

Australian Bar Review
Volume 55 Part 2
(Articles included in this part are linked to the LexisNexis platform)

CONTENTS

Articles

[Fiduciary obligations: Where do they come from and where do they lead?](#)

— *Reginald I Barrett*

123

The High Court has preserved and developed for Australia a measured fiduciary jurisprudence that affords special protection to persons entitled to the benefit of fiduciary obligations. Plaintiffs are therefore active on two fronts. They aim both to expand the scope of fiduciary obligations and to obtain for other wrongs remedies associated with fiduciary breach.

[Knowing assistance and knowing receipt: Divergences between England and Australia](#)

— *RW White*

136

This article addresses the well-known divergence between the current Australian and UK position on the second limb of *Barnes v Addy* (Knowing Assistance) following the High Court's judgment in *Farah*. It points to a likely difference in outcome in a recent NSW Court of Appeal decision if the UK position were the law in Australia. It then considers the UK Supreme Court's judgment in *Byers v Saudi National Bank*, which is in conflict with Australian intermediate appellate authority on the availability of personal remedies under the first limb of *Barnes v Addy* (Knowing Receipt) where a proprietary remedy is barred.

[Judicial review of integrity bodies](#)

— *Jeremy Kirk*

153

Integrity bodies, such as anti-corruption commissions or ombudsmen, exercise statutory power and thus may be subject to judicial review. Their conclusions rarely have direct legal effect, yet commonly are perceived to have weight and authority. Persons affected by an investigation or report may thus wish to challenge the body's jurisdiction to inquire, the way in which it has carried out an inquiry, or the conclusions it has reached. The conclusions of such bodies commonly involve matters of evaluation or opinion on which reasonable people might disagree, so that in practice those who wish to challenge them have limited recourse in the courts. Unless challengers can make out that the agency exceeded its investigational remit, acted unfairly, manifested some procedural error, misdirected itself in law, or acted unreasonably or without any evidence, they are unlikely to succeed in any judicial review proceeding.

[Commentary on 'Judicial Review of Integrity Bodies', delivered by Kirk JA](#)

— *Stephen Free SC*

162

Defences to restitution claims arising from the ultra vires acts of public authorities

— *Laurence Brown*

167

Recent judicial statements have suggested that defences cannot be maintained where public authorities act ultra vires and restitution is sought, either by citizens against the government under the Woolwich claim or vice versa through the claim known as Auckland Harbour Board. This article analyses whether defences can apply in such claims. It explores 'bars' based on wrongdoing and illegality that may operate to preclude the availability of defences and argues that there are no compelling reasons to bar them, so defences ought to be available in restitution claims involving the ultra vires acts of public authorities. This article introduces relevant legal principles that constitute the body of Australian restitution law relating to the ultra vires acts of public authorities, including principles derived from a recent judgment of the High Court in *Redland City Council v Kozik* [2024] HCA 7, before exploring relevant case law and commentary in arguing against defences being barred in this category of claims.