

PUBLIC LAW REVIEW

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ISDS: Litigating the judiciary – *Chief Justice Robert French AC*

This article concerns investor-state dispute settlement (ISDS) clauses in international investment agreements and their interaction with domestic courts. The issues are of global concern and, whether by argument or calibration of the way ISDS works, at least in relation to developed court systems, they require ongoing active consideration. 155

ARTICLES

The argument for a constitutional procedure for Parliament to consult with Indigenous peoples when making laws for Indigenous affairs – *Shireen Morris*

This article argues for a procedural amendment to the Constitution, establishing an Indigenous body to consult with and advise Parliament in its law-making for Indigenous affairs. First, it argues that such a reform would address the unjust omission of the Indigenous constitutional constituency from the check and balance machinery of Australia's federal Constitution. Secondly, this could be an alternative, preventative way of addressing the problem of racial discrimination against Indigenous people, responding to Indigenous concerns for better democratic participation and consultation, as well as to judicial activism and legal uncertainty concerns associated with judicially adjudicated constitutional rights clauses. Thirdly, it could be a practical application of Indigenous self-determination principles within Australia's domestic democratic arrangements. The final section explores practical legal and political considerations: whether the procedure could be drafted to be non-justiciable, the implications of non-justiciability and a discussion of Professor Anne Twomey's proposed draft amendment; what historical lessons can be drawn from the Inter-State Commission and ATSIC that are relevant to the design and success of an Indigenous constitutional body; and what are the possible political objections to this reform proposal. 166

Advice to vice-regal officers by crown law officers and others – *Anne Twomey*

Much has been written about the appropriateness of judges advising the Governor-General, but little consideration has been given to when the Governor-General might need legal advice about the exercise of his or her powers and who might appropriately give it.

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| This article addresses the distinction between formal and informal advice to vice-regal officers and the issues that arise when such advice is given by the Attorney-General, the Solicitor-General and legal or political experts. These include whether a Solicitor-General should be confined to giving legal advice, rather than policy advice, and whether the Solicitor-General must advise the government of the nature of the advice or even that it has been requested and given. | 193 |
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