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(2010) 84 ALJ [page]

The Australian Law Journal is a refereed journal.

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84 ALJR [page]

THE AUSTRALIAN LAW JOURNAL

Volume 84, Number 8

August 2010

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AUSTRALIA JOINS THE HAGUE SERVICE CONVENTION

Gina Elliott and David Hughes

The Hague Service Convention will come into force for Australia on 1 November 2010. The Convention presently has 61 states parties, and is the most important multilateral convention in the field of transnational services of process. This article sets out the main features of the Convention, including when it applies, the manner in which the

Convention will interact with Australian law, and the methods provided by the Convention for the transmission of documents for service abroad. The article also discusses foreign case law that has developed in connection with key issues that arise under the Convention. 532

SPECIAL HEARINGS UNDER THE CRIMES ACT: A POTENTIALLY
MISCONCEIVED ADVENTURE

Rashelle L Seiden and Siddharth Chandrasekaran

In circumstances where an accused is unfit to stand trial, Div 6 of Pt IB of the Crimes Act 1914 (Cth) strikes a balance between the rights of the accused to have criminal proceedings against him or her determined and the rights of the community to see justice done, by instituting a “special hearing”. The hurdles arising from the incapacity of the accused may be insurmountable and the “special hearing” may be unable to overcome the inability of the accused to participate in a proceeding in which his or her liberty is at stake. Consequently, whether this procedure is an exercise of “judicial power” and thereby capable of authorising punitive detention is, in light of the authorities, open to question. 553

FROM MOTLEY PATCHWORK TO SECURITY BLANKET: THE CHALLENGE OF
NATIONAL UNIFORMITY IN AUSTRALIAN “SECURITY OF PAYMENT”
LEGISLATION

Matthew Bell and Donna Vella

The modern form of legislation designed to achieve “security of payment” within the building and construction industry was introduced into New South Wales in 1999. The primary aim was to ensure that cash flow was maintained for all participants in the contractual chain. A decade later, legislation based upon the New South Wales model is in place in all States and Territories and there is a substantial body of case law governing how the Acts work in practice. At the same time, however, significant differences in approach across jurisdictions as to key planks of the legislative platform have the potential to defeat its original intent. This article proposes, therefore, that the Australian construction industry faces a moment of decision as to the future of such legislation. 565

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THOMSON REUTERS

© 2010 Thomson Reuters (Professional) Australia Limited ABN 64 058 914 668

Lawbook Co.

Published in Sydney

ISSN 0004-9611

Typeset by Thomson Reuters (Professional) Australia Limited, Pyrmont, NSW

Printed by Ligare Pty Ltd, Riverwood, NSW