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Family Name	
Given Names	
Student Number	
Teaching Period	Semester 1, 2017

FINAL EXAMINATION	DURATION				
LWZ304 – Administrative Law	<table border="1"> <tr> <td>Reading Time:</td> <td>20 minutes</td> </tr> <tr> <td>Writing Time:</td> <td>120 minutes</td> </tr> </table>	Reading Time:	20 minutes	Writing Time:	120 minutes
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INSTRUCTIONS TO CANDIDATES

- There are two parts to this exam: Part A (problem questions) and Part B (essay question). Students must answer **ANY TWO (2) of the three questions in Part A. There is only a single compulsory question in Part B.** In other words, you must answer 3 questions in total, two from Part A and the compulsory question in Part B.
- All questions are worth equal marks. This examination is worth 60% of the total mark.
- Writing is permitted on the exam question paper or scrap paper during reading time.
- Recommended time for each question is 40-45 minutes.

Enter the number of each question attempted in the appropriate column on the front page of the exam answer booklet.

EXAM CONDITIONS

You may begin writing from the commencement of the examination session. The reading time indicated above is provided as a guide only.

This is an OPEN BOOK examination

Any calculator is permitted

Any handwritten material is permitted

Any hard copy, English dictionary is permitted (annotated allowed)

ADDITIONAL AUTHORISED MATERIALS	EXAMINATION MATERIALS TO BE SUPPLIED
Any printed material with the exception of CDU Library books	2 x 8 Page Book 1 x 16 Page Book 2 x Scrap Paper

**THIS EXAMINATION IS PRINTED
DOUBLE-SIDED.**

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PART A

There are three problem-style questions in Part A. Students must answer ANY TWO (2) of those questions.

QUESTION 1

The NT Government has decided to introduce legislation regulating the conduct of prostitution. Parliament subsequently passes the Sex Industry Regulation Act 2016 (NT). Its objects include: seeking to ensure that criminals are not involved in that industry; promoting the welfare and occupational health and safety of sex workers; and minimising the health risks of sex workers and their clients.

The Act establishes the Sex Industry Regulation Board (SIRB) and authorises it to determine applications for registration as a “services provider”. The Act provides that the SIRB may grant, or refuse to grant, registration, having regard to the objects of the Act, and for the purposes of making such a decision, it may obtain information in such manner as it thinks fit. The Act also provides that the SIRB may refer applications for registration to the Sex Industry Co-operative (the Co-op) – a community organisation whose five members are drawn from sex workers, social workers and police – for its opinion. The Act further provides that it is an offence for a person to carry on the business of providing sexual services for reward unless such person is registered under the Act.

Cindy has, for the last 10 years, been operating a brothel (“Cindy’s”) in the suburb of Stuart Park. Cindy’s has been raided from time to time by the police and Cindy herself has been prosecuted and convicted on several occasions of the summary offence of keeping premises for the purposes of prostitution. “Cindy’s” has also occasionally been visited by Health Department inspectors (in their official capacity) resulting in Cindy being fined on 3 occasions for breaches of health regulations. Despite these problems “Cindy’s” has consistently been a very profitable operation for Cindy and her resident sex workers. Cindy however, wishes to avoid these problems in the future and she applies for registration as a “services provider”.

The SIRB refers her application to the Co-op for consideration. The Co-op meets to discuss Cindy’s application. The social worker member informs the meeting that he is presently counselling 2 former sex workers who claimed that, during the time they worked at “Cindy’s” they were subjected to physical and emotional abuse by her security staff. The police member states that Cindy is suspected by the police to be a “front” for an organised crime syndicate and she provides, on a strictly confidential basis, some details of the information on which the police suspicion is based and the sources of that information. At the conclusion of the meeting, the Co-op makes a report to the SIRB summarising the information provided by the social worker and the police officer and expresses the opinion that Cindy is not a suitable person to be registered.

The SIRB notifies Cindy, in very general terms, of the contents of the Co-op’s report and invites her to make a written response within the next 14 days. Cindy immediately demands to know the names of the 2 former sex workers who made the allegations against her associates and details of the police information and its source. Cindy also demands that her solicitor be allowed to question, on her behalf, the 2 members of the Co-op who provided the information

to it. The SIRB refuses these demands, and simply repeats its invitation to make a written response. Cindy refuses to do so.

The SIRB, at the expiration of the 14 day period, decides to refuse Cindy's application for registration. Cindy requests an explanation. The SIRB informs Cindy that it based its decision on the report from the Co-op.

Cindy seeks judicial review of the SIRB's decision on the ground of denial of natural justice. Advise Cindy.

(20 marks]

QUESTION 2

The Commonwealth Minister for Primary Industry and Energy George Tucker is the Minister responsible inter alia for administration of the *Biological Control Act 1996* (Cth) ("the Act"). Section 18 of the Act provides:

"The Minister may make by-laws regulating and restraining the use of biological agents in or related to any farming, grazing, horticultural or agricultural activity".

Pursuant to section 18 of the Act, Minister Tucker promulgates the Biological Control Regulations. Regulation 4 provides:

(1) No person shall manufacture, possess, use or permit to be used any biological agent without a Biological Release Permit ("BRP") issued by the Minister.

Penalty: \$10,000.00 fine (individuals); \$100,000.00 (corporations)

(2) Permits may specify terms and conditions applicable to the proposed release of any biological agent

Minister Tucker recently issued BRPs to several Northern Territory crocodile farms allowing them to undertake an experimental release program of a genetically-modified genital herpes virus developed by the CSIRO. It is believed that the herpes virus has been successfully modified to act only against cane toads by drastically reducing both male and female toad fertility. Cane toads are known to devastate young saltwater and freshwater crocodile populations. They are hopeful that the herpes virus will save their businesses from massive financial losses.

Two weeks ago the Australian Conservation Foundation ('ACF') wrote to the Minister to express its concern at a recent draft study suggesting that the CSIRO's herpes virus might also have a fertility-reducing effect on certain indigenous wildlife species, and possibly pigs as well. After reading the study, the Minister is alarmed and decides that it would be wise to revoke the crocodile farmers' BRPs. However, concerned by the possible political backlash that might flow from a precipitate decision taken without industry consultation, the Minister announces that he will seek advice from the Australian Agricultural Council ("the Council"). The Council is an industry peak body comprising representatives of various primary industry producers, but not the crocodile-farming industry. It generally meets in private. The Minister also announces

that he will act on the advice of the Council in making a decision whether to revoke the BRPs, in the absence of compelling later scientific evidence.

Concerned that the crocodile farmers should be treated fairly, the Council invites its industry body, the Crocodile Farmers' Union (NT) ('CFUNT'), to make written submissions to it. However, CFUNT is not provided with a copy of the draft study previously sent to the Minister by the ACF. It submits several letters from leading experts, stating that the CSIRO herpes virus does not present any threat whatever to wild or domestic animal species, having regard to the location of the release program and the strict terms and conditions of the BRPs. The Council recommends against revocation of the BRPs, and observes that the ACF study is only in draft form and heavily qualified; the advice of all other leading experts is to the contrary; the indigenous wildlife species possibly affected do not have a native habitat in the Top End; and there is no significant pig-farming industry in the Northern Territory. The Council also observed that pigs are themselves a significant feral pest in the Top End, so that an unintended adverse effect on their fertility would be a good thing anyway.

Meanwhile, the Minister, a married man with 5 children who is also a staunch ultra-conservative member of the Anglican Synod of the Sydney Diocese, receives an anonymous letter from a group styling itself the Wildlife Terrorism Collective. It threatens to publicly reveal the Minister's medical history, which includes more than one fairly recent instance of contracting a Sexually Transmitted Disease in compromising circumstances, unless he immediately revokes the NT crocodile farmers' BRPs.

The Minister announces that the BRPs are to be revoked effective immediately. Unbeknownst to the Minister, his wife has recently become the beneficial owner by inheritance of a large parcel of shares in Keating Piggeries Ltd, Australia's largest pork producer. The Minister later discloses this fact in his annual Disclosure of Interest Statement that must be filed by all MPs.

Advise CFUNT and the individual crocodile farmers of their legal options. Should they take any steps preliminary to litigation? Who should be the parties to any litigation? What form of review should they pursue? What potential grounds are available and what are their respective chances of success?

(20 marks)

QUESTION 3

The *Clean Air Act 1990* (NT) prohibits occupiers of premises from conducting any trade or industry on those premises in such manner as to cause the emission of air impurities in excess of prescribed limits. The Act prescribes a fine of \$1,000 in the event of such conduct.

Smog Pty Ltd is the occupier of premises in NT on which a large industrial plant is operated. Air impurities emitted from the plant exceed the prescribed limits and fall in the form of "acid rain" over the nearby Kikuyu National Park, and are gradually destroying the flora and fauna in the Park. Smog Pty Ltd has been fined under the Act, on average twice per year, but finds it more economical to pay such fines than to provide the necessary emission control equipment.

The Kikuyu National Park Preservation Society Inc. is an incorporated body whose objects include the preservation of NT National Parks generally and the Kikuyu National Park in particular. It sells literature relating to the flora and fauna in the Kikuyu National Park and the

proceeds (approximately \$5,000 per year) are used to maintain the standard of recreational facilities and toilet blocks in the Park. Zoe, the President of the Society, conducts bush-walking tours in the Park on weekends to supplement her income. She earns, on average, \$3,000 per year for conducting such tours. The Society and Zoe are concerned that the “acid rain” from Smog Pty Ltd’s plant is having a deleterious effect on the Park and, as a result, the Park is gradually becoming less popular and their income from the abovementioned activities is declining.

The Society and Zoe are also concerned that the Clean Air Act is not being effectively enforced against Smog Pty Ltd so they request the NT Attorney-General to commence injunction proceedings against Smog Pty Ltd or to consent to relator proceedings for this purpose. The Attorney-General refuses their request on the ground that large industrial operations, such as Smog Pty Ltd, are beneficial to the NT economy and provide substantial employment opportunities, and should not be discouraged.

Advise the Society and Zoe:

- (a) whether the Attorney-General’s decision may be reviewed by the Supreme Court;**
- (b) whether each of them has standing to seek an injunction on their own account;**
- (c) assuming that they have standing, whether the Court is likely to grant an injunction in this case.**

(20 marks)

PART B

There is a single compulsory essay-style question in Part B. Students must answer that question i.e. there is no internal choice.

QUESTION 4

“The current general principles governing standing of business competitors in Australian administrative law are confusing and potentially inconsistent in operation.”

Discuss by reference to relevant case law and principle.

(20 marks)

END EXAM QUESTIONS