

PUBLIC LAW REVIEW

Volume 30, Number 3

2019

EDITORIAL – *General Editors: Cheryl Saunders AO and Janet McLean* 171

COMMENTS – *Editor: Dan Meagher*

Sir Anthony Mason in Hong Kong: A Contribution to Public Law –
Hon William Gummow NPJ 172

Senate Committee Report on Parliamentary Scrutiny of Delegated Legislation –
Stephen Argument 178

Minister for Immigration and Border Protection v SZMTA [2019] HCA 3 –
Loretta Foran 186

ARTICLES

Disclosure, Not Disqualification: A Democratic Proposal to Promote the Fidelity of Elected Representatives to the People – *Matthew Stubbs and Adam Webster*

What is the appropriate role for public law in promoting the fidelity of elected representatives to the people? We examine the qualification (and disqualification) of representatives in five common law jurisdictions: Australia, Canada, New Zealand, the United Kingdom, and the United States. We identify requirements seeking to ensure integrity and competency, and avoid conflicts of interest. We argue all are undemocratic, because courts do not need to intervene where electors could make their own judgements as to the suitability of their representatives. To facilitate informed electoral – not judicial – choices, we propose a regime of compulsory public disclosure by candidates. 190

The Injunction in Section 75(v) of the Constitution – *Daniel Reynolds*

The seminal case of *Plaintiff S157/2002 v Commonwealth* established that the inclusion of “prohibition” and “mandamus” in s 75(v) of the *Constitution* created an entrenched minimum provision of judicial review for jurisdictional error. The third remedy listed in that provision – “an injunction” – was not considered in detail. Sixteen years later, it is still unclear what precisely the injunction adds. The argument presented in this article is that the inclusion of that remedy in s 75(v) extends the entrenched jurisdiction conferred by that provision to all cases where an injunction can, at general law, properly be sought against a public officer. 211

The Executive Power to Withdraw from Treaties in Australia – *Luke Chircop and Timothy Higgins*

While the Australian Executive’s power to enter treaties is well recognised, there had been little reason to consider the corresponding power to withdraw from treaties until the decision of the Supreme Court of the United Kingdom in *Miller*. In this article, we discuss the Australian Executive’s treaty withdrawal power, and how it might interact with

legislation enacted under the external affairs power. We argue that the treaty withdrawal power is subject to few constitutional limitations, though it may be curtailed expressly or impliedly by legislation. We also contend that it can be exercised in a way that has domestic legal consequences and, in some cases, might result in the invalidity of legislation. 229

BOOK REVIEW – *Editor: Edward Willis*

Military Law in Australia, by Robin Creyke, Dale Stephens and Peter Sutherland –
Reviewed by Samuel C Duckett White 248

DEVELOPMENTS 253