

PUBLIC LAW REVIEW

Volume 30, Number 4

2019

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ARTICLES

Immaterial Errors, Jurisdictional Errors and the Presumptive Limits of Executive Power – *Lisa Burton Crawford*

It has long been unclear how a court should respond to an error of law made by an administrative decision-maker that, for some reason, “makes no difference”. In *Hossain v Minister for Immigration and Border Protection* and *Minister for Immigration and Border Protection v SZMTA*, the High Court held that the gravity of an error of law will inform whether it is jurisdictional in nature, as Parliament is deemed not to intend for immaterial errors to invalidate the exercise of statutory executive power. This is doctrinally significant, given the pivotal role that jurisdictional error plays in Australian administrative law. It also represents an important evolution in the way that statutory conferrals of executive power are interpreted by the courts. The differences of opinion expressed in these cases demonstrate the need for a clearer and more coherent account of the principles that inform that interpretive approach.

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Non-Compellable Powers: A Relational Analysis – *Kristen Rundle*

This article proposes a new prism through which to examine the statutory, doctrinal, conceptual and operational architecture associated with “non-compellable” powers in Australian administrative law. By exploring how the design and operation of non-compellable powers construct and sustain relationships between those in whom such powers are reposed and those who are ultimately subject to them, the article aims to contribute to an emerging body of scholarship concerned to tease out the character and implications of this unorthodox form of administrative discretion. Though the focus of the analysis is on the specific example of non-compellable powers and the wider questions of doctrine that have shaped judicial consideration of these powers so far (the application

of common law rules of procedural fairness and the scope of judicial supervision under s 75(v) of the Constitution), the article also seeks to advocate for greater attention to the relational dimensions of administrative power more generally. 300

The Development of Native Title: Opening Our Eyes to Shared History –
Justice Michelle Gordon

Gordon J addresses the question “What is the relationship between history, facts and law in native title?” in her speech for the 2019 John Toohey Oration held 2 October 2019. Hosted by the UWA Law School and John Toohey Chambers, the John Toohey Oration honours the career and contribution to public life of a distinguished graduate of The University of Western Australia, Toohey J, one of the country’s most eminent jurists. 314

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