

Introduction to Keynote Address by Griffiths J

Kerr's Vision Splendid for Administrative Law – Still Fit for Purpose?

This year marks the 50th anniversary of the Report of the Commonwealth Administrative Review Committee, chaired by Sir John Kerr (the **Kerr Report**).¹ Professor Dennis Pearce referred to the recommendations contained in that report as the “vision splendid of the means by which an affected citizen [would] be able to test Commonwealth government decisions”.²

The recommendations of the Kerr Report were designed to “ensure the establishment and encouragement of modern administrative institutions able to reconcile the requirements of efficiency of administration and justice to the citizen”.³ The reforms that followed the Kerr Report and the subsequent Ellicott and Bland reports⁴ came to be known as the ‘New Administrative Law’.⁵ A codified form of judicial review was introduced in the *Administrative Decisions (Judicial Review) Act 1977* (Cth) (**ADJR Act**), the Federal Court was established to administer this newly defined judicial review jurisdiction⁶ and the Administrative Appeals Tribunal (**AAT**) was instituted.⁷ Moreover, a Commonwealth Ombudsman was entrenched.⁸ In the subsequent decade, the

¹ Commonwealth Administrative Review Committee, Commonwealth Government, *Commonwealth Administrative Review Committee Report* (1971).

² Dennis Pearce, ‘The fading of the vision splendid: administrative law: retrospect and prospect’ (Speech, Administrative Law: Retrospect and Prospect Seminar, Australian National University, Canberra, May 1987).

³ Commonwealth Administrative Review Committee, Commonwealth Government, *Commonwealth Administrative Review Committee Report* (1971) at [389].

⁴ Commonwealth Administrative Review Committee, Commonwealth Government, *Prerogative writ procedures: report of Committee of Review* (1973); Commonwealth Committee on Administrative Discretions, Commonwealth Government, *Final report of the Committee on Administrative Discretions* (1973).

⁵ Lynsey Blayden, ‘Seeing the New Administrative Law in a “green light”’ *AUSPUBLAW* (Blog Post, 16 April 2021) <<https://auspublaw.org/2021/04/seeing-the-new-administrative-law-in-a-green-light/>>; Janina Boughey, ‘50 Years after the Kerr Report: Is Australian administrative law still fit for purpose’ *AUSPUBLAW* (Blog Post, 19 March 2021) <<https://auspublaw.org/2021/03/50-years-after-the-kerr-report-is-australian-administrative-law-still-fit-for-purpose>>.

⁶ *Federal Court of Australia Act 1976* (Cth).

⁷ *Administrative Appeals Tribunal Act 1975* (Cth).

⁸ *Ombudsman Act 1976* (Cth).

Freedom of Information Act 1982 (Cth) and *Privacy Act 1988* (Cth) were enacted.⁹ The nascent administrative law framework envisioned in the Kerr Report was to be monitored by the Administrative Review Council (**ARC**)¹⁰.

Following its promulgation, the New Administrative Law was often cited as best practice by law reform bodies across the common law world.¹¹ Moreover, in its wake, standards for good administration became commonplace across Australia's public and private sectors. Agencies now commonly offer internal review as a precursor to external review and codes of conduct and service charters invoke administrative law standards.¹²

However, in the decades since the Kerr Report was handed down, the New Administrative Law has been extensively reformed. For example, in 2015 the specialist migration and social security tribunals were amalgamated into the AAT.¹³ Furthermore, in the 2015-2016 Budget, the Government formally announced that the ARC would be abolished. The ARC's residual functions are now managed by the Attorney-General's Department.¹⁴

The landscape of Australian administrative law has also changed drastically in the decades since the Kerr Report was handed down. The proliferation of automated executive decision-making is a particular challenge facing Australian administrative law.

⁹ Robin Creyke, 'Administrative Justice – Towards Integrity in Government' (2007) 31 *Melbourne University Law Review* 705, 707; Janina Boughey, '50 Years after the Kerr Report: Is Australian administrative law still fit for purpose' *AUSPUBLAW* (Blog Post, 19 March 2021) <<https://auspublaw.org/2021/03/50-years-after-the-kerr-report-is-australian-administrative-law-still-fit-for-purpose>>.

¹⁰ Robin Creyke, 'Administrative Justice – Towards Integrity in Government' (2007) 31 *Melbourne University Law Review* 705, 707; Janina Boughey, '50 Years after the Kerr Report: Is Australian administrative law still fit for purpose' *AUSPUBLAW* (Blog Post, 19 March 2021) <<https://auspublaw.org/2021/03/50-years-after-the-kerr-report-is-australian-administrative-law-still-fit-for-purpose>>.

¹¹ Janina Boughey, '50 Years after the Kerr Report: Is Australian administrative law still fit for purpose' *AUSPUBLAW* (Blog Post, 19 March 2021) <<https://auspublaw.org/2021/03/50-years-after-the-kerr-report-is-australian-administrative-law-still-fit-for-purpose>>.

¹² Robin Creyke, 'Administrative Justice – Towards Integrity in Government' (2007) 31 *Melbourne University Law Review* 705, 707.

¹³ See Robin Creyke, 'Tribunal Amalgamation 2015: An Opportunity Lost' (2016) 84 *AIAL Forum* 54.

¹⁴ Narelle Bedford, 'The Kerr Report's vision for the Administrative Review Council and the (sad) modern reality' *AUSPUBLAW* (Blog Post, 21 May 2021) <<https://auspublaw.org/2021/05/the-kerr-reports-vision-for-the-administrative-review-council/>>.

Additionally, the extensive use of emergency powers in response to the COVID-19 pandemic threatens to erode key accountability mechanisms originally contemplated by the New Administrative Law.¹⁵ The Commonwealth Government's continued efforts to exempt the national cabinet from freedom of information laws are similarly concerning.¹⁶

Now, more than ever, it is necessary to consider whether Kerr's vision splendid for administrative law is still fit for purpose.

¹⁵ Janina Boughey, 'Executive power in emergencies: Where is the accountability?' (2020) 45(3) *Alternative Law Journal*.

¹⁶ Sarah Martin, 'Legal experts blast 'bizarre legislation' proposed to shield national cabinet from FoI requests' (*The Guardian*, 27 September 2021) < <https://www.theguardian.com/australia-news/2021/sep/27/legal-experts-blast-bizarre-legislation-proposed-to-shield-national-cabinet-from-foi-requests>>.