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Are APS disciplinary processes “ahead of the game”? Amendments to the APS Code of Conduct 57

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Project Blue Sky: Invalidity and the evolution of consequences for unlawful administrative action – *Justice Nye Perram*

This article examines the orthodox position that judicial review is largely to be understood as involving the correction of jurisdictional excess. The author suggests that this view is not justified by history, is internally incoherent, is unstable in operation and does not, in fact, accurately describe the practice of courts exercising judicial review powers. It is suggested that invalidity should be abandoned as a useful metric and that a more useful inquiry would be into the lawfulness of a decision together with a consideration of whether, if it be illegal, the circumstances justify its being set aside. 62

One office, three champions? Structural integration in the office of the Australian Information Commissioner – *Carolyn Adams*

In 2010, the Australian Government established a new regulatory agency, the Office of the Australian Information Commissioner, as part of a major reform of its information policy framework. Concerns were raised by stakeholders about the proposed legal and structural arrangements for the Office, but there was very little consideration of these issues during passage of the reform legislation through Parliament. This article suggests that the arrangements are not optimal. They require the OAIC to be both strategic policy advisor and independent regulator to the Australian Government. This creates a tension in the roles and responsibilities of the agency. The arrangements also have the potential to mute the voices of the Privacy and Freedom of Information Commissioners in the information policy debate. The article concludes that it would have been better to more clearly establish the commissioners as independent advocates and “champions” for the human rights to privacy and freedom of information. 77

An Australian rule of law – *Tom Spencer*

This article argues that s 75(v) jurisdictional error surpasses the sovereignty of Parliament, as the Australian form of the rule of law. It offers a definition of jurisdictional error, considered here at length, and also propounds definitions of the Crown, Crown immunity, and judicial power. It also explains how Australian sovereignty is based on the rule of law as founded by the Crown, which originally symbolised the sovereignty of Parliament. The sovereignty of Parliament is characterised as a form of jurisdictional error, albeit a decrepit one by the time of the dismissal of the Whitlam Government in 1975. Subsequently the High Court’s s 75(v) jurisprudence over the last decade is shown to now be the predominant form of the rule of law. 98

