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Scholarly Analysis

Terms of Reference

b(iii) Principles for democratic accountability

The following are the principles for democratic accountability:

- a) The separation of powers between the legislature, the executive and the judiciary;
- b) The law is made by the Parliament, elected by the people, who have a duty of care to be open and transparent;
- c) Criticism is open and without fear by the electorates'/peoples';
- d) Law must be applied fairly and equally, no one is above the law;
- e) Everyone must know the law passed, so that there will be compliance;
- f) No one is subject to any action without law and model litigant rules;
- g) The Judiciary is independent, impartial, open and transparent and provides a fair trial;
- h) All are presumed to be innocent unless proved to be guilty;
- i) No one can be prosecuted without due process, in accordance with law;
- j) No one is subject adversely to a retrospective change in the law.

Walker (1988) '*first*, that the people (including, one should add, the government) should be ruled by law and obey it and *second*, that the law should be such that people will be able (and, should add, willing) to be guided by it'.

Robin Speed, RoLIA President '*the rule of law is an overarching principle which ensures that Australians are governed by laws which their elected representatives make and which it reflect the rule of law. It requires that the laws administered and fairly*'.

Pearce and Geedes (2014) '*legislation is, at its heart, an instrument of communication. For this reason, many so-called rules or principles of interpretation are no more than common-sense and grammatical aids that are applicable to any document by which one person endeavours to convey a*

message to another. Any inquiry into the meaning of an Act should therefore start with the question: 'What message is the legislature trying to convey in this communication?'. (p.146)

b(ii) Administrative law principles

First, statutes passed by Parliament, and *second*, regulations made by regulatory authorities.

VCAT in a review application against the Business Licensing Authority (BLA), heard the evidence of the agent's good reputation and character, their standing in the industry and the uncharacteristic nature of the offending, VCAT decided to set aside the BLA's decision and grant the agent permission to hold their licence

From the above decision, the agent was able to continue the business.

Administrative law is a set of legal principles establishing the relationship between the government and the governed.

In the event the regulatory authority, makes a wrong decision, as the BLA, it can be legally challenged.

Conclusion

The above analysis indicates, that democratic principles must be harmonised with administrative law.

References

Pearce, DS and Geddes, RS; *Statutory Interpretation in Australia*, LexisNexis Butterworths, 8th, ed, 2014 146.

Walker, G., *The Rule of Law: Foundation of a Constitutional Democracy*, Melbourne University Press, 1988.