

## BOOK REVIEW

### *Administrative Law: Context and Critique*

Michael Head (2012) The Federation Press, Sydney. I.S.B.N. 978 1 862 878 846

Despite the adage, one is sometimes prone to lay eyes upon the cover of a book, and make assumptions about its contents. In this case, the appearance of Professor Michael Head's latest edition of *Administrative Law: Context and Critique* appears to embody that which it is: colourful and manageably sized. The book's physical appearance suits its purpose well; it is well-designed to attract the primary target audience – students – who may be venturing nervously into the realm of administrative law for the first time.

The author recognises this book as a product of his time teaching at the University of Western Sydney, and so its usefulness to students is a primary concern. It commences with a chapter which is essentially a disclaimer: what the reader can expect to glean from the text. Professor Head says in the preface that the work attempts to marry pithy summaries of current administrative law with the social, political and constitutional context from which those principles have sprung. It is a union which works well.

The author promotes a realistic view of administrative law practice, starting with high-profile and thought-provoking cases, and working his way out into the more technical realms of administrative law. Its usefulness as a general resource to students is amplified by the inclusion of prompting discussion questions, final exam tips, tables, charts and bridging paragraphs which outline key processes of administrative law and related topics. The paragraph on principles of statutory interpretation was a valuable addition: it is a highly relevant topic, too readily overlooked by other texts (perhaps because it is a substantial discipline of enquiry in itself). Nevertheless, these are handy resources for students. While these particular features are unlikely to assist practitioners greatly, they cement the book's utility as a first reference for new students of administrative law, who are in search of a holistic perspective.

However, it would be wrong for me to imply by way of omission that this book is only of use to students. It is a probative sort of a book, which scratches away at case law in search of the underlying themes and directions of administrative law. It encourages the reader to think broadly, to think beyond what precedent says and consider as well what it means. In that regard it is not only useful to students, but practitioners as well. If I may indulge myself in a platitude or two: it would be a strange world where novel legal argument could be sustained by practitioners who simply knew the current state of the law, and render up no further thought. The context provided by Michael Head may elucidate some trend or gap or growth in the law, some point of nuance or idiosyncrasy, which may be of use to the practitioner. Such is the author's penchant to keep one eye on the current location of the law, but the other eye on its next destination.

In this regard, Professor Head's track record is quite impressive. The book addresses key decisions in the field since the release of the last edition in 2008. It is, I think, reflective of great skill that the author has managed to retain a paragraph entitled Expanding executive power more or less unchanged between editions but for an additional mention of the 2009 High Court case of *Pape v Commissioner of Taxation*.<sup>1</sup>

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<sup>1</sup> (2009) 238 CLR 1.

It is as if the case was simply designed to affirm the trend which the author has identified.

This ability flows from the author's strong commitment to the context, history, and evolution of administrative law. Too often, books which are intended for students dispense with history in chapter one, before turning exclusive focus over to "the law" as it is presently understood. The author does well to resist this temptation. Head abandons the typical temporal disconnect between past law and current law, preferring instead to treat it as a process of evolution. In doing this, the author goes to some lengths to capture and retain the reader's interest in the subject matter, punctuating topics of law with quotes and interesting asides, delivering concise summaries of the law while prodding students to think laterally about the subject matter.

I do not think it is unfair to say that Michael Head's context and critique of administrative law engages a healthy scepticism of the expansion of executive power. So much is apparent through his treatment of topics which avert its susceptibility to review. The author's take on non-justiciability; his view of cases such as *Plaintiff M61/2011E v Commonwealth*<sup>2</sup> and *Commissioner of Taxation v Futuris*;<sup>3</sup> and his questioning whether the most recent changes to freedom of information laws do indeed go far enough, reveal an inquisitive attitude towards official power and to what degree it should appropriately be fettered.

I have approached this book review predominantly from the perspective of students – after all, that is its stated purpose. Professor Head suggests that it is best consumed with *Douglas and Jones' Administrative Law* as an accompaniment. As a student, this seems like sage advice. There are areas of administrative law where this text would be too "light on" for examination purposes, and that is because the text is exactly what it claims to be—context and critique. It does not purport to be a comprehensive guide to Australian Administrative Law, nor do I think that was the author's intention.

Michael Head's 2007 article '*Deep Learning and 'Topical Issues' In Australian Administrative Law*',<sup>4</sup> seems to me to evince an intention quite distinct from simply stating the law with authority. I expect that Professor Head's true intention is to continue refining his methods of addressing the problems in teaching administrative law, which he outlined in that article. He does this by inviting students to engage with relevant examples, and prompting them to discuss and question their discoveries.

The cumulative effect is that students are helped to overcome the conceptual difficulties typically associated with administrative law, so that they are enabled to lay a foundation of core understanding. Upon that foundation more elaborate structures of administrative law knowledge may then be built. Such structures are not the author's concern; indeed, it may be possible that some talented students can build these structures without assistance. But the vast majority of students will find such structures much easier to build and far sturdier with the benefit of Michael Head's solid foundation.

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<sup>2</sup> (2010) 243 CLR 319.

<sup>3</sup> (2008) 237 CLR 146.

<sup>4</sup> Michael Head, 'Deep learning and 'topical issues' in teaching administrative law' (2007) 17(1) *Legal Education Review* 159.