

Chapter 10

Nothing Like the Curate's Egg

The Hon Alan Robertson

This commentary concerns the 15 main recommendations of the Administrative Review Council's Report, *Federal Judicial Review in Australia*, Report No 50, September 2012, which was published by the Administrative Review Council (ARC) after conducting an inquiry of its own motion in accordance with its statutory functions under s 51 of the *Administrative Appeals Tribunal Act 1975* (Cth).

Time does not permit a consideration of the many other recommendations in the report concerning the Schedules to the *Administrative Decisions (Judicial Review) Act 1977* (Cth) (the ADJR Act).

I have found little that has been written about this important ARC Report, although there are some references to it in M Aronson and M Groves, *Judicial Review of Administrative Action*.¹

There are also two articles in (2013) 72 *AIAL Forum*. The first is by Professor John McMillan AO and entitled "Restoring the ADJR Act in Federal Judicial Review", being an essay he presented at an AIAL seminar in Canberra on 4 December 2012.² Professor McMillan, as Australian Information Commissioner, is an ex officio member of the ARC. The second is by Roger Wilkins AO and Bronwen McGee and entitled "Judicial Review: A Jurisdictional Limits Model", being a paper presented at the same AIAL seminar.³ Roger Wilkins AO is Secretary of the Attorney-General's Department and an appointed member of the ARC. Ms McGee is Senior Legal Officer in the ARC Secretariat.

Each paper is directed towards the "primary issue" in the federal judicial review system identified by the ARC,⁴ discussed below, being the "divergence between the two avenues of judicial review available in the Federal Court (review under the ADJR Act and review under s 39B(1) of the *Judiciary Act*)". Professor McMillan's paper canvasses the five alternative ways of addressing that divergence considered by the ARC and discusses the option adopted as Recommendation 1 by a majority of the ARC. Professor McMillan concludes that this recommendation, considered

1 5th ed, Thomson, 2013. The relevant footnotes are p 21 fn 121, p 60 fn 278, p 63 fn 298, p 69 fn 325, p 81 fn 421, p 88 fn 484, p 101 fn 576 and 578, p 146 fn 241, p 185 fn 497, p 251 fn 451 and p 253 fn 471. The discussion of the report is in the text containing those footnote references.

2 (2013) 72 *AIAL Forum* 12.

3 (2013) 72 *AIAL Forum* 20.

4 At para 4.2.

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