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**Separation of Powers – Dialogue and Deference** – *John Basten*

This article is an edited version of the 2017 Harry Whitmore Lecture, under the auspices of the Council of Australasian Tribunals, delivered on 17 October 2017. It explores whether there is a role for a doctrine of deference in dealing with legislation and administrative decision-making. While many judges have been squeamish about the language of “deference”, the author argues that there is a legitimate interest in exploring the process by which “constructional choices” are made. .... 91

**Tale of Two Characters – The Paradoxical Application of the Character Test between Visa Holders and Applicants for Australian Citizenship** – *Jason Donnelly*

Applicants for Australian citizenship must demonstrate that they are persons of good character. Under current Australian law, applicants who fail to meet the character test under the *Australian Citizenship Act 2007* (Cth) continue to hold their permanent residency visas. In that context, this article broadly advances two essential arguments. First, it is contended that where a non-citizen fails the character test under the *Australian Citizenship Act 2007* (Cth), such a finding demonstrates that the non-citizen also fails the first limb of the character test under ss 501(2) and 501(6)(c) of the *Migration Act 1958* (Cth). In support of this contention, it is demonstrated that similar legal principles are relied upon by decision-makers in applying the character test under both pieces of legislation. Second, this article argues that where a non-citizen is determined to have failed the character test under the *Australian Citizenship Act 2007* (Cth), a mandatory legislative obligation should be imposed on the Minister for Home Affairs to consider whether the non-citizen’s permanent residency visa should also be cancelled on character grounds under s 501(2) of the *Migration Act 1958* (Cth). .... 104

**Procedural Fairness in Application Cases: Is Compellability of Consideration a Critical Safeguard? – *Emily Hammond***

The proposition that governmental actors must extend procedural fairness to applicants for statutory rights, subject only to clear contrary legislation, has become a background assumption of Australian administrative law. However, experience in the migration context highlights a form of legislation that disrupts the presumptive operation of procedural fairness in application cases – namely, legislation for procedural non-compellability. This article describes how non-compellable powers disrupt the presumptive operation of procedural fairness in application cases. Drawing on this analysis, it proposes that an effective doctrinal response to the phenomenon will require courts to re-engage with the common law foundations for procedural fairness to applicants. .... 122

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