decisions, let alone sift through those which might contain principles of wider relevance. This book provides a useful and well judged filter, in which all notable decisions are recorded and analysed. That aspect of the book means that it provides a record of potentially relevant cases that is far more comprehensive than can be provided by law reports.

The second notable feature of this book is its coverage of the many different jurisdictions of VCAT. The tribunal is one of general jurisdiction in the true sense of the word. It has an enormously diverse jurisdiction, ranging from occupational and professional regulation, town planning, FOI decisions and human rights issues (though the precise scope of this jurisdiction remains to be explored). Pizer not only explains each of those jurisdictions in clear detail but he also draws attention to the important procedural variations that have emerged in these different jurisdictions. A separate but related part of this aspect of the book is that it provides a comprehensive account of the continued amendments to VCAT's jurisdiction.

The third notable feature of this book is that it moves beyond an immediate analysis of the practice of VCAT to many of the wider issues affecting the tribunal. The book considers, eg, the thorny question of whether VCAT is a court or tribunal but explains that issue by an informative run down of the relevant cases and the extent to which they have held that requirements of the judicial-adjudicative model extend to VCAT. The analysis also regularly draws attention to wider issues that were not decided, or not clearly settled, by the cases.

The fourth notable feature of this book is that it would be of great value and assistance to unrepresented applicants. Like almost every tribunal or court, VCAT has witnessed a relentless increase in the number of unrepresented parties. One notable feature of the response of VCAT, and the Supreme Court of Victoria in its appellate jurisdiction, has been the development of a detailed body of principles relevant to hearing of such cases. It is well settled that VCAT should not provide legal advice in the full sense to unrepresented parties but it bears a "higher burden of explanation and assistance" towards unrepresented applicants.[2] The burden that falls upon VCAT to explain and clarify matters of procedure can easily blur into more substantive issues of advice. The clarity with which this book explains procedural issues, such as filing and other such requirements, and more substantive issues, such as standing rules, means it is useful to both practitioners and unrepresented parties who might appear before VCAT.

These many fine features of this book make it valuable to all practitioners and observers of tribunals.

Matthew Groves

DISQUALIFICATION FOR BIAS

Disqualification for Bias, by J Tarrant. Federation Press, 2012, pp i-xxxvii, 1-378.

"The province of natural justice is very large".[3] It is "a doctrine of indefinite scope".[4] The basic rules of natural justice (or procedural fairness as it is called for preference) are, however, clear. The parties must be given adequate notice and opportunity to be heard (audi alteram partem) and the adjudicator must be disinterested and unbiased (nemo judex in causa sua).[5] The latter is a most important doctrine in our system of law generally: no one should encounter a biased judge. Bias goes to the very heart of our system. This includes not only a judge or tribunal member who is actually biased but one who is apparently biased. Bias of the latter kind is especially directed at the judge who appears to have a closed mind whether showing so by words or conduct. The reality of justice, and the appearance of it

[2] *Collection House Ltd v Taylor* (2004) 21 VAR 333 at [27]. See also *Winn v Blueprint Instant Printing Pty Ltd* [2002] VSC 295; *Wood v Meglin Investment Nominees Pty Ltd* (2004) 22 VAR 28; *Dona Homes (Vic) Pty Ltd v Stevens* (2005) 24 VAR 139.

[3] *Vidovich v Mildura Rural City Council* [1999] 2 VR 399; [1999] VSCA 49 at [26] per Brooking JA.

[4] *Mildura Rural City Council v Minister for Major Projects* [2006] VCAT 623 at [7] per Morris J.

[5] *Gas & Fuel Corp of Victoria v Wood Hall Ltd* [1978] VR 385 at 396.

being done, are both important in our system of law – whether we speak of justice in our courts or our tribunals. Judges and tribunal members should not so conduct themselves as to compromise the appearance of impartiality.[6]

The subject of bias is thus one well worthy of examination and it is undertaken most adequately indeed by Professor Tarrant in this book.

In Ch 1 Tarrant discusses the "Disqualification Principle". He says that in this regard the purpose of his book "is to explore the law on disqualification for bias as it applies to a wide range of adjudicators and decision-makers, including judges, jurors, arbitrators, statutory tribunals, consensual tribunals, administrative decision-makers, commissions of inquiry and local government" (p 1). This he does admirably in the book's succeeding chapters.

In Ch 2 he deals with the early history and some of the modern developments. Tarrant quotes Bracton, writing in the 13th century, that a judge should be disqualified on grounds such as kindred, enmity or friendship with a party or because the judge has acted as an advocate for a party (p 19). Although bias, as such, is an evil thing in itself, as we readily recognise in modern times, one suspects that much earlier learning on the subject may have been influenced by deistic notions God as the just judge and the judge of St Augustine not capable of evil.

Chapter 3 of the book is devoted to the test for bias and examines its various elements. There is a very thorough examination of the topic in this chapter. The test for apprehended bias as noted in *Brooks v The Upjohn Co* (1998) 85 FCR 469 (which is mentioned by Tarrant in Ch 7) is "whether, in all the circumstances, the parties or the public (being fair minded and informed) might entertain a reasonable apprehension that the judge might not bring an impartial and unprejudiced mind to deciding the principal application" (see also *J Aron Corporation v Newmont Yandal* [2006] NSWSC 720 at [42] (Austin J)). One gets the impression, surveying the authorities examined by Tarrant, that the "fair minded observer" has replaced the "reasonable man" in our law – at least in this area.

Chapter 4 is a lengthy chapter dealing with actual or supposed disqualifying factors. They include, eg, a lack of independence brought about by being an acting, temporary, or part-time judge. Or, by having some interest in the case including some remote or distant pecuniary gain. Other disqualifying factors include: prejudgment or predetermination; association (such as with a legal representative); outside influence (eg, access to extraneous information); and conduct, whether by the decision-maker or litigant or legal representative.

Chapter 5 is much shorter, dealing with exceptions to the disqualification principle. Examples discussed include waiver and acquiescence, necessity and contractual agreements. Of course a person can hardly complain of bias in a decision-maker if they can appeal from that person's decision and have the matter re-determined, but there is still cost and inconvenience involved.

In Ch 6 Tarrant discusses application of the disqualification principle; that is, one might say, the area of its ambit. For example he discusses it in connection with political and ministerial decisions, with sporting and other clubs, and with expert witnesses. This last topic is an interesting one. He quotes *FGT Custodians Pty Ltd v Fagenblat* [2003] VSCA 33, where Ormiston JA is plainly not persuaded that a doctrine of apprehended bias can apply to experts but this seems completely wrong in principle. The law has always been ambiguous about experts – they are paid for by a party and could be expected thus to be partisan but are required to be independent and objective. But if they are required to be independent and objective is it asking too much that they not be unbiased even not apparently so?

In Chapter 7 Tarrant proceeds to discuss issues of a practical nature. I found his discussion most enlightening after having sat on various tribunals and bodies over the years. When an allegation of bias is made against you, what do you do? On the one hand there is the temptation to say – well if that is what you think then it is better that I discontinue. On the other hand there is the view, firmly expressed, that one should not lightly entertain such an accusation because it is all too easy to make and if it was to succeed, whenever it was made, tribunal or court business could hardly ever be

[6] See *Antoun v The Queen* (2006) 80 ALJR 497 at [22]; [2006] HCA 2 (Gleeson CJ).

transacted. This kind of analysis underlies much of the chapter and Tarrant gives a very useful guide to decision-makers who must make a very difficult decision as to what to do "on the run" so to speak.

Chapter 8 deals with the various remedies which are obtainable (such as injunctions, judicial review, reconstitution and retrial) while Ch 9 deals with future developments and gives a conclusion. In that conclusion Tarrant interestingly observes: "It remains to be seen whether international human rights norms will have any significant impact on recusal law and practice in Australia" (p 358). My view, for what it is worth, is that they will – in due course because things change slowly in Australia.

This book provides a most learned and exhaustive coverage of a most significant aspect of our law and of legal systems generally – the need to ensure we do not live in a Kafkaesque world of biased judges and other decision-makers. Anyone having occasion to deal with a question of bias – or a supposed question of bias – simply *should be* consulting his book if they want a thorough and authoritative coverage of the subject.

Damien J Cremean