AUSTRALIAN JOURNAL OF ADMINISTRATIVE LAW

Volume 28, Number 3

2021

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Lockdowns, Curfews and Human Rights – Unscrambling Hyperbole – *Emeritus Professor Rosalind Croucher AM*

Responses to the COVID-19 pandemic have required very quick action. But those responses have also involved significant limitations on people's rights and freedoms and implemented through executive power often with limited parliamentary involvement. One such exercise was a curfew in Victoria, which was challenged in *Loielo v Giles*. This article works through the decision in Loielo as a matter of legal analysis and concludes with a consideration of the democratic challenges of emergency decision-making. The decision is an instructive illustration of how human rights principles can inform decision-making and provide a framework of accountability. 137

Accountability and Redress Mechanisms for Outsourced Government Services – *Kaitlyn Oliver*

During the COVID-19 pandemic, Australian Federal, State and Territory governments have outsourced the delivery of key public services, including hotel quarantine programs, to the private sector. Accountability should not be lost where private companies are contracted to perform public functions, especially when their actions directly impact Australia's response to the pandemic. This article focuses on the outsourcing of services in Victoria's hotel quarantine program over March to June 2020 and the reports from the COVID-19 Hotel Quarantine Inquiry. I use the Victorian program as a case study to highlight the existing accountability gap between the treatment of public and private actors under public law. This case study indicates public law accountability mechanisms are more likely to be available where decisions are made by a public agency. I also evaluate the benefits of extending private law accountability mechanisms to public authorities to remedy the accountability gap. 149

Materiality and the Interpretation of Executive Power – *Lisa Burton Crawford*

This article examines recent decisions of the High Court, which confirm that immaterial errors of law made by executive decision-makers are presumed to be non-jurisdictional in kind and clarify the way in which this new "materiality criterion" works. It focuses on the approach to statutory interpretation that underpins this doctrinal development and calls

for greater rigour and transparency in the way that courts explain the presumptive limits of executive power. In doing so, it responds to recent contributions to this journal which have questioned the level of theoretical sophistication and coherence that can be expected of administrative law and considers the broader theories and doctrinal positions that the materiality criterion may destabilise. 166

Chapter III and Legislative Competence to Stipulate that a Material Legal Error Is Non-jurisdictional – *Emily Hammond*

It has been widely assumed that Australian Parliaments enjoy plenary power to provide that legal errors are non-jurisdictional. The recently articulated materiality threshold for jurisdictional error raises an intriguing possibility: Might the Court now recognise a general rule that material legal errors are jurisdictional? This article argues that the Constitution supports this step for executive powers, and State judicial powers outside Supreme Courts. There is a discernible scheme within Ch III of the Constitution to ensure legal accountability for governmental powers over legal status; and it is incongruous with the scheme that non-jurisdictional error should operate to deny accountability for material legal error, as it does if applied to such errors in executive powers and State judicial powers outside Supreme Courts. Thus, the integrity of the Ch III accountability scheme requires a general rule that material legal errors in these two categories of powers are jurisdictional errors. 177

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