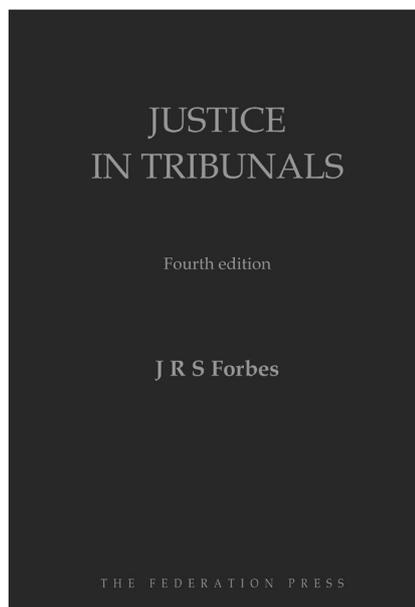


Justice in Tribunals (4th ed)

JRS Forbes | Federation Press | 2014



Forbes on tribunals has become a classic text, at times directly noted by courts. The latest edition gives confidence that status will be maintained.

The structure of the work is the same as that of the preceding 3rd edition in 2010. Chapter 1 is a conspectus with introduction to primary terms and concepts. Chapter 2 outlines the techniques of judicial review of public tribunals. Chapter 3 examines the limited bases of curial intervention in the operation of private decision-makers when economic interests are not affected by the decision.

Chapter 4 discusses the expansion, through the doctrine of restraint of trade applied to private organisations in *Buckley v Tutty* (1971) 125 CLR 353, of judicial review of the rules, as well as their application, of private organisations and their domestic tribunals whose decisions affect livelihood or other economic interests. Chapter 5 points to the intrusion of statutory and curial rights

of review or appeal against decisions of some private tribunals whose socio-economic impact is great, including the developing single-judge jurisdiction based on public funding of political parties and the collateral impact of discrimination legislation.

Chapter 6 examines the degree to which error-based criteria, particularly irrationality in decision-making, can result in what is close to a merits review. The history and meaning of 'natural justice' is discussed in Chapter 7. The implications of the right to be heard are explored in Chapters 8 to 14: does it apply prior to proceedings being commenced and to the process of commencement; can urgent action be taken without full observance; how fully must the case to be met be articulated; what time to respond must be allowed; representation; form of hearing; standard and means of proof; when are reasons required to be exposed, and in what depth and form; and internal appeals. Chapter 15 discusses the differing standards of disqualifying bias in public and private tribunals.

Chapter 16 summarises the differing procedures and remedies against statutory and private tribunals. Chapter 17 outlines the available judicial controls in respect of Royal commissions and other public inquiries.

The current edition carries forward the crisp statements of principle and discussions of controversy that characterised preceding editions. The author does not shy away from arguing robustly for a particular conclusion or from pungent critique in topics of controversy such as public funding jurisdiction and the impact

of discrimination clauses. There is an overt distaste for expansion of curial intervention in organisational decision-making beyond the orthodox bounds.

Historical development is succinctly expounded so as to elucidate the current position, particularly in relation to the review of domestic tribunals whose decisions affect livelihood, other economic interests, or reputation. Footnotes give full reference to principal and consequential authority for propositions in the text without becoming an essay in themselves and distracting from the argument in the text. The index is helpful.

Most chapters are largely unchanged from the previous edition apart from discussion of recent case law and statutory development, and the addition or expanded discussion of earlier authority in quite a few instances. There is, for instance, an expanded discussion in Chapter 15 of the standard for findings of bias applied in different decision-making bodies. There is an expansion, primarily in Chapter 5, of the critique of the rationale for single-judge decisions on the broad reviewability of decisions of political parties by reason of public funding provisions. Curiously in this respect, the author does not appear to discuss the potential to achieve a similar result in respect of political parties by the application of *Buckley v Tutty* principles to decisions (such as candidate selection and endorsement processes) that potentially or actually impact on economic interests.

Reviewed by Gregory Burton SC