

PUBLIC LAW REVIEW

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COMMENTS

- The voting rights ratchet: *Rowe v Electoral Commissioner*** – *Graeme Orr* 83
- Extending the Kable doctrine: *South Australia v Totani*** – *Elizabeth Southwood* 89

ARTICLES

The interpretation provisions of statutory bills of rights: A little bit Humpty Dumpty? – *Luke Beck*

This article considers the meaning given to the interpretation provisions of the statutory bills of rights of New Zealand, the United Kingdom, Victoria and the Australian Capital Territory. The article compares the language of each instrument and the interpretations given to that language by the courts of each jurisdiction. Consideration is also given to what might explain the differing approaches to interpretation adopted in each jurisdiction. The article demonstrates that the impact of statutory bills of rights on principles of statutory interpretation can, but will not necessarily, vary enormously and does so for reasons depending very little upon the terms of the interpretation provisions themselves. These issues are significant with respect to the roles of the courts and Parliament in the protection of human rights and will be under consideration by the High Court in the appeal in *Momcilovic v The Queen*. 97

Reconceiving the separation of judicial power – *James Stellios*

The principle that courts exercising Commonwealth judicial power cannot exercise non-incidental, non-judicial power is increasingly raising difficult questions about the allocation of government power in a modern regulatory state. This principle generally limits courts exercising Commonwealth judicial power to the determination of disputes about existing rights, and imposes important constraints on judicial decision-making at both the federal and State levels. This article explains the difficulties raised by the current principles, and suggests revisions that might ease the unnecessary constraints on judicial decision-making. 113

A question of integrity: The role of judges in counter-terrorism questioning and detention by ASIO – *Rebecca Welsh*

This article considers the constitutional issues arising from the involvement of serving judges in the Australian Security Intelligence Organisation’s counter-terrorism questioning and detention warrant regime. It deals first with the role of “issuing authority” conferred on federal judges in their personal capacity (as *personae designata*), and secondly with the role of “prescribed authority” – overseer of interrogation and detention – conferred on State judges, again in their personal capacity. It is concluded that these roles would be likely to survive constitutional challenge based on Ch III of the Constitution. However, the recognition that judicial process is central to judicial power, and that this scheme is at odds with judicial process, indicates that the involvement of judges in the scheme is incompatible with judicial independence, even if the roles are in keeping with current

constitutional doctrine. Unfortunately, it is likely that judges will be increasingly involved in politically controversial, rights-offensive regimes as a matter of policy; and this will continue to erode judicial independence.	138
BOOK REVIEW	
Information Rights: Law and Practice by Philip Coppel (Reviewed by Daniel J Carr)	153
DEVELOPMENTS	157