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# Editorial

General Editors: Matthew Groves and Greg Weeks

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## THREE GIANTS OF AUSTRALIAN ADMINISTRATIVE LAW HONOURED

On 7 February 2022, the Australian National University awarded degrees of Doctor of Laws *honoris causa* to three of its Emeritus Professors: Robin Creyke, John McMillan and Dennis Pearce. Professors Creyke, McMillan and Pearce have been honoured for their immense contributions to Australian administrative law previously, having each been made Officers of the Order of Australia and Fellows of the Australian Academy of Law. Each has also been the subject of a *festschrift*,<sup>1</sup> a “published collection of legal essays written by several authors to honour a distinguished jurist”.<sup>2</sup> While Professors Creyke, McMillan and Pearce each have a distinguished record of public service (including as members of the Administrative Review Council and as long-serving executive members of the Australian Institute of Administrative Law), it was especially pleasing for them to be recognised as academics with connections to the ANU going back decades.

While readers of this Journal are doubtless familiar with the three new Doctors of Laws, it is worthwhile to set out some highlights from their citations in order to illustrate just how much they have contributed to the discipline of administrative law.

**Dennis Pearce** was admitted as a barrister and solicitor of the Supreme Court of South Australia and the High Court of Australia in 1963 and joined the ANU Law Faculty in 1968. He was appointed as a Professor in 1981 and twice served as Dean before his retirement in 1996. Dennis chaired a discipline review of Australian Law Schools between 1985 and 1987 and the resulting, five-volume *Pearce Report*<sup>3</sup> reshaped the teaching of law in Australia. Professor Pearce served as Commonwealth and Defence Force Ombudsman from 1988 to 1991 and has served on a number of tribunals. His career in public service alone justifies the honours Dennis has received (and was the primary reason for him being awarded a Centenary Medal in 2001). He also practised as a consultant to HWL Ebsworth for many years. However, administrative lawyers will know him best for his considerable and continuing academic work. Dennis Pearce is the author of “two books that have for a very long time sat on the shelves of most practising public lawyers in Australia”:<sup>4</sup> *Statutory Interpretation in Australia*<sup>5</sup> and *Delegated Legislation in Australia*.<sup>6</sup> More recently, Dennis has written a stand-alone book on Acts Interpretations Acts.<sup>7</sup> He is also the author of the essential work on the Administrative Appeals Tribunal (AAT),<sup>8</sup> without a copy of which few practitioners ever enter the AAT.<sup>9</sup> Dennis Pearce has been a mentor to many lawyers, both

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<sup>1</sup> See AJ Connolly and D Stewart (eds), *Public Law in the Age of Statutes: Essays in Honour of Dennis Pearce* (Federation Press, 2015); G Weeks and M Groves (eds), *Administrative Redress In and Out of the Courts: Essays in Honour of Robin Creyke and John McMillan* (Federation Press, 2019).

<sup>2</sup> M Taggart, “Gardens or Graveyards of Scholarship? Festschriften in the Literature of the Common Law” (2002) 22 *Oxford Journal of Legal Studies* 227, 227; M Taggart, “Turning the Graveyard of Scholarship into a Garden: the Indexing of Common Law Festschriften” (2006) 17 *PLR* 90, 91.

<sup>3</sup> D Pearce, E Campbell and D Harding, *Australian Law Schools: A Discipline Assessment for the Commonwealth Tertiary Education Commission* (1987).

<sup>4</sup> Justice S Gageler, “Book Launch: Delegated Legislation in Australia (4th ed)” (Canberra, 3 December 2012). With respect to his Honour, it is more likely that the current editions of those books have sat on the desks of many practising lawyers since they were first published.

<sup>5</sup> See now DC Pearce, *Statutory Interpretation in Australia* (LexisNexis Butterworths, 9th ed, 2019). For a long time, this book was known simply as *Pearce and Geddes*, in reference to Dennis and his long-term co-author, RS (Harry) Geddes.

<sup>6</sup> See now DC Pearce and S Argument, *Delegated Legislation in Australia* (LexisNexis Butterworths, 5th ed, 2017).

<sup>7</sup> DC Pearce, *Interpretation Acts in Australia* (LexisNexis Butterworths, 2018).

<sup>8</sup> DC Pearce, *Administrative Appeals Tribunal* (LexisNexis, 5th ed, 2020).

<sup>9</sup> Professor Peter Cane referred to that book as “invaluable”: P Cane, *Administrative Tribunals and Adjudication* (Hart Publishing, 2009) viii. Others have concurred: J Boughey, E Rock and G Weeks, *Government Liability: Principles and Remedies* (LexisNexis, 2019) 182.

academics and practitioners, all of whom will consider his recognition as a Doctor of Laws thoroughly merited.

**John McMillan** is a graduate of the ANU Law School who became an associate to Sir Anthony Mason while he was a Justice of the High Court of Australia. John spent four years as a lecturer at UNSW before commencing his academic career at the ANU in 1983, where he was eventually promoted to Professor and from which he retired in 2010. John's career in public interest advocacy can be traced back to his time as a student and he was a foundation member of the Freedom of Information Campaign Committee in the 1970s. He played a leading role in making the case for the enactment of the *Freedom of Information Act 1982* (Cth) and it is significant that John went on to have a key position in that statutory scheme as the first Australian Information Commissioner, between 2010 and 2015.<sup>10</sup> To many, John McMillan is best known for his time as Commonwealth Ombudsman between 2003 and 2010. He had earlier been an investigator in that office under the leadership of the inaugural Commonwealth Ombudsman, Jack Richardson (the first of three ANU Professors to serve in that role). John served as an Executive Member of the Australian and New Zealand Ombudsman Association and as the Chair of the Pacific Ombudsman Alliance; the role of Ombudsmen has also been the subject of numerous influential academic publications.<sup>11</sup> John had a successful legal career, including during a long association with Clayton Utz. He is a remarkably generous colleague who has been accorded rock star status by every group of students to whom he gives a guest lecture (inevitably, he is a very hard act for the full-time lecturer to follow).

**Robin Creyke** gave the address to the graduating students after receiving her Doctorate of Laws<sup>12</sup> and reflected that she took up public law in part so that she would not be "typecast" as a family lawyer. How fortunate that she made that choice. Robin is a graduate of the University of Western Australia, where she topped the graduating class of the Law Faculty in her final year. She has been a legal practitioner for over 50 years and started her academic career at the ANU Law Faculty as a lecturer in 1973. She later became the Alumni Chair of Administrative Law and held a number of other leadership roles prior to her retirement from teaching. Robin's expertise in administrative law covers a broad range of subjects but she has written frequently on tribunals<sup>13</sup> and she has been appointed to serve on several (including the AAT and the ACT Civil and Administrative Tribunal) by State, Territory and federal governments. She was appointed as the Integrity Advisor to the Australian Taxation Office between 2006 and 2009, a Commissioner of the ACT Independent Competition and Regulatory Commission and has been an advisor to the Australian Law Reform Commission in three separate inquiries. Robin's dedication to public service has seen her establish and serve on various community bodies (including the ACT Citizens' Advice Bureau and the Welfare Rights and Legal Centre) which have made important contributions to the Canberra community. She has published several textbooks, possibly the best-known of which is *Control of Government Action*, which she continues to write with Professor John McMillan.<sup>14</sup> Robin is

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<sup>10</sup> At the time of the Office of the Australian Information Commissioner being defunded, it was remarked that "it is hard to nominate anybody who has done more to give Australians access to government information over the course of the last 40 years. His role as Australian Information Commissioner is, in many ways, the pinnacle of Professor McMillan's outstanding career": G Weeks, "Editorial: The Closure of the Office of the Australian Information Commissioner" (2014) 342 *Australian Administrative Law Bulletin* 5, [8710].

<sup>11</sup> See, eg, J McMillan, "The Ombudsman and the Rule of Law" (2005) 44 *AIAL Forum* 1; J McMillan, "The Ombudsman in Australia: Flourishing, Expanding, Diversifying, Innovating" in M Hertogh and R Kirkham (eds), *Research Handbook on the Ombudsman* (Edward Elgar, 2018) 436.

<sup>12</sup> See Australian National University, *ANU Recognises Three Public Law Scholars with Honorary Doctorates* (16 February 2022) <[https://law.anu.edu.au/news-and-events/news/anu-recognises-three-public-law-scholars-honorary-doctorates?mc\\_cid=69d5db3a52&mc\\_eid=d84742dd2a](https://law.anu.edu.au/news-and-events/news/anu-recognises-three-public-law-scholars-honorary-doctorates?mc_cid=69d5db3a52&mc_eid=d84742dd2a)>.

<sup>13</sup> See, eg, R Creyke, "Tribunals: Divergence and Loss" (2001) 29 *Federal Law Review* 403; R Creyke, "Tribunals and Merits Review" in M Groves (ed), *Modern Administrative Law in Australia: Concepts and Context* (CUP, 2014) 393; R Creyke, "Australian Tribunals: Impact of Amalgamation" (2020) 26 *AJ Admin L* 206.

<sup>14</sup> The current edition is R Creyke, M Groves, J McMillan and M Smyth, *Control of Government Action: Text, Cases and Commentary* (LexisNexis, 6<sup>th</sup> ed, 2022).

a tireless colleague who has given much to subsequent generations of administrative lawyers, including through her thorough and perceptive contributions as a supervisor and examiner of PhD theses.

The General Editors of this Journal are proud to call these three extraordinary scholars our friends and to record some of their extensive and remarkable achievements. Administrative lawyers in Australia and around the world owe them each a debt of gratitude.

## **CHANGES TO THE JOURNAL**

This volume of the Journal will see a new team take over the editorship of the Current Issues section, which now includes case notes. **Nathalie Ng** has expanded her role from that of Case Notes editor and is joined by **Sarah Lim** and **Steven Gardiner**. All three are legal practitioners and gifted administrative lawyers. The section will be in safe hands.

The new team is fortunate to build on the skilful work of the previous editors of the Current Issues section. **Katie Miller**, **Justin Davidson** and **Stephen Tully** have stepped down from their editorial roles after many years of excellent service to the Journal. We record our thanks to each of them for their hard work and dedication.

We also farewell **Mark Robinson SC**, who has been a member of the Editorial Board for several years. It is perhaps a mark of his stature as an administrative law practitioner that he will be replaced by two new appointments to the Editorial Board: **Justice Rachel Pepper** and **Professor Paul Daly**. We welcome them to the Journal and thank Mark for his service.