

LEGAL PROFESSION ADMISSION BOARD

SEPTEMBER 2009

ADMINISTRATIVE LAW

Time: Three Hours

This paper consists of **five** questions.

Candidates must attempt **one** question from **Part A** and any **two** questions only from **Part B**.

Part A will count for 34 marks, and each question from Part B will count for 33 marks.

If a candidate answers more than the specified number of questions in Part A, only the **first** question attempted will be marked, and in Part B, only the first **two** questions attempted will be marked.

All questions may be answered in one examination booklet.

Each page of each answer must be numbered with the appropriate question number.

Candidates must indicate which questions they have answered on the front cover of the first examination booklet.

Candidates must write their answers clearly. Lack of legibility may lead to a delay in the candidate's results being given.

Permitted Materials:

This is an open book exam. Apart from books borrowed from any University of Sydney library, candidates may refer to any other books and any printed or handwritten materials they have brought into the examination room.

As some instances of cheating and of bringing unauthorised material into the examination room have come to the attention of the Admission Board, candidates are warned that such conduct will result in instant expulsion from the examination and may result in exclusion from all further examinations.

This examination should not be relied on as a guide to the form or content of future examinations in this subject.

Part A

Attempt any one (1) question in this part.

Background facts for Part A.

Imagine that the *Explosives Act 2006* (Cth) (the EA) was passed as a package of legislation to strengthen anti-terrorism laws and came into effect on 1 July 2006. In introducing the legislation, the Attorney-General stated that it was the government's intention to restrict access to substances which could be used to prepare terrorist bombs. The EA contains, among others, the following provisions:

Section 4

A person must not handle or transport an explosive, or an explosive substance, unless the person is authorised to do so by a licence granted under this Act.

Section 5

- (1) The Minister may, if satisfied that the applicant is a fit and proper person, grant a licence to allow a person to handle or transport an explosive, or an explosive substance.
- (2) In deciding whether a person is a fit and proper person, the Minister is required to have regard to whether the person has appropriate qualifications or experience in dealing with explosives or explosive substances, and whether the person has any criminal history.
- (3) The Minister may specify the term of the licence granted under this section, up to a maximum of 5 years.

Section 6

The Minister may request the Commissioner of Police to supply a report with respect to any one or more of the following matters:

- (a) whether the applicant has been found guilty or convicted of an offence;
- (b) whether the applicant is of good character and repute;
- (c) whether the applicant has good reason for holding the licence;
- (d) whether the applicant can be trusted to handle explosives in the manner authorised by the licence without danger to the public.

(Background Facts continues)

(Background Facts continued)

Section 7

- (1) The Minister may impose conditions on the grant or renewal of a licence.
- (2) The Minister must give reasons for any decisions to refuse a licence or to impose conditions.
- (3) At any time, the Minister may, by notice in writing to the holder of a licence:
 - (a) impose conditions on the licence;
 - (b) vary or revoke any conditions already imposed or add further conditions;
or
 - (c) suspend or revoke a licence.

Section 8

A person may apply to the Administrative Appeals Tribunal for review of any decision of the Minister.

Section 9

The Minister may make regulations with respect to any matter which is necessary to give effect to this Act, including prescription of substances as explosive substances.

On 3 July 2008, the Minister announced that she had made regulations under the EA. Regulation 9 sets out a list of substances stated to be “explosive substances”. Regulation 10 states:

Without limiting the grounds on which the Minister may refuse to grant a licence to an applicant, the Minister must refuse to grant a licence if a report relating to the applicant contains a recommendation from the Commissioner of Police that the applicant should not be granted the licence on the basis of criminal or security intelligence or other information available to the Commissioner.

Frederick Flintstone has for many years operated a transport company, subcontracting for delivery jobs for a range of different goods. His is one of two transport companies in Bedrock, the other being operated by Barnaby Rubble.

Frederick Flintstone has several contracts with local landscaping firms for delivery of gardening supplies. He was offered a contract by Growit Pty Ltd for regular deliveries of fertilizers, including ammonium nitrate. As well as being a useful fertilizer, ammonium nitrate can be combined with fuel to make an explosive.

Ammonium nitrate is included in the Regulations made under the EA as an “explosive substance”. On 10 July 2008, Frederick Flintstone lodged an application for a licence to transport the ammonium nitrate.

(Background Facts continues)

(Background Facts continued)

On 20 October 2008, Frederick Flintstone received a letter from the Minister advising that his application had been refused. In the letter, the Minister stated in part:

“I have received a report from the Commissioner of Police that you are not a fit and proper person to be granted a licence and I must refuse to grant the licence.”

Frederick Flintstone is devastated by this decision. The local newspaper reported it and since then, Frederick Flintstone has lost most of his regular contracts, including those for ordinary deliveries.

Barnaby Rubble also lodged an application for a licence under the EA, so that he could deliver toy fireworks, including sparklers and cap pistols, to a number of toy stores in Bedrock. His application was successful and his licence was granted on 14 August 2008, subject to a condition that he installs a red flag on the back of his truck. Barnaby Rubble complied and has been making regular deliveries to the toy stores.

In October 2008, Barnaby Rubble reached an agreement with Growit Pty Ltd to take on the fertilizer deliveries. He plans to commence these deliveries in mid-November 2008. On 23 October 2008, Barnaby Rubble received an email from the Minister’s personal assistant stating that the Minister had revoked the EA licence. No reasons were given in the email. Barnaby immediately contacted the Minister’s office and spoke to her personal assistant.

The Minister’s personal assistant stated that he could not do anything as the Minister was overseas with a trade delegation. Two weeks later, the Minister returned to Australia and a meeting was arranged. Barnaby Rubble attended the meeting but the conversation was brief. The Minister allowed Barnaby to speak for five minutes, to explain why he needed the licence. When he had finished, the Minister stated that nothing he had said had persuaded her that her decision was wrong.

Question 1

Advise Frederick Flintstone on what appeal (if any) he should take to the AAT and its prospects of success. How should he prepare for such an appeal? How would the Tribunal deal with an application by the Minister to have confidential evidence given by the Commissioner of Police?

(34 marks)

(Part A Question 2 follows)

Question 2

- (a) Advise Frederick Flintstone on which court or courts would have jurisdiction to hear a challenge to the Minister's decision and what remedy or remedies Frederick Flintstone should seek.
- (b) What documents or information could Frederick Flintstone obtain about the drafting of the regulation and the Minister's decision?

Note: Do not discuss Frederick Flintstone's possible grounds of judicial review, as this issue is covered in another question.

(34 marks)

Question 3

Advise Frederick Flintstone and Barnaby Rubble of the grounds on which they could seek judicial review of the Minister's decisions.

(34 marks)

Part B

Attempt any two (2) questions in this part.

Question 1

"The time has arrived for Freedom of Information in Australia to return to its intended roots."

Discuss the many attempts of FOI reform which have been attempted in Australia over the last ten years and the proposed legislative changes.

(33 marks)

Question 2

"The Ombudsman has demonstrated that it is quite a different institution to the courts and tribunals in a number of ways. Some would say that it has more pluses than minuses."

Discuss.

(33 marks)

(Part B Question 3 follows)

Question 3

“The establishment of the AAT in 1975 and the subsequent creation of similar tribunals in most States, represented a radical departure from the existing system of judicial review. The tribunals are a hybrid, combining the features of both courts and administrative agencies.”

Discuss.

(33 marks)

Question 4

“Privative clauses diminish accountability and ultimately, they prevent justice.”

Discuss whether this is correct, with references to applicable case law and relevant policy arguments.

(33 marks)

END OF PAPER