

# Constitutional Writ Review and the ADJR Act: Ships in the Night?

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The session considered and compared review by way of constitutional writ with review under the *Administrative Decisions (Judicial Review) Act 1977* (Cth) (*ADJR Act*). Particular attention was given to the recommendations of the Administrative Review Council (ARC) in its 2012 report, *Federal Judicial Review in Australia* (ARC’s Report).

## The ARC’s Report

The ARC’s inquiry was directed to examining, in a detailed way, the federal system of judicial review and to consider whether it ‘could recommend changes to improve the accessibility and efficiency’ of the system.<sup>1</sup> An interesting feature of federal judicial review is the co-existence of statutory and constitutional judicial review. While constitutional writ review has been available since 1 January 1901, the *ADJR Act* commenced in 1980. Moreover, since 1980, the jurisprudence concerning constitutional writ review developed considerably, especially as the concept of ‘jurisdictional error’ was further defined and s 39B(1) of the *Judiciary Act 1903* (Cth) was introduced. One consequence of these developments is that there are now ‘several different mechanisms for seeking judicial review of Australian Government decisions and actions’.<sup>2</sup> In the opinion of the ARC, the co-existence of these different mechanisms created a ‘fragment[ed] ... federal judicial review landscape’.<sup>3</sup> For that reason, the ARC aimed to make recommendations that would achieve ‘better integration of the review mechanisms and access to judicial review in federal courts’.<sup>4</sup>

In the first of its two main conclusions, the ARC concluded:<sup>5</sup>

- 1 Administrative Review Council, *Federal Judicial Review in Australia* (Report No 50, September 2012) at 11.
- 2 Ibid at 9.
- 3 Ibid.
- 4 Ibid.
- 5 Ibid at 11.

This is a preview. Not all pages are shown.