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ARTICLES

RETIREMENT OF THE HON PETER W YOUNG AO QC: SEVENTH EDITOR OF THE AUSTRALIAN LAW JOURNAL

Hon Michael Kirby AC CMG

Justice Peter Young has stood down as General Editor of the ALJ, after a record 24 years service. In this reflection, the author (who also farewelled his predecessor J G Starke QC) notes the remarkable features of Peter Young's service to the ALJ. It included monitoring and reporting on changes in the law and judiciary over more than two decades; providing regular notes on the growing impact of technology and changing values on the law; attempts to cater for the vast and diverse interests of the Australian legal profession; and adjusting to the growing demands of digital law. The fact that the editorial duties were performed alongside extremely busy judicial activities, as well as writing important legal texts and participating in legal education and Church affairs, speaks volumes for his fidelity to duty and devotion to work for others. A few hints are offered on the possible future interests and activities of Peter Young, to whom Australian lawyers owe a huge debt of gratitude. 316

THE INTERACTION OF STATUTE LAW AND COMMON LAW

Hon Sir Anthony Mason AC KBE GBM

This is a tripartite discussion of the interaction between common law and statute. Part I deals with the constitutional dimension, demonstrating ways in which the Constitution shapes and influences the content of the common law, just as it impacts upon statute law. Most notably the Constitution constrains the principles of statutory interpretation and mandates a "uniform" common law. Part II illustrates the way in which the common law moderates legislative intention by presumption and rules of statutory interpretation. Part III discusses analogical development of the common law by reference to statute and likewise common law development by reference to statutory policy. The discussion identifies the considerations relevant to such development, including the doctrine of coherence and the relevance of statutory intention. 324

CONTOURS AND PROSPECTS FOR INDIGENOUS RECOGNITION IN THE AUSTRALIAN CONSTITUTION AND WHY IT MATTERS

Fr Frank Brennan SJ AO

The Australian Constitution does not mention Aboriginal and Torres Strait Islander peoples. Amendment of the Constitution is notoriously difficult to achieve. The 1967 referendum deleted the two adverse references to Aboriginal people. The 50th anniversary of that referendum provides an impetus for the Australian Parliament to consider a further referendum after the 2016 election. The 2012 Expert Panel recommended the insertion of a racial non-discrimination clause in the Constitution. Such a clause is unworkable and unachievable. Constitutional recognition of an Indigenous body advisory to Parliament has also been suggested. A legislative trial of such a body is warranted and should precede any attempt at constitutional entrenchment. The preamble of the Commonwealth of Australia Constitution Act should not be altered. A preamble for the Constitution should be considered only when it is severed from the Imperial Act. Now is the time to consider the insertion of an Acknowledgment of Aboriginal and Torres Strait Islander peoples, their history and aspirations at the commencement of the Constitution. The Commonwealth Parliament's s 51 power to make laws could then include the power to make laws with respect to the peoples and matters acknowledged. ... 340

HOW SHOULD ACADEMIA, THE PRACTISING PROFESSION AND THE COURTS
ASSIST EACH OTHER IN THE EDUCATION OF AUSTRALIAN LAWYERS?

Ailsa McKeon

This article identifies four proposals for increased engagement between academia, the practising profession and the courts for the furtherance of Australian lawyers' education. These proposals are, in sum: increased involvement between professional regulation bodies and university students; greater emphasis on critical thinking and problem-solving skills through taught law courses and pro bono activities; greater student engagement with the operation of courts and tribunals; and the training of solicitors from law firms by those within community legal centres in relation to their pro bono activities. The philosophical foundations of the law support such steps, which would be of direct advantage to students and broader benefit to the community.

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