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ARTICLES

The Centrality of Jurisdictional Error: Rationale and Consequences – *Lisa Burton Crawford and Janina Boughey*

Jurisdictional error has emerged as a central concept of Australian administrative law. Yet, it is not without its critics. As recent case law has revealed, there are also aspects of judicial review doctrine that do not cohere with the distinction between jurisdictional and non-jurisdictional errors of law, and the constitutional principles that underpin it. This article reiterates the core case for the distinction between jurisdictional and non-jurisdictional errors of law, and addresses the doctrinal implications of this theory for the ambit of judicial review remedies and the scope of the entrenched minimum provision of judicial review in light of recent case law.

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Popular Sovereignty, “the People” and the Australian Constitution: A Historical Reassessment – *Benjamin B Saunders and Simon P Kennedy*

This article analyses the views of the framers of the Australian Constitution through the lens of the theme of popular sovereignty. It examines the leading works in political theory which have discussed the concept of popular sovereignty and identifies two main strands in that literature, namely the “constitutive” and “political” elements. The framers of the Constitution adhered to both of these strands of popular sovereignty thinking: they intended to create a constitutional structure that emanated from the people and to establish institutions of government through which the people would rule. The framers considered that, in a political sense, “the people” were the basis of constitutional and governmental authority and believed strongly that they were erecting a constitutional structure whose primary – if not sole – purpose was to ensure self-government by the Australian people. As such, their views can accurately be characterised in popular sovereignty terms.

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Res Judicata at the Administrative Appeals Tribunal: Re-opening the Case – *Matthew Paterson*

It is an unavoidable reality of legal decision-making that individuals may try to re-litigate matters that have already been decided. The question is how decision-makers should deal with these cases. While courts answer this question by applying the doctrine of res judicata,

it is yet to be satisfactorily answered in the jurisdiction of the Administrative Appeals Tribunal (AAT). By analysing the respective natures of res judicata and the specific brand of administrative decision-making undertaken by the AAT, this article explores whether res judicata can and should be applied by the AAT. Ultimately, it will conclude that the AAT must apply res judicata where relevant, unless there is an express statutory intention allowing for the decision to be re-made. 58

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