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EDITORIAL – *Editor: Janina Boughey*

Kerr’s Vision Splendid for Administrative Law: Still Fit for Purpose? 203

ARTICLES

Designing Administrative Law for an Administrative State: The Carefully Calibrated Approach of the Kerr Committee – *Lynsey Blayden*

This article explores the ways in which the recommendations of the Kerr Committee pragmatically blended “red” and “green-light” approaches to establish a comprehensive system of administrative law that went beyond control by the Courts or Parliament alone. The Kerr Committee’s recommendations sought to address gaps in administrative oversight, including by creating new and innovative institutions, with complementary functions, specifically adapted to the challenges of overseeing the modern administrative state and meeting the needs of those who were affected by administrative decisions. Since these ground-breaking institutions were established, there have been significant changes to the practices of the administrative state. It is now time to look again at our systems of administration and administrative law, and how they currently function together, in the way that the Kerr Committee once did, and consider what is needed to ensure these systems continue to advance key liberal democratic values in the 21st century. 205

50th Anniversary of the Kerr Committee – *Justice John Griffiths*

On the 50th anniversary of the Kerr Committee Report, this article reflects on significant changes in public administration which have exposed some weaknesses in the package of administrative law reforms relating to judicial review and merits review by the Administrative Appeals Tribunal. It describes how the intended primacy of the *Administrative Decisions (Judicial Review) Act 1977* (Cth) has been challenged by the resurgence of the constitutional writs and the doctrine of jurisdictional error. This article also explores the important role played by other review and investigative agencies, such as the Commonwealth Ombudsman and the Immigration Assessment Authority, and how this is consistent with the incrementalism envisaged by the Kerr Committee. The article argues for the now-defunct Administrative Review Council to be revived as an important advisory body able to provide expert advice on future reform required to ensure effective and efficient means of achieving transparency and accountability in Commonwealth public administration. 224

A Call for Ongoing Political Commitment to the Administrative Law Project – *Janina Boughey*

This article examines the crucial role that bipartisan political commitment to administrative accountability and transparency played in achieving the reforms to federal administrative law in the 1970s and 1980s. It surveys the nature of that commitment before, during and after the Kerr Report, and the influence of the particular individuals involved in the Kerr Report

in ensuring its implementation. The article then looks to the present and future, arguing that political commitment has waned in recent years, particularly within the executive branch. This has resulted in growing gaps in government accountability and transparency. The article argues that political commitment to administrative law values remains as important today as it was 50 years ago, to ensure that the federal system of administrative law remains fit for purpose to hold modern (complex, automated, outsourced) governments to account. 242

Transparent Government – Are We Travelling Well? – John McMillan

Four decades have passed since the Australian Parliament enacted the *Freedom of Information Act 1982* (Cth). The Act caused major change: it created a legally-enforceable mechanism for obtaining access to government documents; the federal Act was adopted in all Australian States and Territories; and it instigated cultural change towards greater transparency in government practice. But the overall picture is mixed. The Act rests on an outdated assumption that government information is held in documentary form. Important legislative form proposals have been sidelined. The Office of the Australian Information Commissioner faced abolition after a short period as open government champion. Government disclosure practices are driven more by message control objectives than by public interest principles. This article surveys major developments over the past 40 years. It argues for renewed leadership to invigorate open government practices in Australia. 259

The Kerr Reforms 50 Years On – Some Personal Reflections – Jaala Hinchcliffe 264

50th Anniversary of the Kerr Committee Report Judicial Review – Justice John Basten

The Administrative Decisions (Judicial Review) Act 1977 (Cth) is almost a decade younger than the Kerr Committee report. Nevertheless, it forms an integral part of the administrative law package envisaged by the Committee. While there is no doubt that, by providing a statutory structure for judicial review of administrative decisions, the Act stimulated a coherent development of the jurisprudence in this area, it left much to general law principles of statutory interpretation. Understandably, it did not foresee the current focus on jurisdictional error as a defining concept of judicial review, partly because it was only concerned with administrative decision-making, and was limited to decisions made under an enactment. Some argue that it should have stated general principles for review of administrative decisions; however, generic principles might not have advanced the work of the courts given the diversity of statutory powers covered by the Act. It must be credited with stimulating the growth of the supervisory jurisdiction of superior courts, and with comparable statutory developments in a number of States. 269

VOLUME 28 – 2021

Table of Article Authors	275
Table of Section Authors	277
Table of Cases	279
Index	291