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ARTICLES

Burying Certiorari for Error of Law on the Face of the Record – Declan Noble and Kate Thomas

In *Probuild Constructions (Aust) Pty Ltd v Shade Systems Pty Ltd* in 2018, Gageler J questioned the historical foundations of certiorari for error of law on the face of the record and hinted at the doctrine’s possible “burial”. In this article, we take up that invitation, and show that the doctrine was, as it were, invented by the English Court of Appeal in *R v Northumberland Compensation Appeal Tribunal; Ex parte Shaw* in 1951. The doctrine is premised on a misreading of older authority. The true position is that certiorari was always concerned with jurisdiction and, save for the peculiar procedure of using certiorari to state a case to King’s Bench, decisions were never quashed for mere error of law. Not only is the doctrine historically suspect, it is inconsistent with other aspects of modern Australian administrative law and should be “buried”. This article also considers how statutes which refer to the doctrine should now be construed. 818

The Turbulent Effects of COVID-19 Policy on Australian Federalism and National Uniform Legislation – Guzyal Hill and John Garrick

The COVID-19 pandemic prompted intergovernmental reforms across nine jurisdictions in Australia, with divergent state policies reviving debates about the core federal structure. This article probes the effects of the divergent COVID-19 policies on the federation and examines how state responses can, in future, strengthen federation by considering unique regional characteristics within a national context. Advocacy coalitions, such as public health, business and economic, have influenced policy responses, some seeking strict measures to contain the virus others prioritising economic recovery. This study identifies that the divergent and incremental post-pandemic legislation occurring within individual jurisdictions may lead to divisions that may not be beneficial for the next emergency. Rushing into expedient legislation that serves one jurisdiction may not produce optimal outcomes for that state or Australia as a whole, especially when shaped by strong local advocacy coalitions. Longer-term considerations and a more cohesive approach are necessary to ensure best outcomes for the states, territories and the Australian federation. 842

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