NSW and outlines Rule 59 of the *Uniform Civil Procedure Rules 2005* (NSW) (UCPR) which took effect on 15 March 2013.

The rule dictates the practice and procedure of judicial review cases in the Supreme Court of NSW, Common Law Division.

It covers wide ranging matters, such as the time for commencement of judicial review proceedings, the evidence permitted, limited discovery and it permits the court to order a statement of reasons to be produced from a public authority decision-maker.

It also contains machinery provisions for submissions and the production of a Court Book before the hearing.

I will first set what is in effect a brief refresher on administrative law in NSW. I will not cover the Commonwealth or the other states and territories. In addition to the new Rule 59, I will talk about:

- Administrative law process and remedies in New South Wales;
- The primary tenets of administrative law;
- Merits review and judicial review in NSW (the legality/merits distinction);
- An overview of jurisdictional error and the grounds of judicial review.

Administrative Law in NSW

The full range and scope of administrative law process and remedies should be first identified. At its broadest, administrative law in New South Wales relates to or concerns the following:

1. ***Self-help*** remedies or processes may be invoked by aggrieved persons or entities from time to time (be they personal, political, fair or unfair, lawful or not). It can be as simple as picking up the telephone and speaking to the administrator who made the impugned decision or a letter-writing campaign.

2. ***Internal Review*** - where there is provision (usually in the enabling Act, but not necessarily so) for a person superior in employment status to the original administrative decision-maker to look at and re-make the subject decision (usually afresh). Sometimes it is done without a statutory provision, as a matter or practice or policy.

3. ***Need the Documents? - Freedom of Information*** (now under *Government Information (Public Access) Act 2009* (NSW)("**GIPAA**") . The agency decisions under GIPAA are subject to merits appeals to the Information Commissioner and then to the NSW Civil and Administrative Decisions Tribunal ("**NCAT**"));

4. ***Breach of Privacy? - The Privacy Commissioner***, and NCAT in administering the *Privacy and Personal Information Protection Act 1998* (NSW) – involves breach of privacy by a State government agency only; and,

5. ***Maladministration? - The Ombudsman*** - whose office investigates and reports on systemic and particular instances of maladministration and makes recommendations (which are usually accepted by the NSW Government);

6. ***Corrupt Conduct? - The Independent Commission Against Corruption***;

7. ***Ex gratia or act of grace payments*** – When someone has suffered a financial or other detriment as a result of the workings of the government. This detriment must be of a nature which cannot be remedied or compensated through recourse to legal proceedings. Payments are discretionary in nature and it is for Ministers to determine individual applications (see NSW Treasury Circular NSW TC 11-02 dated 1 February 2011).

8. ***External Merits Review*** - is the process of obtaining an external review of the merits of a statutory (administrative) decision by a person or entity independent of the original decision-maker, who comes to a new decision. Merits review involves making a decision "*de novo*" (meaning, literally, from the very beginning, anew). It has also been referred to as "*standing in the shoes of the decision-maker*" and concerns a "*remaking*" of the decision under review in order to come to the correct or

preferable decision based on evidence now presented. The jurisdiction of the Administrative and Equal Opportunity Division of NCAT is a leading example of an independent, external merits review body. The leading case on the nature of external merits review is *Shi v Migration Agents Registration Authority* (2008) 235 CLR 286.

9. ***Judicial Review*** - the legality of administrative decisions, including those of Ministers, Governments and Tribunals that affect rights, interests or legitimate expectations of persons or entities. These proceedings known as "*judicial review*" of administrative action are usual dealt with by the Supreme Court of NSW, Common Law Division, in the Administrative Law List. This is usually the option of last resort for an applicant, and it is undertaken when all other options for challenge are not available. A leading NSW case concerning the nature of judicial review is *Bruce v Cole* (1998) 45 NSWLR 163.

Administrative law did not develop in a vacuum.

It was developed by the courts in England and Australia over 500 years and for good reason. Its purpose was to keep a check on inferior court judges and tribunals and quasi-judicial tribunals as well as to keep check on executive decision-makers so as to ensure they all acted lawfully and within the meaning, scope and purpose of their legal powers. Primary tenets of administrative law have developed over time. Overall, they are to ensure that in the making of administrative decisions, there is:

a. legality (judicial review and merits);
b. fairness; (judicial review and merits)
c. participation (merits);
d. accountability; (merits)
e. consistency; (merits)
f. rationality; (judicial review and merits)
g. proportionality (judicial review and merits); and,
f. impartiality (judicial review and merits).

The usual aim of an **external merits review** process in a tribunal is to provide the review applicant with a correct or preferable administrative decision, while at the same time,

improving quality and consistency in relation to the making of decisions of that kind. It is an aid to good public administration.

The primary aim of **judicial review** in the court is to ensure (and to some extent, enforce) legality, namely the legal correctness of administrative decisions. It seeks to prevent unlawful decisions from remaining or standing on the public record.

The fundamental distinction between the two is known as the "*legality/merits distinction*".

Judicial Review of Administrative Action in NSW

The leading academic text in this area is 1,149 pages long - Aronson and Groves, Judicial Review of Administrative Action, 5th ed, 2013 (Lawbook Co, Sydney).

Framework and Procedure

The jurisdiction of superior courts by way of judicial review of administrative action was developed by the courts in accordance with the common law or general law. It involves a court assessing or examining a decision or purported decision of an executive or governmental body or a tribunal for legal error (and not on the merits of the particular case).

The relief granted (which is discretionary) may be to quash or set aside the decision, declare the decision invalid or void and, in some cases, to remit the decision to the original or primary decision-maker for re-consideration according to law (sometimes with a direction that the matter be decided by a different decision-maker or differently constituted tribunal).

While judicial review in NSW lies largely in the realm of the common law, its existence is constitutionally entrenched and protected by section 73 of the Commonwealth *Constitution* (see, *Kirk v Industrial Court of NSW* (2010) 239 CLR 531 and, "*The Centrality of Jurisdictional Error*", Hon J Spigelman AC (2010) 21 Public Law Review 77). Because judicial review is protected by the Constitution, it cannot be taken away by any State legislation (at least for correction for jurisdictional error).

The NSW Government has deliberately chosen not to enact a codification of the law here [such as the *Administrative Decisions (Judicial Review) Act 1977* (Cth) ("**ADJR Act**") or the *Judicial Review Act 1991* (Qld)] – although that might change in the near future. The consequence is that, in so far as decisions of most public bodies and officials made or

required to be made under statute are concerned, the avenue for judicial review is neither helped nor hindered by statutory considerations. The grounds for such review are still evolving through decisions of various courts and many of these grounds overlap.

Early identification of the most appropriate ground or grounds of judicial review is the key to success in this area, providing you have also sought the appropriate remedy and the discretionary factors do not work against you. The discretionary factors are these. A remedy will not normally be granted (on the finding of a legal error or defect) if:

- a more convenient and satisfactory remedy exists (such as a merits appeal to the NCAT);
- no useful result could ensue (futility);
- the applicant has been guilty of unwarrantable delay, or,
- if there has been bad faith on the part of the applicant, either in the transaction out of which the duty to be enforced arises or towards the court to which the application is made[1]; also;
- an applicant should not have acquiesced in the conduct of proceedings known to be defective. An applicant cannot "*sleep on their rights*" - they should make an election to challenge or no longer participate in the executive or court-like process below.

Ordinarily then, the grounds of judicial review are known as:

- error of law amounting to identification of the wrong question,
- ignoring relevant material,
- relying on irrelevant material or, at least, in some circumstances,
- making an erroneous finding or reaching a mistaken conclusion,

leading to an excess of power or authority, will give rise to the availability of relief against the decision of that administrative body for what has come to be known nowadays as a "**jurisdictional**" error of law.

1 See the discussion of the discretion and the relevant cases at *Commissioner of Taxation v Futuris Corporation Limited* (2008) 237 CLR 146 at [91]-[92] per Kirby J.

Practice and Procedure

In NSW, an aggrieved party hoping to seek relief by way of an application for judicial review must apply to the Supreme Court of NSW– usually in the ***Administrative Law List*** of the Common Law Division of the Court.

To this end, legal practitioners need to be aware of the Supreme Court Practice Note CL 3 dated 6 July 2007 which explains the practical operation of the Administrative Law List and some of the provisions of the *Uniform Civil Procedure Rules 2005*(NSW).

The primary statutory provisions concerned with properly invoking the Supreme Court's judicial review jurisdiction (by way of the filing of a summons) are the following sections of the *Supreme Court Act 1970* (NSW):

- s69 – proceedings by summons in lieu of the prerogative writs;
- s65 – an order to fulfil a public duty;
- s66 – injunction; and
- ss75 and 63 – declarations.

In the *Uniform Civil Procedure Rules 2005*, a practitioner must first check the list of legislation in Schedule 8 (Assignment of business in the Supreme Court). If an Act is listed there, any proceedings in the Supreme Court regarding any section of that Act are thereby assigned to be heard in the Administrative Law List of the Common Law Division. By reason of rule 45.3, judicial review proceedings should <u>all</u> be assigned or transferred to the Administrative Law List. Other UCPRs that must be checked are:

- rule 1.18(b)&(c) – assignment of business;
- rule 6.11 – submitting appearances;
- Part 49 (internal appeals);
- Part 50 (external appeals); and
- Part 51 (Court of Appeal) and,
- the new Part 59 (judicial review).

Section 48 of the *Supreme Court Act 1970* (NSW) sets out which matters are assigned to be heard in the Court of Appeal.

Once proceedings are commenced, in the ordinary course, a directions hearing will be convened before the Registrar of the Supreme Court (sometimes before a judge). At that hearing, orders are made for the orderly preparation of the matter for trial.

The principal concerns are then:

- Obtaining any available documents and affidavits for tender; and
- Obtaining an early hearing date.

Usually, all that is required in evidence is the tender of the documentary material that was before the original decision-maker (*cf*: *Allianz Australia Insurance Ltd v Kerr* (2012) 83 NSWLR 302 (McColl, Basten and Macfarlan JJA)). In some cases (depending on the ground of judicial review relied upon) more evidence than just the exhibits is required, such as an affidavit or a transcript of the hearing of the proceedings below (if a procedural fairness point is taken or a no evidence point). Oral evidence and cross examination is almost never required in judicial review matters. If evidence is put on that is voluminous and is not required, one can expect significant criticism from the bench and maybe an adverse costs order. There will also be a bloodbath in the Court of Appeal.

At the first return of the summons, under the Practice Direction, an application may be made seeking a direction that the person or body whose decision has been challenged furnish to the plaintiff a statement of reasons for the impugned decision. The statement must not only set out the decision-maker's reasons for decision but must also include that person's findings on material questions of fact, referring to the evidence or other material on which those findings were based, together with that person's "*understanding of the applicable law and the reasoning processes leading to the decision*".

It can readily be seen that in a number of circumstances, an order of the Court requiring a decision-maker to provide his/her "*understanding of the applicable law and the reasoning processes leading to the decision*" might be an extremely useful forensic tool or weapon.

Obtaining reasons by order of the Court might well be the only option available to aggrieved applicants in NSW, as ordinarily reasons are not required to be given by an executive decision-maker unless there are special circumstances - *Public Service Board (NSW) v Osmond* (1986) 159 CLR 656.

The general law requires that, in the ordinary case, where an administrative decision-maker exercises discretionary statutory power to make a decision, there is no common law duty to provide reasons for that decision. However, the High Court also held in *Osmond* that where there were "*special circumstances*" either in the relevant Act or as required by the principles of natural justice, then the general rule did not apply and reasons were required to be provided (see, *Osmond* at 670.5 (per Gibbs CJ) and 676.7 per Deane J). This proviso was explained and applied in NSW in relation to a ruling that costs assessors must provide reasons for their decision (the Act was silent on the question) otherwise, the appeal rights given by the Act would be close to useless - see, *Attorney-General of New South Wales v Kennedy Miller Television Pty Ltd* (1998) 43 NSWLR 729 at 734C to 735C (per Priestley JA, with Handley and Powell JJA agreeing), adopting in part Sperling J's decision in *Kennedy Miller Television Pty Limited v Lancken*, New South Wales Supreme Court, unreported, 1 August 1997 (BC9703385).

The importance of fully stated reasons as an essential legal requirement for a quasi-judicial tribunal (the NSW workers compensation medical Appeal Panel) was discussed in *Campbelltown City Council v Vegan* (2006) 67 NSWLR 372 where the NSW Court of Appeal held that the Appeal Panel members in workers compensation had a duty to give full and proper reasons (at [24] per Handley JA with McColl JA agreeing) even though that was not expressly stated in the relevant legislation. The reasons were held to be inadequate and the Panel's decision was set aside. The Court indicated (at [106], per Basten JA with McColl JA agreeing) that the authorities that underpin *Osmond's* case might "*no longer be as definitive as they once were*". In *Vegan*, the Court of Appeal further held that, as a matter of statutory construction and as a matter of principle the medical Appeal Panel was a quasi-judicial entity and it should be required to provide reasons for that reason alone.

Jurisdictional Error and the Grounds of Judicial Review

Ordinarily, judicial review remedies (orders in the nature of the prerogative writs, certiorari, prohibition and mandamus and injunctions and declarations) are available under the *Supreme Court Act* 1970 (NSW) in the Court's exercise of its supervisory jurisdiction over State statutory decision-makers and tribunals.

Establishing a ground of judicial review is all that is ordinarily required in order to move the Court for a remedy (which in judicial review, as we have seen, is discretionary in most cases – possibly except for denials of natural justice – see: *SAAP v Minister for Immigration and*

Multicultural and Indigenous Affairs (2005) 228 CLR 294, at [80] (per McHugh, with Kirby J agreeing)).

Examples of jurisdictional errors of State tribunals and executive decision-makers include identifying a wrong issue; asking a wrong question; ignoring relevant material; relying on irrelevant material; or an incorrect interpretation and/or application to the facts of the applicable law, ***in a way*** that affects the exercise of power (see: *Craig v State of South Australia* (1995) 184 CLR 163 at 179; *Minister for Immigration and Multicultural Affairs v Yusuf* (2001) 206 CLR 323 at [82]; and *Kirk v Industrial Relations Commission of New South Wales* (2010) 239 CLR 531 at [60] to [70].

The words there "in a way" are in bold for good reason. It must be something that moves the Court to find for legal error.

Jurisdictional errors that may be committed by a tribunal or executive body (post *Craig's case*) that will always be corrected by a Superior Court (as extended by the High Court decision in *Minister for Immigration and Multicultural Affairs v Yusuf* (2001) 206 CLR 323 at [61]-[63]) can also be discussed as follows:

- The definition of "*jurisdictional error*" in *Craig's case*, is not exhaustive (*Kirk's* case also held this at [60] to [70]).
- Those different kinds of error may well overlap.
- The circumstances of a particular case may permit more than one characterisation of the error identified, for example, as the decision-maker both asking the wrong question, and ignoring relevant material.

If an error of this kind is made, the decision-maker did not have <u>authority</u> to make the decision that was made. He or she did not have jurisdiction to make it - *Minister for Immigration and Multicultural Affairs v Bhardwaj* (2002) 209 CLR 597 esp at [51] to [53].

Denials of natural justice or breaches of the rules of procedural fairness almost invariably result in a jurisdictional error - *Plaintiff S157/2002 v Commonwealth of Australia* (2003) 211 CLR 476 at 508 [83]; *Refugee Review Tribunal, Re; Ex parte Aala* (2000) 204 CLR 82; and, *Minister for Immigration and Multicultural Affairs, Re; Ex parte Miah* (2001) 206 CLR 57.

The remaining traditional grounds of judicial review (in addition to denials of natural justice or breaches of procedural fairness – including bias and apprehended bias) in respect of tribunals and executive decision-makers include:

1 Errors of law (including identifying a wrong issue; making an erroneous finding; and reaching a mistaken conclusion).
2 improper purpose;
3 bad faith;
4 irrelevant/relevant considerations;
5 duty to inquire (in very limited circumstances);
6 acting under dictation;
7 legal unreasonableness;
8 proportionality (not presently available, except via legal unreasonableness);
9 no evidence;
10 uncertainty;
11 inflexible application of a policy (without regard to the individual merits of the application);
12 manifest irrationality or illogicality (possibly a sub-branch of legal unreasonableness);
13 failure to afford a "proper, genuine and realistic consideration" of material; and,
14 failure to provide reasons or adequate reasons where reasons are required to be provided as part of the decision-maker's power.

The Record

It should be borne in mind that as an alternative to jurisdictional error, one need only prove that there was an error of law on the face of the record on any of these grounds in order to obtain relief in the nature of certiorari (quashing or setting aside). Accordingly, attention should be drawn to errors such as this as they go to legality as well in the sense that once found, a decision is usually set aside by the court. Any of the above errors is capable of constituting error of law on the face of the record, and, if they are serious enough, they also constitute jurisdictional error or a constructive failure of the decision maker to exercise his or her jurisdiction (or both or all three). By section 69(3)&(4) of the *Supreme Court Act 1970* (NSW), the "*record*" of a tribunal includes the written reasons expressed for its "*ultimate determination*".

Part 59 UCPR (Judicial Review Proceedings)

The introduction of Part 59 with effect from 15 March 2013 has brought enormous and far-reaching changes to the conduct of judicial review proceedings in NSW.

It has codified many difficult to find practices and procedures and it serves as a stable process for such matters.

It applies to proceedings commenced on or after 15 March 2013 and it applies to proceedings made under sections 65 and 69 of the *Supreme Court Act 1970* (NSW) and other proceedings in the supervisory jurisdiction of the Supreme Court (which presumably means where the court's jurisdiction is enlivened by way of a collateral attack on the validity of certain instruments or action) (rule 59.1(1)). It also applies to Class 4 and Class 8 proceedings in the Land and Environment Court.

It provides that judicial review proceedings are to be commenced by summons and has detailed provisions for who must be joined as a party, including each person or body who may be directly affected by the relief sought (rule 59.3).

Time to commence proceedings

The time for commencing proceedings is prescribed in rule 59.10 as being no later than **three months** from the date of the decision. The day of the decision is not counted (section 36(1) of the *Interpretation Act 1987* (NSW)). Any time after that, the court has a discretion to extend the time for commencing proceedings. This rule does not apply where there is a statutory limitation period for commencing judicial review proceedings. It also does not apply when setting aside a decision is not required, in other words, proceedings for prohibition or mandamus, declaratory proceedings or proceedings for equitable relief (rule 59.10(4) & (5)).

In considering whether to extend the time the court is to take into account the circumstances of the particular case including the following at rule 59.10 (3):

> (a) any particular interest of the plaintiff in challenging the decision,
>
> (b) possible prejudice to other persons caused by the passage of time, if the relief were to be granted, including but not limited to prejudice to parties to the proceedings,
>
> (c) the time at which the plaintiff became or, by exercising reasonable diligence, should have become aware of the decision,

(d) any relevant public interest.

Each of these concepts has the potential to involve considerable complexity and may require separate affidavits to address. The main matter to address is to explain why there was a delay in the first place and this often involves an explanation by the solicitor and sometimes by a barrister. It often involves a legal practitioner falling on his or her sword.

The making of rule 59.10 is the first time in NSW that a limit has been fixed for the commencement of judicial review proceedings. Prior to that, the matter was within the discretion of the court and unwarrantable delay, or the plaintiff acquiescing to the validity of the decision would have resulted in the court refusing to hear any judicial review proceedings. As it was put in *Italiano v Carbone* [2005] NSWCA 177 at [117] (per Basten JA):

> "Generally speaking, certiorari may be sought within a reasonable period of the making of a decision, which is not fixed in this State but in other jurisdictions is at periods varying from 60 days to six months, in all cases extendable by leave."

Rule 59.11 provides that a plaintiff is not required to provide security for costs in judicial review proceedings except in "exceptional circumstances". Rule 42.21 (security for costs) therefore does not apply in judicial review proceedings.

The content of any summons filed is mandated by rule 59.4 which provides that the summons must state the orders sought and, if there is an impugned decision, you must state the identity of the decision maker, the terms of the decision and whether you are challenging the whole of the decision or part of the decision. You must also plead "with specificity, the grounds on which the relief is sought".

Setting out the grounds of review with specificity

The requirement to set out the grounds of judicial review with specificity is entirely new. In the past, summonses could be filed that merely challenged the decision under review and set out the relief that was sought. Under Part 59, you must specifically identify each of the grounds of judicial review on which you rely, even if they are overlapping grounds (as many of them are).

Under rule 59.5, a plaintiff has five days to serve the summons. Under rule 59.6 each defendant to the summons must file and serve a "response" stating whether the defendant

opposes the relief sought and, if so, on what grounds. This is an important document that is intended to elicit areas of consent and seeks to narrow the issues between the parties.

The procedure at judicial review hearings is also covered by Part 59. In rule 59.7(1) evidence is to be given by affidavit unless the court says otherwise. Under rule 59.7(3) cross examination is permitted only by leave of the court and that leave should, if practicable, be sought prior to the hearing. As I said earlier, cross examination rarely occurs in judicial review proceedings as it is simply not needed in most cases.

Discovery and Interrogatories

By 59.7(4) a party must have leave of the court to seek discovery from or to interrogate another party to the proceedings. Any application for leave must include a draft list of categories of documents or draft interrogatory is that are sought to be administered. The requirement of leave is in addition to the ordinary difficulties of obtaining discovery in judicial review proceedings. Normally, there is a decision and written reasons for decision which defines the scope of any of the decision maker's documents necessary for any hearing. However, in cases where the issues between the parties have been formalised and identified (as in a summons setting out grounds of judicial review followed by a formal "response") there might be some room for discovery in particular cases. The following cases discuss the former general approach adopted in judicial review proceedings:

(i) *Nestle Australia Ltd v Federal Commissioner of Taxation* (1986) 10 FCR 78 (Wilcox J) esp at p 82.7 & 83.6; and

(ii) *Australian Securities Commission v Somerville* (1994) 51 FCR 38 (Black CJ, Ryan & Olney JJ) esp at 52B to 53B and 55C & E.

As to discovery of documents against the Crown generally, see the good discussion of the principles in *Commonwealth v Northern Land Council* (1991) 30 FCR 1 (Black CJ, Gummow and French JJ) at pages 22 to 24 (per Gummow J) [This discussion was unaffected by the successful High Court appeal in the matter in *Commonwealth v Northern Land Council* (1993) 176 CLR 604].

Rule 59.8 sets out a very detailed procedure for the production by the parties of a "Court Book" to be contained in a white folder with dividers that contains a copy of the summons, the response, the written submissions, the decision under review, and agree chronology and

an agreed schedule of relevant correspondence together with any party's list of objections to the evidence. This book must be filed and served by the plaintiff at least seven working days before the hearing.

This means that the rules now provide that the plaintiff must produce written submissions will seven working days before the hearing (not exceeding 10 pages) and the defendant must file and serve written submissions at least four working days before the hearing (not exceeding 10 pages). The rule provides for the plaintiff to file and serve a reply submissions one working day before the hearing (not exceeding 5 pages).

This rule is subject to any directions given by the court. Accordingly, if you cannot be both succinct and cogent in 10 pages, you will need to ask for more at an early stage at the directions hearing.

Rule 59.9 provides that a plaintiff may within 21 days of commencing proceedings against a public authority or official serve on that body a notice requiring it or the official to provide a copy of the decision and a statement of reasons for decision. The statement of reasons must:

(a) set out findings on material questions of fact, and

(b) refer to the evidence or other material on which those findings were based, and

(c) explain why the decision was made.

If the statement of reasons is not produced by the public authority or official, the plaintiff is entitled to apply to the court for an order that it be provided. Combined with the practice note I mentioned earlier, this is an effective overturning of *Osmond's Case*.

The next interesting question is whether, having now received a statement of reasons that was produced possibly several months after the decision under review came down should be tendered into evidence by the plaintiff. If the defendant sought to tender it into evidence, it would be rightly objected to. What a decision maker said about the decision afterwards is often of no consequence and evidence of it might therefore be inadmissible (*eg: Minister for Immigration, Local Government & Ethnic Affairs v Taveli* (1990) 94 ALR 177 where an unverified statement of reasons made after the statutory decision had already been made should not be received into evidence as it could affect the result of the proceedings (per French, Davies and Hill JJ)).

So far, there are very few cases specifically dealing with Part 59 of the UCPRs.

Those that are available, deal with the early operation of the Part, and hold that it is not applicable (directly or by analogy) retrospectively to statutory or executive decisions made before 15 March 2013 – see: *Mauger v Wingecarribee Shire Council* [2013] NSWSC 1587 (Button J); *Regional Express Holdings Ltd v Dubbo City Council (No 2)* [2013] NSWLEC 113 (Biscoe J); *Agricultural Equity Investments Pty Ltd v Westlime Pty Ltd* [2013] NSWLEC 122 (Pepper J); and, *Save Little Beach Manly Foreshore Inc v Manly Council* [2013] NSWLEC 155 (Biscoe J) (held no exceptional circumstances and security for costs application refused in public interest litigation).

It will be most interesting to see how the new rule impacts on the conduct of judicial review cases in the longer term.

At least we now have some important practice and procedural principles set out plainly for the first time and gathered in the one place.

Thank You