

PUBLIC LAW REVIEW

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ARTICLES

The Amenability of Private School Decisions to Judicial Review – James J Anson-Holland

The question of whether private school decisions are amenable to judicial review has yet to be answered in New Zealand. This article discusses conflicting judicial and academic debate within the Commonwealth in order to conclude that private education is sufficiently public to attract judicial review and that, in any event, its contractual context justifies equivalent procedural protections as an implied term. 106

How and When Can a Constitutionally Valid Statute Become Invalid? – Ben Ye

When a law is found unconstitutional, when does its invalidity commence? Conventional wisdom in Australia suggests that an invalid law is void ab initio; there is little scope for a law to start its life as valid but subsequently become invalid. By contrast, a law initially valid under the defence power can become invalid after the war's conclusion. Through a comparative analysis of the case law of the High Court and the US Supreme Court, this article argues that while the void ab initio doctrine may be the common and default approach to invalidity, the concept that an initially valid law can subsequently become invalid enjoys sound constitutional foundation in Australia. Applicable to both Commonwealth and State legislation, such a concept applies when a law's validity is contingent upon some constitutional fact. 120

Minority Government and the Validity of Standing Order Requirements for Absolute Majority Votes – Anne Twomey

The Commonwealth Constitution provides that any question arising in a House of the Commonwealth Parliament shall be determined by a simple majority. Yet if a government slips into minority and the Opposition can muster a simple majority to vote for a private member's Bill, it still faces the hurdle of a Standing Order requirement for an absolute majority in order to get its Bill debated. This article discusses the constitutional validity of any Standing Order that requires a vote by a special majority. It considers the previous legal

advice on the topic, the distinction drawn between procedural and substantive votes, the question of whether a clash between the Standing Orders and the Constitution is justiciable and the difficult manner and form question of whether a House has the power to bind itself in this way.	142
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