

PUBLIC LAW REVIEW

Volume 21, Number 4

December 2010

COMMENTS

- Speech to Government Solicitors' Conference – *The Hon Justice Nye Perram*** 223
- The role of the Governor when there is a hung Parliament: The 2010 Tasmanian experience – *Michael Stokes*** 227
- Truth in political advertising – *Anne Twomey*** 232

ARTICLES

Statutory interpretation and indigenous property rights – *Sean Brennan*

Four recent decisions concerning native title and land rights confirm that the approach of the High Court to statutory interpretation has become a focal point in defining the relationship between indigenous peoples and the wider Australian community. These recent decisions and the longer-range judicial development of Australian law on indigenous property rights raise questions about the consistency with which traditional common law principles of interpretation have been applied. After more than three decades of statutory land rights in the Northern Territory, recent developments suggest a perhaps higher than suspected capacity for Australian law and politics to accommodate strong Aboriginal property rights and decision-making power. This raises questions whether the legal containment of native title by judges and politicians in the aftermath of *Mabo (No 2)* was an overreaction to uncertainty and somewhat of a missed opportunity. 239

Commentary on “Statutory interpretation and indigenous property rights” – *The Hon Justice John Basten*

Justice Basten provides a commentary on Sean Brennan’s article focusing, in particular, on statutory interpretation in the context of compulsory acquisitions. 263

Section 100 and State water rights – *John M Williams and Adam Webster*

The question of a State’s right to water from rivers that cross interstate boundaries or form the boundary between two States of Australia is one which has remained unresolved since before Federation. This article examines the drafting history behind s 100 of the *Constitution* – the only section within the *Constitution* to deal directly with water rights. The article explores the limited judicial consideration given to s 100 and concludes that if there is a right to water from interstate rivers as between States, then s 100 is not its source. In doing so, the recent case of *Arnold v Minister Administering the Water Management Act 2000* is considered. Finally, this article identifies some of the unanswered questions regarding interstate water rights. 267

DEVELOPMENTS 285

VOLUME 21 – 2010

Table of Authors	295
Table of Cases	297
Index	306

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