

THE AUSTRALIAN LAW JOURNAL

Volume 95, Number 12

December 2021

CURRENT ISSUES – Editor: Justice François Kunc

When Public Interest Is and Is Not in the Public Interest	939
Impermissible Communications between Judges and Counsel	939
Ensuring Female Judges Are Not Interrupted	940
Developments in Four Matters of Continuing Interest	941
Launch of the 2021 Special Issue	943

LETTER TO THE EDITOR

The Crown in Australia	945
------------------------------	-----

AROUND THE NATION: TASMANIA – Editor: Justice Stephen Estcourt AM

The Battle for Trial by Jury	946
------------------------------------	-----

FAMILY LAW – Editor: Richard Ingleby

Arbitration Clauses in Financial Agreements	950
---	-----

HUMAN RIGHTS – Editor: Simon Rice

The Human Rights Implications of Vaccine Passports	953
--	-----

NEW ZEALAND – Editor: Justice Matthew Palmer

A House Divided? The Māori Language, National Anthems and the Construction of a National New Zealand Identity	956
---	-----

ARTICLES

TOWARDS A NORMATIVE STANDARD OF ADMINISTRATIVE JUSTICE: THEMES AND PRINCIPLED TENSIONS

Amy Elton

This article proposes a novel theory of administrative justice suitable for creating institution-specific normative standards in Australia. This article examines the content of administrative justice in Australia and identifies previously recognised administrative justice properties. In so doing, this article gives close consideration to the relationship between these properties. It is at this point that a new theory of administrative justice is proposed from foundational rule of law principles. This theory is unique in that it arranges administrative justice properties into four themes which embrace the principled tensions that are ever-present when considering normative standards of administrative justice. The generalised theory of administrative justice presented here is suited to Australian administrative practice and is tailorable to different administrative settings. 964

A LAWYER BY ANY OTHER NAME: THE RESTRICTIONS ON UNQUALIFIED LEGAL PRACTICE IN AUSTRALIA

Katie Murray

This article examines the restrictions on engaging in legal practice in Australia, focusing on how the restrictions also apply to lawyers, who remain in good standing with the profession, but who no longer hold a current practising certificate. In doing so, it outlines jurisdictional differences; the tests that have been applied to determine what constitutes “legal practice”; and examines whether the restriction of lawyers can be justified against the dual considerations of public protection. In particular, I question whether placing lawyers in the same category as “laypeople” is justified by the need to protect the public from “unlawful operators” and argue that this may do a disservice to both lawyers and the public. 979

JOHN FLETCHER HARGRAVE – A CHRONICLE OF AUSTRALIA’S FIRST LAW LECTURER

Dr Alan Davidson

John Fletcher Hargrave has been described as unhinged of mind and a woman hater. Nevertheless, in the latter half of the 19th century in New South Wales, he became a foundation Judge of the District Court, a Justice of the Supreme Court, including the first Divorce Justice, a member of both the Legislative Assembly and Legislative Council and was Attorney-General and Solicitor General. In the 1850s he was concerned about the lack of formal legal education and presented the first series of law lectures at the newly established University of Sydney. His son, Lawrence Hargrave, became well known for his many aviation experiments in the northern Illawarra. 998

Australian Law Journal Reports

HIGH COURT REPORTS – Staff of Thomson Reuters

DECISIONS RECEIVED IN NOVEMBER 2021

Addy v Federal Commissioner of Taxation (<i>Taxes and Duties</i>) ([2021] HCA 34)	911
Hamilton (a pseudonym) v The Queen (<i>Criminal Law</i>) ([2021] HCA 33)	894
Hofer v The Queen (<i>Criminal Law</i>) ([2021] HCA 36)	937
Park v The Queen (<i>Criminal Law</i>) ([2021] HCA 37)	968
R v Rolfe (<i>Criminal Law; Police</i>) ([2021] HCA 38)	975
Sunland Group Ltd v Gold Coast City Council (<i>Environment and Planning</i>) ([2021] HCA 35)	922