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EDITORIAL

Farewell to Damien Cremean	3
Submissions	3
Current issues	3

CURRENT ISSUES – *Justin Davidson, Katie Miller and Stephen Tully*

Immigration and Border Protection v SZSSJ; Minister for Immigration and Border Protection v SZTZI	5
AS v Minister for Immigration and Border Protection (Ruling No 4)	6

ARTICLES

Balancing the Discretionary Seesaw: Are Community Values an Appropriate Guide for the AAT’s “Preferable” Decisions? – *Madeleine Harkin*

This article examines the discretionary decision-making power of the Administrative Appeals Tribunal, focusing on Downes J’s proposal that community values should guide these decisions. It is contended that community values are an inappropriate guide as their existence is questionable and their use is fraught with problems. 7

The Function of s 75(v) of the Constitution – *Lindsay Muir*

It is settled that Parliament cannot formally deny the High Court its jurisdiction to review for jurisdictional error under s 75(v) of the Constitution. However, it remains unclear the extent to which Parliament can functionally reduce the scope of this jurisdiction through no-invalidity clauses or other drafting mechanisms. This article argues that a “thin” version of the rule of law, namely non-arbitrary government, would provide the least controversial, and therefore the most robust, foundation to define the boundaries of the High Court’s jurisdiction under s 75(v). This is because the proposition that s 75(v) entrenches the value of non-arbitrary government is consistent with most approaches to constitutional interpretation. This article also recognises how a number of entrenched common law concepts will limit the scope of the High Court’s jurisdiction under s 75(v) but demonstrates how the value of non-arbitrary government can be reconciled with these limits via a rule versus standard analysis. 21

Australian Ombudsmen: Drafting a Blueprint for Reform – *Anita Stuhmcke*

The ombudsman institution was introduced across all Australian jurisdictions from the 1970s as a central piece of administrative law reform. The original role of the office was to scrutinise administrative decision making and to promote government accountability through the resolution of citizen complaints. However, since the 1970s all Australian governments have undergone significant change. Government has expanded involvement

into areas such as whistle blower and disability protection and human rights. Government also increasingly outsources decision-making to private companies, leading to the introduction of private industry ombudsmen and the removal of control from the purview of administrative law transparency mechanisms. This article argues that this transformation necessitates discussion as to reform of the ombudsman institution and suggests a new blueprint for such reform.	43
BOOK REVIEWS – Janina Boughey	
<i>Soft Law and Public Authorities: Remedies and Reform</i> by Greg Weeks	63
<i>Leading Cases in Australian Law: A Guide to the 200 Most Frequently Cited Judgments</i> by Daniel Reynolds and Lyndon Goddard	65
<i>Controlling Administrative Power: An Historical Comparison</i> by Peter Cane	66