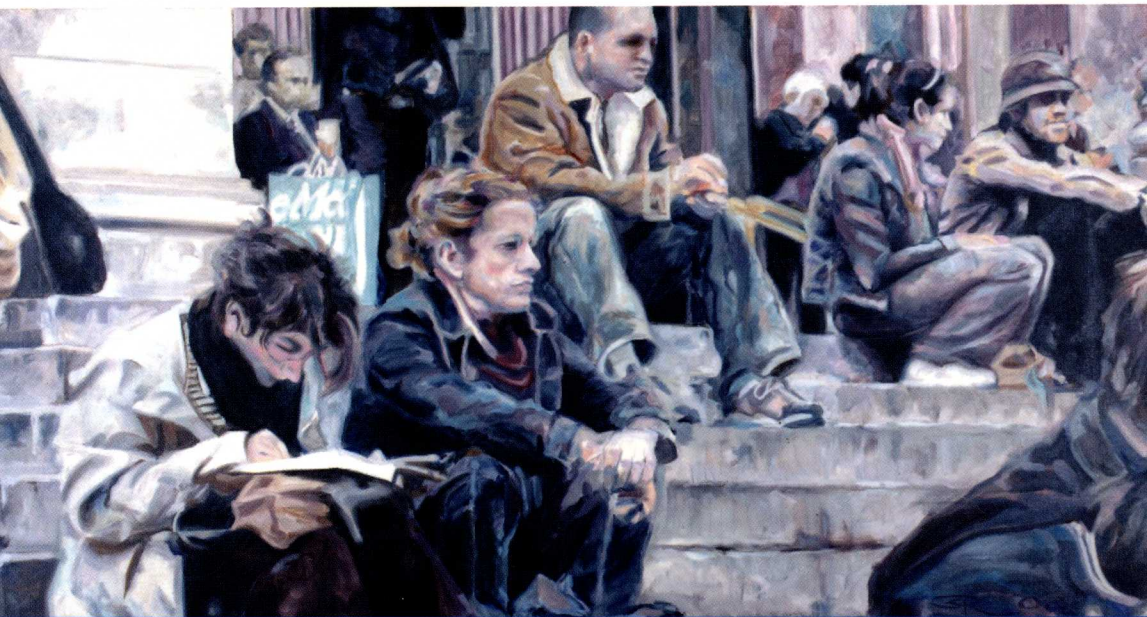


Robin Creyke | John McMillan

Control of Government Action

TEXT, CASES & COMMENTARY



2nd Edition



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Text, Cases and Commentary

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Control of Government Action

Text, Cases and Commentary

2nd Edition

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Preface

The title, *Control of Government Action*, raises three questions dealt with in this book — what is being controlled, how is it being controlled, and for what purpose? Those are large and important questions that we shall not attempt to answer in this preface. But a word or two on how we have sought answers may be helpful.

The controls on government action are numerous and varied. They comprise not only the familiar external oversight agencies (such as courts, tribunals and ombudsman offices), but also internal controls, executive practices, common law traditions, constitutional rules and concepts, public law theories, and review criteria and standards. A selection of each of those influences and controls is covered in this book.

Australia, with a federal system, has nine governments; there are important differences in the controls applying to each government. This book cannot map all those differences, but draws attention in an illustrative way to many of them.

What makes the topic of this book so engaging is that there is room for many different views on how government action should be controlled. We have endeavoured to approach all issues in a balanced and dispassionate fashion by pointing to the scope for divergence. It is not feasible in a work of this kind to be comprehensive and to capture all opinions: our limited aim is to emphasise that competing and credible views abound on every topic.

This book is principally designed as a teaching casebook to be used in university courses on administrative law. Cases and journal extracts have been heavily edited to make them pithy, interesting and focussed on generic principles that apply to government administration. That has been done at times by leaving out footnotes and other references, joining paragraphs, including only some of the points made by a writer, dividing cases between different chapters, and repeating some extracts in more than one place. In deciding what cases and extracts to include, their illustrative and teaching value was a factor. Sometimes that meant including single-judge decisions that do not necessarily have the weight of authority of full court decisions that sit alongside them. We have endeavoured not to misrepresent or over-simplify the law, but we advise caution in relying on the extracts in the book beyond the teaching environment.

Our second aim was to provide a text that would be useful in government and to practitioners. We have been delighted that this second objective has met success. It

confirms our view that the best way to understand the complexity and subtlety of administrative law is approach it broadly, looking at examples drawn from the many different circumstances in which it applies, and at opinions expressed by a variety of commentators. For that reason we have often referred to more examples than would be necessary in a simpler text directed only at students.

There is also more textual discussion and analysis in this book than in some other teaching casebooks. We think that is unavoidable in a book on administrative law. Such a work should explain how generic principles apply through multiple avenues of review to areas of government that are as diverse as taxation, housing, immigration, customs, native title, heritage protection, urban planning, public sector employment and foreign relations. We have sought to capture the diversity of voices by short quotes and summaries.

We owe a great debt to numerous colleagues, students and friends who helped to shape the ideas presented in this book. In addition to those listed in the first edition of this book, we specially mention the research assistants who provided exceptional support for this second edition — Tom Smyth, David Ananian-Cooper, Will Bateman and Trevor Moses. Special thanks are also due for perceptive comments received from Stephen Argument and Jeffrey Barnes of La Trobe Law School, who pointed to infelicities in the first edition and to content discussion that could be improved.

Over many years the staff of Butterworths, later LexisNexis, have been singularly supportive and generous to the authors: we have worked especially closely for this edition with Linda Boer.

Administrative law evolves and changes in response to trends in government, law and community expectations. Instances come to mind already as to how this book could be presented differently. Future editions provide an opportunity to include developments, corrections, refinements, improvements and reconsiderations. We welcome the comments of readers.

May you share the interest and stimulation that we have found in public law.

Robin Creyke
John McMillan
June 2009

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