

## LAWS4002: Administrative Law

Newcastle City Precinct  
Semester 2 – 2023



THE UNIVERSITY OF  
NEWCASTLE  
AUSTRALIA

# OVERVIEW

### Course Description

The study of Administrative Law involves examination of the legal rules and institutions through which government decision-making is authorised, controlled, and challenged. This course examines the legal principles that regulate the exercise of executive power by administrative agencies and officials, and the means by which administrative decisions can be supervised, controlled and challenged. It explains the role of tribunals in providing merits review and the role of the courts in undertaking judicial review. Particular attention is paid to the grounds of judicial review and the consequences of unlawful decision-making. Consideration is also given to the role of independent statutory agencies such as the Ombudsman in investigating individual complaints about government decision-making as well as undertaking investigations into systemic problems in administration. Means of accessing information held by the administration are also evaluated.

### Skills Focus

This course will focus on assisting students to develop the following skills:

- Content Management
- Advanced Statutory Interpretation
- Social Justice

### Requisites

This course is only available to students enrolled in the Bachelor of Laws and associated combined degree programs or Bachelor of Laws (Honours) and associated combined degree programs.

### Assumed Knowledge

LAWS1010, LAWS1011, LAWS1020, LAWS1021, LAWS2030, LAWS3040, LAWS3041, and LAWS4001.

### Contact Hours

**Newcastle City Precinct**

#### Online Activity

Online

2 hour(s) per Week for Full Term

#### Seminar

Face to Face On Campus

2 hour(s) per Week for Full Term

### Compulsory Attendance

Please note that the School's Attendance Policy applies to this course. Please see p. 3 of this Course Outline for further details.

### Unit Weighting

10

### Workload

Students are required to spend on average 120-140 hours of effort (contact and non-contact) including assessments per 10 unit course.

# COURSE OUTLINE

[www.newcastle.edu.au](http://www.newcastle.edu.au)

CRICOS Provider 00109J

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# CONTACTS

**Course Coordinator**      **Newcastle City Precinct**  
Dr David Tomkins  
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+ 61 2 4921 8747

Consultation: By appointment

**Teaching Staff**              Dr Joseph Wenta  
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+ 61 2 4921 6218

Consultation: By appointment

Other teaching staff will be advised on the course Canvas site.

**School Office**                **School of Law and Justice**  
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# SYLLABUS

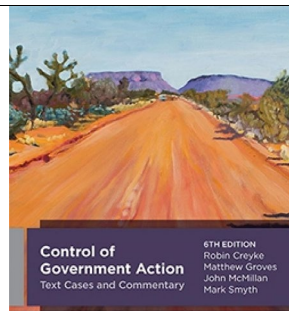
**Course Content**              The course will comprise eight key areas of study:

- The nature and functions of administrative law.
- Merits review and administrative tribunals.
- Judicial review of administrative decision-making.
- Grounds of judicial review.
- Consequences of unlawful decision-making.
- Executive power, rule-making and delegated legislation.
- Public oversight of administrative action and investigative bodies, including Ombudsman offices.
- Access to information held by the administration.

**Course Learning Outcomes**      **On successful completion of this course, students will be able to demonstrate:**

1. Developed knowledge and understanding of the concepts and principles of administrative law.
2. Advanced skills in statutory interpretation and in analysing case law as well as the ability to identify and analyse relevant secondary sources.
3. Advanced capacity to apply legal reasoning, statutory interpretation, and case analysis skills to solve administrative law problems.
4. Critical understanding of the values of administrative law, and of the avenues to seek review of decisions made by government bodies.
5. Critical awareness of ambiguities in administrative law, current issues in administrative law, and the contexts in which administrative law may be relevant.
6. Advanced skills in written communication and independent legal research in the context of administrative law.

**Course Materials**              **1. Prescribed Text:**  
Robin Creyke, Matthew Groves, John McMillan, and Mark Smyth *Control of Government Action: Text, Cases & Commentary* (LexisNexis Butterworths, 6th ed, 2022)



This is the same book and same edition as was set in 2022. Earlier editions of the prescribed text (such as the 5th edition (2019) which was used in the 2021 course and earlier) will not contain the most up to date information and case extracts and should therefore be referred to with all due caution as they will not always reflect the current state of the law.

## 2. Other Recommended Texts / Materials:

A list of other recommended texts / materials, many of which are available from the University library, will be made available on Canvas.

# COMPULSORY REQUIREMENTS

There is a compulsory attendance requirement in this course. Attendance at all classes (seminars and workshops) will be monitored and records maintained by the Course Coordinator. In order to satisfy the "Attendance" requirement, students must be present at a minimum of 80% of scheduled classes as spelled out in the course outline, unless they are able to demonstrate that their absence falls within the Adverse Circumstances policy. Unless this requirement is met, despite marks awarded in other assessment items, the student will receive a zero mark and a CF grade for the course.

Please note that if you miss more than 2 classes for reasons that fall within the University's adverse circumstances policy you may be required to complete additional assessment items to ensure that you have completed the required volume of learning for this course.

Note also that "Attendance" means attending the given class for its full length. Where a student leaves class early, attendance may not be credited.

# SCHEDULE

Week	Week Begins	Topic	Learning Activity	Assessment Due
1	17 Jul	<b>Topic 1 – Introduction to Administrative Law</b>	Seminar 1: Statutory Interpretation and Administrative Law	
2	24 Jul	<b>Topic 2 – Understanding Administrative Decisions</b> 2.1 Reasons 2.2 Internal Review 2.3 FOI	Seminar 2: Reasons and FOI	
3	31 Jul	<b>Topic 3 – Challenging a Decision: Judicial Review</b> 3.1 Jurisdiction of the Courts 3.2 Justiciability	Seminar 3: Case Analysis	
4	7 Aug	<b>Topic 3 (cont'd) – Challenging a Decision: Judicial Review</b> 3.3 Standing 3.4 Why bother? – An introduction to Remedies	Seminar 4: Judicial Review Problem Solving (1)	

5	14 Aug	<b>Topic 4 – Grounds of Judicial Review</b> 4.1 Introduction to Grounds of Review 4.2 Unauthorised Decision-Making / Exceeding Power 4.3 Statutory Purpose, Relevant Considerations and Irrelevant Considerations	Seminar 5: Judicial Review Problem Solving (2)	
6	21 Aug	<b>Topic 4 (cont'd) – Grounds of Judicial Review</b> 4.4 Natural Justice	Seminar 6: Judicial Review Problem Solving (3)	Online Test (20%). Friday 25 August (no later than 11:59 pm)
7	28 Aug	<b>Topic 4 (cont'd) – Grounds of Judicial Review</b> 4.5 Executive Policies, Directions and Representations 4.6 Failure to perform a statutory duty	Seminar 7: Judicial Review Problem Solving (4)	
8	4 Sep	<b>Topic 4 (cont'd) – Grounds of Judicial Review</b> 4.7 Unreasonableness 4.8 Law, fact and evidence 4.9 Jurisdictional error	Seminar 8: Judicial Review Problem Solving (5)	
9	11 Sep	<b>Topic 5 – The Consequences of Unlawful Decision Making</b> 5.1 Recap on remedies 5.2 Invalidity 5.3 Materiality 5.4 Privative (or ouster) clauses	Seminar 9: Judicial Review Problem Solving (6)	
10	18 Sep	<b>Topic 6 – Subordinate (or Delegated) Legislation</b>	Seminar 10: Subordinate (or Delegated) Legislation	Case Analysis (30%) Friday 22 September, 11:59 pm.
<b>Mid-Term Break</b>				
<b>Mid-Term Break</b>				
11	9 Oct	<b>Topic 7 – Challenging a Decision: Merits Review</b> 7.1 Merits Review 7.2 Tribunals – Cth and NSW 7.3 Features of tribunals 7.4 Role of policy 7.5 Status of decisions 7.6 Reform of merits review	Seminar 11: Merits Review	
12	16 Oct	<b>Topic 8 – Ombudsman and other integrity bodies</b>  <b>Topic 9 – Privacy</b>	Seminar 12: Ombudsman, other integrity bodies, and Privacy	
13	23 Oct		REVISION (Details TBC)	
<b>Examination Period</b>				
<b>Examination Period</b>				

# ASSESSMENTS

This course has 3 assessments. Each assessment is described in more detail in the sections below.

	Assessment Name	Due Date	Involvement	Weighting	Learning Outcomes
1	Online Test	Friday 25 August (no later than 11:59 pm) (week 6)	Individual	20%	1, 2, 3, 4
2	Case Analysis	Friday 22 September, 11:59 pm (week 10)	Individual	30%	1, 2, 4,5,6
3	Formal Examination	To be held in the University exam period (30 October to 11 November)	Individual	50%	1, 2, 3, 4, 5, 6

To ensure that grades are fair both within and between courses and cohorts the School of Law and Justice has a rigorous policy of moderating and reviewing assessment. The School Assessment Board (SAB) reviews all final grades before they are released to students and the SAB process may result in the overall marks of a class being moved up or down by a specific number, thus impacting upon individual marks. This is consistent with grading practices in other law schools across the country and important to ensure the integrity of assessment. This means that the final grade you are awarded may not be the sum of marks you have received in all assessments.

**Late Submissions** The mark for an assessment item submitted after the designated time on the due date, without an approved extension of time, will be reduced by 10% of the possible maximum mark for that assessment item for each day or part day that the assessment item is late. Note: this applies equally to week and weekend days.

**Adverse Circumstances** All three assessment items in this course are subject to the University's adverse circumstances policy and procedure. In particular, this statement constitutes notice under clause 2(4)(b) of the [Adverse Circumstances Affecting Assessment Items Procedure](#) in respect of Assessment 1 – Online Test.

## Assessment 1 - Online Test

<b>Assessment Type</b>	In Term Test
<b>Description</b>	Duration: 90 minutes from the time students commence the Test on the course Canvas site. The purpose of this assessment is to assess students' knowledge of and ability to apply administrative law principles in respect of Topics 1-3 (= weeks 1-4). Students apply critical thinking in assessing brief factual scenarios and in discerning and applying relevant administrative law principles.
<b>Weighting</b>	20%
<b>Due Date</b>	No later than 11:59 pm on Friday 25 August (week 6). The test is to be completed online on Friday 25 August at a time of your own choosing (but no later than 11:59 pm).
<b>Submission Method</b>	Online. The test is accessible via the course Canvas site.
<b>Assessment Criteria</b>	The Online Test will require students to: <ul style="list-style-type: none"><li>• Demonstrate their knowledge and understanding of the course content</li><li>• Demonstrate an ability to apply administrative law principles and reasoning to solve legal problems</li><li>• Demonstrate an awareness of the nuances and uncertainties in administrative law.</li></ul>
<b>Return Method</b>	Marks will be provided to students via Canvas.
<b>Feedback Provided</b>	Marks will be provided to students within 2 weeks of sitting the test.

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## Assessment 2 - Case Analysis

**Assessment Type** Written Assignment

**Description**

Word limit: 2,500 words. The primary purpose of this assessment item is to provide students with the opportunity to improve their skills of research, critical analysis, written expression and referencing; this assessment also provides students with the opportunity to obtain knowledge of a recent administrative law case. This should promote professionalism, scholarship and community awareness.

Students apply critical thinking in analysing a particular administrative law case in depth. They effectively communicate in writing the strengths, weaknesses, significance and broader doctrinal context of the case and the reasoning therein.

Writing a case analysis requires more than a repetition of the facts and reasoning in the case; case analyses that provide a mere summary of the judgment in question will at best achieve a passing mark. Although it is essential that students clearly identify those aspects of the judgment that are of significance, priority should be given to thoughtful analysis and evaluation of the reasoning in the case, and its significance in the field of administrative law. Higher order responses will identify and explore unclear or questionable aspects of the reasoning in the case, and clearly articulate the contribution of the case in question to the development of the rules and principles of administrative law.

**Weighting** 30%

**Due Date** Friday 22 September, 11:59 pm (week 10)

**Submission Method** Online via Canvas. **It is each student's responsibility to keep a copy of the assignment that is submitted.**

**Assessment Criteria** In preparing their case analyses, students should take particular care to demonstrate the following:

**1. Knowledge of administrative law.**

This criterion requires students to demonstrate a detailed understanding of the concepts and principles of administrative law of relevance to the case in question. Students will also be required to demonstrate knowledge of the field of administrative law more broadly, in considering the significance of the decision in question in the development of administrative law.

**2. Skills in analysis of primary and secondary legal materials.**

In order to achieve at a high level with respect to this criterion, students will identify clearly the administrative law issues, concepts and principles considered in the case, critically examine the reasons for decision in the case, and evaluate the contribution of the case to administrative law. Critical examination of the judgment in the case requires thoughtful analysis of the reasons in question, identification of questionable aspects of the reasoning in the case and consideration of the factors influencing that reasoning. Higher order responses will clearly articulate the contribution of the case in question to the development of the rules and principles of administrative law, identify any lacunae or uncertainties in the law either created or remedied by the case the subject of analysis, and critically engage with relevant secondary literature.

**3. Quality of written communication.**

It is expected that this work will display a high level of skill in written communication including structure, clarity, precision, spelling and grammar. The written component will be an effectively structured written piece (analysis of the case proceeds in a clear and logical fashion; appropriate paragraph structure utilised; subheadings utilised where appropriate) which demonstrates mastery of written expression (arguments are expressed with clarity and precision; document is free of spelling and grammatical errors) and adheres to the expectations of the discipline (document is comprehensively referenced and AGLC4 is adhered to). Students should especially note that the use of distinctly American (i.e. U.S.) orthography is unacceptable unless *directly* quoting from a source that employs it (in which case fidelity to the original is required).

<b>Return Method</b>	Marks will be made available on Canvas. Marked assignments (with brief written feedback if feedback has been requested) will either be distributed in class or alternatively available for collection from the course coordinator (if marked on paper), or available online via the course Canvas site (if marked electronically).
<b>Feedback Provided</b>	<b><u>Written feedback will be available on an “opt in” system.</u></b> Students may request written feedback by arrangement with the course coordinator at the time of (or prior to) submission. Further details on how to do this will be made available with the assignment instructions when they are released on Canvas.

## Assessment 3 – Open Book Formal Examination

<b>Assessment Type</b>	Formal Examination (Open Book).
<b>Description</b>	The formal examination assesses students' ability to analyse and synthesise legal information for problem solving, and to deliver well-structured and well-presented arguments and solutions. Students may be asked to answer both problem and essay style questions, demonstrating their cognitive and technical legal skills. They demonstrate their specialised knowledge and understanding of the concepts and principles of administrative law and their application to a variety of audiences. Students apply lateral thinking to solve hypothetical administrative law problems.
<b>Weighting</b>	50%
<b>Due Date</b>	Held in the formal examination period commencing Monday 30 October.
<b>Submission Method</b>	Students must sit the exam at the allotted time and venue in the formal examination period.
<b>Assessment Criteria</b>	<p>Performance in this assessment item will be evaluated with reference to the following criteria:</p> <ol style="list-style-type: none"><li><b>1. Knowledge of administrative law</b> This criterion requires students to demonstrate an advanced awareness and understanding of the aims, purposes, concepts and principles of administrative law. This knowledge must be demonstrated in such problem questions and essay-style questions as comprise the final examination.</li><li><b>2. Skills in analysis of primary and/or secondary legal materials</b> The formal examination may ask students to prepare an essay that critically analyses or comments on a discrete area of administrative law. Higher level answers will, in addition to demonstrating advanced knowledge of administrative law (above), also demonstrate advanced:<ul style="list-style-type: none"><li>• Capacity to use appropriate primary and/or secondary sources to answer the question effectively and efficiently.</li><li>• Capacity to craft and sustain sophisticated arguments in response to the question.</li><li>• Capacity to communicate effectively in this format.</li></ul></li><li><b>3. Problem solving in administrative law</b> The formal examination will require students to identify administrative law issues in hypothetical problems, and to apply relevant concepts and principles of administrative law to the issues identified in order to provide an appropriate response. It is expected that students will demonstrate a capacity to engage in developed legal reasoning in formulating their response to the hypothetical problem. Higher order responses will evince a nuanced application of legal reasoning and argumentation, encompassing an awareness of the limitations and uncertainties of administrative law.</li></ol>
<b>Return Method</b>	N/A
<b>Feedback Provided</b>	No.

# ADDITIONAL INFORMATION

## Grading Scheme

This course is graded as follows:

Range of Marks	Grade	Description
85-100	High Distinction (HD)	Outstanding standard indicating comprehensive knowledge and understanding of the relevant materials; demonstration of an outstanding level of academic achievement; mastery of skills*; and achievement of all assessment objectives.
75-84	Distinction (D)	Excellent standard indicating a very high level of knowledge and understanding of the relevant materials; demonstration of a very high level of academic ability; sound development of skills*; and achievement of all assessment objectives.
65-74	Credit (C)	Good standard indicating a high level of knowledge and understanding of the relevant materials; demonstration of a high level of academic achievement; reasonable development of skills*; and achievement of all learning outcomes.
50-64	Pass (P)	Satisfactory standard indicating an adequate knowledge and understanding of the relevant materials; demonstration of an adequate level of academic achievement; satisfactory development of skills*; and achievement of all learning outcomes.
0-49	Fail (FF)	Failure to satisfactorily achieve learning outcomes. If all compulsory course components are not completed the mark will be zero. A fail grade may also be awarded following disciplinary action.

\*Skills are those identified for the purposes of assessment task(s).

## Course Evaluation

Each year feedback is sought from students and other stakeholders about the courses offered in the University for the purposes of identifying areas of excellence and potential improvement.

## Oral Interviews (Vivas)

After you have submitted your online test or case analysis assignment you may be required to take part in a viva (also called an oral exam) for quality assurance purposes. A viva will consist of an interview with one or perhaps two staff and will last approximately 10 minutes. During this time you will be asked questions about the answers you have provided in the relevant assessment item. For instance, you may be asked about the workings or rationale behind the way you structured an assessment response or a couple of questions from the test. This will help us verify your knowledge of a topic, demonstrate that it is your own work and provide informative feedback to staff to help them make enhancements to future examination / assessment papers.

## Academic Misconduct

All students are required to meet the academic integrity standards of the University. These standards reinforce the importance of integrity and honesty in an academic environment. Academic Integrity policies apply to all students of the University in all modes of study and in all locations. For the Student Academic Integrity Policy, refer to <https://policies.newcastle.edu.au/document/view-current.php?id=35>.

## Adverse Circumstances

The University acknowledges the right of students to seek consideration for the impact of allowable adverse circumstances that may affect their performance in assessment item(s). Applications for special consideration due to adverse circumstances will be made using the online Adverse Circumstances system where:

1. the assessment item is a major assessment item; or
2. the assessment item is a minor assessment item and the Course Co-ordinator has specified in the Course Outline that students are to apply using the online Adverse Circumstances system;
3. you are requesting a change of placement; or
4. the course has a compulsory attendance requirement.

Before applying you must refer to the Adverse Circumstance Affecting Assessment Items



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Procedure available at: <https://policies.newcastle.edu.au/document/view-current.php?id=236>

### **Wellness Contacts**

There are a variety of pressures on law students, and being able to perform well academically under pressure without excessive stress will contribute to enhanced outcomes in wellbeing and academic results. Reach out to support services and learn ways to maintain your mental health, deal with stress and common issues like perfectionism, procrastination and anxiety.

To access UON support:

<https://www.newcastle.edu.au/current-students/support/personal>

Ph: 4921 6622 or email: [counselling@newcastle.edu.au](mailto:counselling@newcastle.edu.au)

For support outside of office hours call the University Crisis Support Line on 1300 653 007 or for chat SMS 0488 884 165.

For immediate support contact Lifeline 24/7 on 13 14 11 or <https://www.lifeline.org.au/>

### **Important Policy Information**

The 'HELP for Students' tab in UoNline contains important information that all students should be familiar with, including various systems, policies and procedures.

*This course outline was approved by the Head of School. No alteration of this course outline is permitted without Head of School approval. If a change is approved, students will be notified and an amended course outline will be provided in the same manner as the original.*

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