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# Australian Law Journal

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# THE AUSTRALIAN LAW JOURNAL

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## ARTICLES

### THE CONSTITUTIONAL DECISIONS OF THE FOUNDING FATHERS

**Murray Gleeson**

Knowledge of the historical context in which the Constitution was written may aid an understanding of its meaning, but the legal relevance of the subjective beliefs of individuals who participated in its drafting is another matter. Five of the Founding Fathers became members of the High Court, and in that capacity they were obliged to make decisions about the meaning of the instrument they had helped to create. These decisions show that in important respects they had different opinions about what the Constitution meant, and they disagreed about some of the basic principles that were to guide its interpretation. On occasion, they accused each other of departing from the intentions of the framers. The decisions also show that the framers of the Constitution well understood that it was to apply in future circumstances which they could not foresee. What is legally relevant is text and context, not subjective belief or understanding. .... 791

### AUSTRALIA AND THE WORLD TRADE ORGANIZATION: DECISION ENFORCEMENT

**Justice Brian Tamberlin and Lucas Bastin**

International tribunals suffer from an inability to enforce decisions. The World Trade Organization is an exception. It has a detailed system in place to monitor and compel compliance. Australia has successfully engaged with the World Trade Organization dispute settlement system. Two cases, EC – Sugar and EC – Trademarks, exemplify the way in which Australia has litigated international trade claims in order to maximise benefits for Australian exporters. In addition, Australia has sought to improve the dispute settlement system through proposals for reform. .... 802

### ABOLISHING THE CRIME OF TREASON FELONY

**Graham S McBain**

A previous article in this Journal advocated abolishing the crime of treason: see McBain GS, “Abolishing the Crime of Treason” (2007) 81 ALJ 94. If so, it becomes pertinent to ask – what about treason felony? This crime was invented by statute in England in 1848. Certain constructive treasons under the Treason Act 1351 had been made substantive treasons by the Treason Act 1795. However, with the gruesome punishment for treason (hanging, drawing and quartering) and juries being reluctant to convict, certain treasons under the Treason Act 1795 were “downgraded” to treason felonies, with the lesser punishment of transportation. The Treason Felony Act 1848 was incorporated into the legislation of many Commonwealth countries. It remains extant both in England and elsewhere. This article argues for its abolition, with one offence being modernised, but not being termed treason felony. .... 812

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