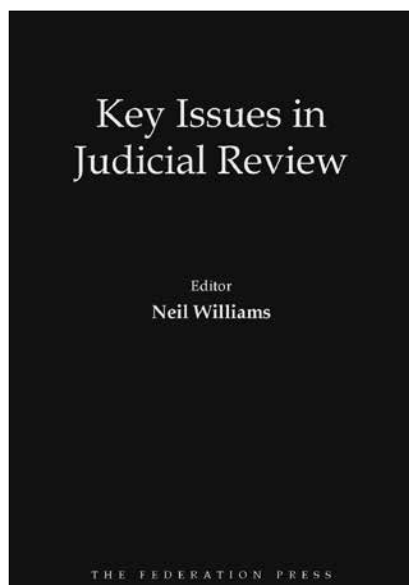


Key Issues in Judicial Review

By Neil Williams (ed) | The Federation Press | 2014



This book comprises a collection of essays predominantly from members of the New South Wales Bar, as well as from judges and one from Peter Quiggin PSM, the first parliamentary counsel of the Office of Parliamentary Counsel. There are 13 essays in total. While one may be forgiven for thinking from the title of the work that it is a text or case book on judicial review, in fact it covers a variety of topics all of which bear upon and are important in a consideration of judicial review.

The book commences with reflections on the role of courts in public law by the Hon PA Keane. It is a helpful starting point for the rest of the work in that it reflects upon the nature and limits of judicial power, integral to an exercise of judicial review. Jeremy Kirk SC is the author of a chapter on the concept of jurisdictional error which will assist and interest administrative law practitioners and those with an academic interest in the topic alike. Among other aspects of the doctrine, the chapter examines privative clauses; and the significance of *Kirk v Industrial Court (NSW)* (2010) 239 CLR 531 in relation to the possible existence of constitutional limits protecting the supervisory jurisdiction of state supreme

courts to grant relief for jurisdictional error in respect of decisions made under state enactments.

The Hon John Basten's essay on judicial review of executive action considers the impact of the High Court's seminal decision in *Minister for Immigration and Citizenship v Li* [2013] HCA 18 and how that decision contributed to the development in the law of the issues of rationality, reasons and reasoning and procedural fairness.

The concept of satisfaction as a jurisdictional fact is examined by James Hutton in view of the High Court's decision in *Minister for Immigration and Citizenship v SZMDS* (2010) 240 CLR 611. Hutton's essay examines the implications of treating a decision-maker's state of satisfaction as a jurisdictional fact to be determined by the court, and highlights some of the limitations upon such an approach.

Theresa Baw has examined another aspect of *SZMDS*: the availability of illogicality or irrationality as a stand-alone ground of judicial review; and she argues that the High Court's decision in *Li* has made unreasonableness a more accessible ground of review which in turn has influenced the nature of the illogicality or irrationality ground of review.

Integral to the process of judicial review is the task of statutory construction. The essay by Peter Quiggin PSM covers both statutory interpretation and statute-drafting in a rare and interesting insight into both aspects of statutory construction from a drafter's perspective. The essay that follows Mr Quiggin's is a comment on his paper by Justice Nye Perram. This paper helpfully considers some differences in approaches, between drafters on the one hand, and judges and barristers on the other, to the task of statutory interpretation.

Stephen Lloyd SC and Houda Younan have authored an essay on partial invalidity of both legislative instruments and, significantly, administrative instruments and decisions. They examine the basic principles in relation to reading down legislative instruments, considering cases which have applied principles of distributive reading down, then they consider related principles of construction before examining severance in relation to administrative instruments and decisions.

The essay on evidence in public law cases by Neil Williams SC and Alan Shearer will interest administrative law practitioners, as it provides a practical and thorough consideration of issues associated with the admissibility of extrinsic evidence, starting from preliminary evidence gathering, and considering the admissibility of various types of evidence according to the ground of review of the decision under challenge.

In an essay entitled 'Nothing Like the Curate's Egg', the Hon Alan Robertson has examined the 15 main recommendations of the Administrative Review Council's Report *Federal Judicial Review in Australia* published by the Administrative Review Council in September 2012. Justice Robertson's review of the recommendations is thoughtful and raises many questions for consideration in respect of them. The essay also examines the suggestion that the ADJR Act be repealed and the consequences should such a proposal be carried out.

The book also contains an essay by Kristina Stern SC entitled 'The Rationale for the Grant of Relief by Way of Judicial Review and Potential Areas for Future Development' which examines these areas by reference to the English position. Geoffrey Kennett SC and David Thomas have presented an analysis of constitutional and administrative law

aspects of tax, an area of fertile ground which will no doubt be of interest to both public law and tax practitioners.

The book concludes with an essay by Richard Lancaster SC and Stephen Free on the relevancy grounds in environmental and administrative law. Rather than setting out the fundamentals

of the law in relation to this topic, the authors comment upon particular issues and trends in an impressive array of recent decisions, in environmental law specifically, and administrative law more generally.

Barristers who practise in administrative law, or who have an interest in public

law more generally, will find this work an interesting and useful addition to their libraries.

Reviewed by Victoria Brigden

Mutiny on the Bounty

White Star Publishers | 2006

Mutiny on the Bounty is a compilation of works by William Bligh and others.

Captain Bligh and the flora-laden HMS *Bounty* were returning to England from Tahiti when, early on the morning of 29 April 1789, one of the officers, Master's Mate Fletcher Christian, mutinied with most of the crew members. The captain and 18 loyal members were set adrift in a longboat, with minimal food, clothing and essential supplies.

Loyalty counted for nothing. Christian had been a beneficiary of Bligh's assistance during his brief naval career. Three voyages with Bligh, the last at a time when any voyage, anywhere in peacetime, was a treasured jewel. As Bligh's star rose, so too did that of Christian. As second in command, Christian was extended officers' courtesies. The night before mutiny he had been invited to the captain's table. The invitation was declined. It was later evidenced that Christian had been drinking until midnight before the mutiny: grog for courage. As Bligh was manhandled over the side, Christian (talking of past benefits from his friend) exclaimed 'That – Captain Bligh – is the thing; I am in hell, I am in hell.' (Bligh's own memory). A Bligh loyalist witness, the ship's carpenter,

at court martial deposed that Christian said to Bligh: 'Hold your tongue and I'll not hurt you; ...I have been in hell for weeks past with you.'

It was reported that Bligh expected high standards of performance from his pupil (Christian), and humiliated Christian publicly in pursuit of same. One mutineer supported this by later, post court martial evidence. Another expressed to the contrary, also by post court evidence. Another (a Bligh loyalist) evidenced (post court martial) that Bligh did not ill-treat Christian. All officers were obliged to do their duty and Bligh had shown great professional care for Christian's development.

All that was behind Bligh and Christian from early 29 April 1789. With compass, quadrant and extraordinary seamanship and leadership, as well as the iron self and imposed discipline of the crew, the ejected *Bounty* crew landed in West Timor on 14 June 1789. One of his crew had been tragically killed by native attack on the first and only landfall in the Tahitian Islands after their ejection. The senior sailor had sacrificed himself to enable the others to escape an attack by hostile natives.

First landfall thereafter was Restoration Island (named by Bligh for their restoration, it being also the anniversary of restoration of Charles II) off the New Holland (Queensland) coast (29 May 1789). The days spent off and on the land of New Holland had been restorative. They had secured much needed fresh food and water. They showed a self protecting respect of the Aboriginal occupants, with Bligh ensuring that his party kept well distanced and alert.

After arrival in Dutch territory, the Dutch convened an enquiry into the loss of the *Bounty*. No Dutch vessels or citizens were involved, but, just as piracy was (and is) regarded as a scourge for all seafaring nations to address, so was mutiny. It was noted that four remaining on *Bounty* '... are deserving of mercy, being detained against their inclinations'. Such must have been based on the evidence of Bligh and his loyalists, and is a tribute to the integrity of the evidence. All four were acquitted at later court martial.

Unfortunately, two of Bligh's loyalists died of illness despite best Dutch efforts.

Captain Bligh landed back in England on 2 January 1790.