

PUBLIC LAW REVIEW

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Constitutional elements of judicial review – *John Basten QC*

The possibility that justifications for, and identification of the limits of, judicial review can usefully be informed by constitutional principles has been the subject of vigorous debate in the UK in recent years. Because judicial review is the mechanism by which the courts police the exercise of executive (and legislative) power, that debate has obvious relevance in relation to a Constitution which incorporates the principle of separation of powers. In Australia, courts have been content in the past to derive relevant principles from the common law, even when exercising a jurisdiction referable to s 75(v) of the *Constitution*. Recent judgments of the High Court, however, touch on the constitutional debate. Those issues will need to be addressed in a broader constitutional context, including the limits of legislative power to permit the unfair or irrational exercise of power by the executive.187

Is the ADJR Act hampering the development of Australian Administrative Law? – *Mark Aronson*

The ADJR Act is the legislative template for statutory judicial review schemes in several places, and has helped secure the Federal Court's practical pre-eminence in Australian judicial review. However, it is not beyond criticism. This article discusses the need to extend its coverage to those areas presently reached only by common law judicial review, and questions whether the Judiciary Act's extensions have made the ADJR Act redundant. The article also discusses recent suggestions that the ADJR's judicial review grounds are deficient for being wholly particularised. Is it correct to suggest that the Act contain a statement of general principles, and that the absence of such a statement has stunted the growth of Australia's common law of judicial review?.....202

The special place of tribunals in the system of justice: How can tribunals make a difference? – *Robin Creyke*

Tribunals have been on the Australian landscape for over a century. Despite their longevity, and their reputation as providing cheaper, more accessible, more expert judgments which provide people with the substantive outcome they are seeking, their

output has not received the prominence which could be expected. That is in part due to the negative attitude towards tribunals by some in the legal profession and, to an extent, the executive; and to a failure on tribunals' part to sell their virtues. That position could be changed provided those setting up tribunals get the model right for each individual tribunal, establish relationships with appropriate areas of government, and demonstrate to the executive and to the community that they can add value to primary decision-making. The article considers several avenues to achieve these objectives.....220

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