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ARTICLES

Ministers’ Signatures – What Do They Prove? – *Mark Aronson*

Judicial review of administrative decisions made personally by Ministers usually comes down to questioning the sufficiency or legal accuracy of written records prepared by their departments – records which the Ministers have signed and purported to adopt as their own. Where the relevant statutory power requires the decision-maker to have engaged intellectually with a large body of materials, there is sometimes room for doubting the Minister’s claim to have read and considered everything on-file. In such circumstances, what weight should be accorded the written claims, and when (and how) should applicants for judicial review be allowed to test their accuracy? 10

Judicial Review and Rights Review – *Pamela Tate AM KC*

The conduct of public authorities, and their decision-making processes, are governed by obligations under Victoria’s Charter of Human Rights and Responsibilities. A failure to act compatibly with human rights, or a failure to give proper consideration to relevant human rights, results in unlawfulness. Rights review focuses upon the legality of executive action. In this respect rights review is similar to judicial review. This similarity has led to rights review being treated as a species of judicial review. However, there are important differences, as was recognised in *Thompson v Minogue*. This article considers the ways in which rights review had been assimilated to judicial review and it examines the reasoning in *Minogue*. It explores the differences between judicial review and rights review. It is argued that these differences support the recognition of rights review as distinctive. 30

Some Observations on Jurisdictional Error – *Nye Perram*

Jurisdictional error is one of the defining concepts of Australian administrative law. A previous article published in this journal by the author in 2014 identified several conceptual difficulties with use of the concept as an overarching one. That article considered whether the apparent doctrinal functions performed by jurisdictional error might be served better by a more coherent theoretical approach to judicial review. This article examines developments since 2014 that have overcome many of the objections originally voiced by the author, but also identifies several issues that either remaining outstanding or have since arisen. 49

Causation in Public Law – *Ellen Rock*

As a general rule, public law is not concerned with assessing or correcting the impact of breaches of public law norms. The function of the Australian courts in judicial review is to police the legal boundaries within which public power may be exercised, and to the extent that a judicial review remedy alters the outcome of a case, this is thought to be a matter of coincidence rather than design. On closer inspection, however, there are various circumstances in which public law traverses the terrain of causation and outcomes. This article analyses the ways in which causation-oriented reasoning features in public law questions of jurisdiction, grounds of review and the award of relief, as well as in cases sitting at the public-private law divide. It is argued that contrary to orthodox thinking, public law does deploy causation-based principles in the resolution of judicial disputes. However, the courts' approach to causation in public law is necessarily different to that deployed in private law due to the influence of the separation of powers. 56