

AUSTRALIAN JOURNAL OF ADMINISTRATIVE LAW

Volume 28, Number 1

2021

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Judicial Review of Administrative Action: Between Grand Theory and Muddling Through – *Mark Aronson*

It is a truth worth universal acknowledgment that the scholar in search for a meta-theory of judicial review of administrative action is in need of a life. The administrative state comprises a diverse range of state actors and regulators, all operating under the specifics of their own governing laws, which are read alongside a set of generic grounds of judicial review. The generic grounds are indeterminate, and the governing law usually gives no indication of the consequences of an administrative breach of its specific requirements. Statutory silence is the norm with regard to these critical issues, but for constitutional reasons, the whole exercise is now theorised as one of “statutory interpretation”. Supplying meaning to statutory text has always involved normative and operational input from the judges themselves. There is nothing new about that, no profound judicial assertion of the power to amend statutory texts to suit their own preferences, and no threat to the survival of the generic principles. Different administrative fields will produce their own inflections of the fit between their governing laws and judicial review’s general principles. 6

The State of the Art in Contemporary Administrative Law – *Paul Daly* 20

Peremptory Mandamus in Australian Administrative Law – *Christopher Chiam*

This article critically evaluates the current role of peremptory mandamus in Australian administrative law. Part I provides an outline of the remedy of mandamus to explain and contextualise peremptory mandamus. Part II explains what peremptory mandamus is, and Part III seeks to explain why it has played a limited role in contemporary administrative law and judicial review. Part IV analyses the High Court decision in *Plaintiff S297/2013 v Minister for Immigration and Border Protection* [No 2] which is one of the few modern authorities to consider the remedy. It argues that the High Court’s treatment of the remedy in that case is based on an inaccurate account of the remedy’s role and history, and is contrary to principle. 28

Delegated Legislation and Emergency Rule-making in Australia – *Tim Wright*

This article examines the framework for delegated legislation under the *Legislation Act 2003* (Cth) and recent trends in Executive law-making in times of emergency. The Executive’s reliance on delegated legislation to implement matters of substantive policy with limited parliamentary scrutiny raises serious questions about the constitutional validity

of delegated legislation and adequacy of consultation by rule-makers. These issues are explored with reference to recent inquiries conducted by the Senate Standing Committee for the Scrutiny of Delegated Legislation. As the role of delegated legislation continues to evolve and expand, the Parliament must take further measures to strengthen its control and oversight of this type of legislation. 44

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