

PUBLIC LAW REVIEW

Volume 21, Number 2

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COMMENTS

- New Zealand's shifting electoral sands** – *Andrew Geddis* 61
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ADDRESS

The centrality of jurisdictional error – *Hon JJ Spigelman AC*

In *Kirk v Industrial Relations Commission (NSW)* (2010) 239 CLR 531, the High Court has completed a process of convergence between State and Commonwealth judicial review. The fact that Australian administrative law has a constitutional dimension exerts a “gravitational pull” on State judicial review, but until *Kirk*, State judicial review was not protected in the same manner as the High Court's original jurisdiction under s 75(v). With the finding that judicial review of decisions affected by “jurisdictional error” is a fundamental element of the constitutional concept of a “State Supreme Court”, the High Court has extended this protection and affirmed the centrality of the concept of “jurisdictional error” in Australian administrative law. 77

ARTICLES

Constitutionalising supervisory review at State level: The end of Hickman? – *Chris Finn*

In *Kirk v Industrial Relations Commission (NSW)* (2010) 239 CLR 531, the High Court has made a strong statement setting out a clear Ch III basis for supervisory judicial review of inferior courts and tribunals acting under State legislation. The corollary is that privative clauses will be of limited effect, being unable to validly exclude review for jurisdictional error. This welcome simplification effectively equates the position in relation to Commonwealth and State privative clauses and casts further doubt upon the continued utility of the *Hickman* formula. In all Australian jurisdictions, the determinant of reviewability will be the presence or absence of “jurisdictional” error. The decision also contains significant discussion of the twin concepts of jurisdictional error and error on the face of the record, and questions the courts' previously narrow approach to these grounds in *Craig v South Australia* (1995) 184 CLR 163. Importantly, the decision breathes fresh life into Ch III jurisprudence, establishing that Chapter as a clear foundation for the constitutional role and protection of the State Supreme Courts. 92

Constitutions and populations: How well has the Australian Constitution accommodated a century of demographic change? – *Brian Opeskin*

Australia, like most Western countries, has undergone profound demographic changes since 1901. The most significant transformations have been the sizeable growth in population, declining fertility and mortality, substantial immigration, population ageing, and the spatial redistribution of people between the States and Territories. This article

examines how the Australian <i>Constitution</i> has dealt with the deep processes of demographic change that have reshaped the Australian population over the course of a century. Demography was in its infancy as a scientific discipline when the <i>Constitution</i> was drafted in the 1890s, yet the founders showed an understanding of rudimentary aspects of population dynamics. They anticipated population growth, interstate migration, the role of international immigration in shaping the Australian community and the importance of population statistics. However, in other respects, they introduced constitutional rigidities that have impeded the capacity of government to adapt to population change. This article charts the areas of demographic foresightedness and short-sightedness in the <i>Constitution</i> . It concludes by considering how a constitution might be designed to provide a sound framework for governance that is responsive to population dynamics.	109
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