

PUBLIC LAW REVIEW

Volume 22, Number 3

September 2011

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ARTICLES

The shield of the Crown in England and Australia: The need for statutory interpretation that applies the principle of legality – *Steven Churches*

This article charts the anthropomorphic muddle of English common law in dealing with “the Crown” and then turns to the Australian experience in understanding the ambit of Crown personality. The antipodean colonial period saw the creation of numerous corporate entities designed to perform “public” or “governmental” functions, but fabricated to be removed from direct political control. These bodies, variously boards, commissions and corporations created by statute, worked hard at personating the Crown, because such status brought the bountiful advantages at law claimed by the Crown. The judicial (and social) attitudes of deference to “the Crown” in the half century prior to federation left a lasting legacy that the new terms of the Constitution did nothing to shake. The appreciation of how the shield of the Crown is assessed has rolled into the 21st century in a blaze of 19th century assumptions and a corresponding lack of logic and analysis of Australia’s constitutional structure and statutory interpretive technique, in particular with regard to the assumption of equality under the law, and the principle of legality. 182

The 2009 amendments to the Native Title Act 1993: The extended powers of the Federal Court – *Justice John Mansfield*

This article considers the significance of amendments to ss 87 and 87A of the *Native Title Act 1993* (Cth) introduced by the *Native Title Amendment Act 2009* (Cth). It addresses the extent to which those amendments enable the Federal Court of Australia to make orders by consent reflecting the agreement between parties to claims made in relation to native title under s 61 of the *Native Title Act*, which may extend beyond the determination of native title rights and interests. It suggests that the amendments provide a significant opportunity to parties involved in such claims to reach fair and effective resolution of such claims efficiently and in accordance with the purpose and objects of the Act. It also considers the extent to which the procedures now introduced may facilitate such resolution in lieu of the procedures available under Pt 2 Div 3 by the use of Indigenous Land Use Agreements. 202

Face off: Assessing WTO challenges to Australia’s scheme for plain tobacco packaging – *Tania Voon and Andrew Mitchell*

Australia is set to become the first country in the world to implement a scheme mandating the plain packaging of tobacco products. The outcome of the scheme in Australia in the coming months and years will establish a critical precedent for both tobacco control

interests and the tobacco industry. Among the various legal and other avenues that tobacco companies and others are pursuing in challenging the scheme, the claim is frequently made that the scheme violates Australia's obligations as a member of the World Trade Organization. However, a careful analysis demonstrates that plain tobacco packaging as envisaged by Australia is consistent with all relevant World Trade Organization agreements. 218

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