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ARTICLES

Arbitration of Treaty of Waitangi Settlement Cross-Claim Disputes – *Amokura Kawharu*

Māori have long participated in commercial arbitration, often as landlord in rent review arbitrations. Māori participation in these arbitrations is not especially distinctive. Recently, Māori have also participated in arbitrations involving inter- and intra-tribal disputes over the allocation, distribution and governance of *Treaty of Waitangi* settlements with the New Zealand Crown. The use of arbitration in this context has promise as well as certain drawbacks. The article examines two such arbitrations and the post-award litigation associated with them. It argues that, despite efforts to integrate Māori law into the common law, arbitration provides a more effective means by which Māori can secure the expression of cultural values in dispute resolution, including the application of Māori law. It also argues that the success of arbitration of these disputes rests on ordinary principles, including respect for party autonomy and adherence to the inherent procedural attributes of the arbitral process. 295

Anti-democratic Political Parties as a Threat to Democracy: Models of Reaction and the Strategic Democracy – *Antonios Kouroutakis*

There is a consensus among policymakers, lawmakers, legal scholars and “we the people” in the western world, that democracy is a blessing. However, how do we defend democracy from anti-democratic political parties that aim to overthrow the democratic regime by abusing the guarantees and the tolerance of democracy? This article argues that there are three public policy options: the traditional model that permits the dissolution of anti-democratic political parties; the business as usual model, that regulates such parties with ordinary administrative law and controls the conduct of their members via ordinary criminal law; and finally, the strategic model that employs an electoral system according to which political parties, like the anti-democratic, having more enemies than supporters are ostracised. That said, this article argues that while electoral law is the most rule-of-law based mechanism to safeguard democracies from anti-democratic parties, not all electoral systems are capable. Only the electoral systems that allow for “strategic voting” can be employed for this purpose. 310

“Silent Members of Society”?: Public Servants and the Freedom of Political Communication in Australia – Kieran Pender

This article considers constitutional limitations on the regulation of Australian public servants’ political expression. It begins by analysing current regulation, arguing that the *Public Service Act 1999* (Cth) cannot be read down to avoid constitutional concerns. The article thus assesses the statute’s validity, highlighting the inadequacies of constitutional and administrative review in undertaking this task. It therefore proposes a novel as-applied approach for determining compliance with the implied freedom of political communication. As the High Court prepares to hear *Comcare v Banerji*, this article offers a sophisticated framework to address shortcomings in the existing law. 327

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