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GOVERNMENT AND POLITICAL MATTERS: “LANGE” SEVEN YEARS ON

Paul Heywood-Smith QC

The High Court’s decision in <i>Lange v Australian Broadcasting Corporation</i> (1997) 189 CLR 520 was a landmark step in the development of freedom of speech in political discussion. Many questions remained unanswered however and a spate of recent Full Supreme Court decisions evidences the uncertainty that remains over the availability of the defence. This article identifies those questions and considers their possible resolution.	22
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IMPLIED LIMITATIONS ON LEGISLATIVE POWER IN THE UNITED KINGDOM

Anne Twomey

The ban on fox-hunting in the United Kingdom provoked large protests and a number of legal challenges. The English Court of Appeal and the House of Lords, while upholding the validity of the Hunting Act 2004 (UK), added to the controversy by accepting that the courts could determine the validity of an Act of Parliament, contrary to the accepted principle of parliamentary supremacy, and that there were implied limitations on the power of the Westminster Parliament to enact laws under the Parliament Act 1911 (UK). For good measure, the courts added warnings about the use of the Parliament Act to push through “undemocratic” measures. This article examines the judgments and draws parallels with the position in Australia.	40
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BUILT ON QUICKSAND: THE PURCHASE MONEY SECURITY INTEREST UNDER THE GENERAL LAW

Gerald Ng

Australian courts, most significantly in <i>Sogelease Australia Ltd v Boston Australia Ltd</i> (1991) 26 NSWLR 1, have accepted the principle that if a loan is made to finance a purchase on the understanding that a charge or security will be given, the purchaser acquires legal title to the property subject to that security, which would thus prevail over, say, an earlier security on the purchaser’s after-acquired property. This article examines	
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the various lines of reasoning employed in the decided cases to derive that principle. It will be seen that none of them provide support for so broad a proposition as that which the courts have recognised, either because they are founded on questionable premises or because they are engaged only in limited circumstances.	53
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STATUTORY WILLS IN AUSTRALIA: WILLS FOR PERSONS LACKING CAPACITY

John Hockley

The need for statutory wills to be made by judges for persons lacking capacity has been recognised in Law Reform Commission Reports in New South Wales and Victoria for a number of years. Legislation enabling statutory wills was enacted in Victoria in 1998. In 2004 the first case on this legislation reached the Victorian Court of Appeal. This case illustrated some difficulty with the wording of the sections in the Victorian Act. Legislation on statutory wills is proposed for Queensland and Western Australia. In Western Australia, rather than adopt the Victorian model, it is proposed to follow the English legislation with its greater certainty. In New South Wales, further consideration is being given to the introduction of statutory wills.	68
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