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The late arrival of the "judicial activism" debate in Australian public discourse – *Tanya Josev*

The term "judicial activism" was coined by the historian Schlesinger in 1947 as a politically neutral descriptor for a voting bloc on the United States Supreme Court, but later became a catchword for commentators and lobbyists seeking to criticise the work of certain judges. Despite the apparent lay appeal of the terminology, and various Australian legal academics being familiar with the terminology as early as the 1960s, the words "judicial activism" have only appeared in Australian public discourse in recent decades. This article explores the reasons behind the terminology lying dormant in Australia for over four decades, concluding that the ingredients behind Schlesinger's early formulation of "activism" were simply not present in Australia at this time. 17

Jurisdictional facts after Plaintiff M70 – *Brian Mason*

A crucial method by which the superior courts determine whether administrative decisions were made within power is by verifying that all preconditions to the exercise of that power were satisfied. The High Court prominently performed this task in *Plaintiff M70/2011 v Minister for Immigration and Citizenship* (2011) 244 CLR 144 when concluding that the Minister acted beyond power in declaring Malaysia a destination to which asylum-seekers could be transferred because the relevant jurisdictional facts had not been satisfied. The court in that case refrained from conducting an extensive doctrinal review of the role jurisdictional facts perform in administrative law, but its methodology provides three subtle indicators as to the manner in which the Australian jurisdictional fact jurisprudence may develop. The first mandates a constructionist approach when interpreting statutes for jurisdictional facts, despite the practical difficulties this poses for decision-makers determining whether their statutory powers have been activated. The second points to a new category of jurisdictional fact which collapses the subjective and objective dichotomy recognised to date. The third alludes to a taxonomy of jurisdictional errors where the consequences for incorrectly ascertaining the presence of a jurisdictional fact reflect that error's severity. This article analyses these indicators and their implications for the development of Australian administrative law. 37

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