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## PREFACE

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## ARTICLES

### **Justice Basten and the New Frontiers of Administrative Law: Crime, Tort and Contract – Justice Mark Leeming**

This appreciation of Justice Basten’s judicial and extra-judicial contribution to administrative law focuses upon three areas outside the mainstream: in crime, tort and contract. These areas of administrative law at the State level have seen considerable developments over the last two decades, coinciding with the intrusion of statute into areas traditionally regulated by common law (such as assessments of personal injury in motor vehicle and industrial accidents and adjudicators’ determinations in construction claims) and with the recognition of a constitutionally entrenched supervisory jurisdiction for jurisdictional error. The paper identifies some of his significant judgments and writings in these areas, and the nature of the influence they enjoy. The paper also mentions Basten JA’s awareness of the significance of language – the text of the statute, and the label used to describe legal principle. .... 92

### **Environment and Planning Law in the Age of Statutes – Justice Rachel Pepper**

The search for meaning and coherence in the formulation and application of the principles of statutory construction remains one of the key tasks facing Australian courts. This article examines the contribution of Justice John Basten to the continued development of the principles that inform this debate, by reference to environmental and planning law. That area of law provides an especially useful vehicle to consider questions of statutory construction because planning statutes and instruments are often expressed at a high level of generality and confer broad discretionary powers upon decision-makers. The legacy of Justice Basten has illuminated the pathways of this law. .... 99

### **Reforming Certiorari and Messing with Nullity – Mark Aronson**

When a court issues an order in the nature of certiorari, the impugned decision is declared to have been a nullity, thereby erasing its adverse effects upon the applicant. The court tells us to treat the decision as if it never had any relevant legal force or effect, but it is generally acknowledged that it takes a court to say this. Adverse decisions that remain on foot will be enforced. Stung by recent high profile losses in the Supreme Court, the government of

the United Kingdom announced a grand project of reforming the very institution of judicial review – its grounds of challenge, its procedures, and its remedies. The grand project may not proceed, but its first, small, step has been legislation to allow for quashing orders not just to be suspended, but even to be made purely prospectively. The declared driver for this particular reform is confusion over the concept of nullity, but the cure only deepens confusion. Worse still, it takes the courts into political territory, making them balance strict legality against essentially political conceptions of good administration. .... 110

**Does Administrative Law Ask Too Much of Statutory Interpretation? – Steven Gardiner**

A core part of Basten JA’s legacy is the role he has played in emphasising the importance of statutory interpretation. This article hopes to build on that legacy by exploring the relationship between administrative law and statutory interpretation – and the extent to which that relationship has become strained as a result of the High Court’s decision in *Hossain v Minister for Immigration and Border Protection*. The article then explores the role of presumptions of statutory interpretation in the modern approach to statutory interpretation. The article concludes by considering whether an approach that makes more explicit the underlying values that form the basis for the presumptions of statutory interpretation used in administrative law may be an improvement on the current state of affairs. .... 127