

PUBLIC LAW REVIEW

Volume 23, Number 1

March 2012

COMMENTS

- New Zealand's vote to keep proportional representation** – *Andrew Geddis* 3
- Tribunals, judicial review and the Victorian Charter** – *Matthew Groves* 9

ARTICLES

Policy, principles and guidance: Tribunal rule-making – *Linda Pearson*

The principles governing how a merits review tribunal gives consideration to a policy formulated or applied by the agency whose decision is under review are relatively well settled. Whether a review tribunal should develop its own policy in the course of exercising its adjudicative functions is less well explored, and potentially more contentious. This article considers different approaches to policy formulation in administrative review, drawing on examples from environmental and planning, and asylum, decision-making in Australia, the UK and Canada. It addresses issues of the source of the power to develop policy or guidance, types of guidance, adequacy, and the status of tribunal guidance. 16

Terrorism threat assessments: Problems of constitutional law and government accountability – *Edward Santow and George Williams AO*

This article examines the ways in which terrorism threat assessments are made, and the types of assessment that are used, especially in constitutional litigation and parliamentary debate in Australia. It then examines the constitutional consequences that can flow from the use of such assessments. Finally, the article proposes new measures that would introduce greater accountability into the making of terrorism threat assessments. 33

Appointing the first Australian-born Governor-General: Legal and vice-regal opposition – *John Waugh*

Archival sources that have become available in recent years deepen our understanding of the controversy that surrounded the nomination in 1930 of Sir Isaac Isaacs as the first Australian-born Governor-General of the Commonwealth of Australia. A chorus of elite Australian lawyers told King George V and the public that the appointment of Isaacs on the advice of the Australian Prime Minister would be invalid under the Australian Constitution. Their views, and those of other critics, were relayed by State Governors and the outgoing Governor-General, who added comments revealing their anti-Semitic hostility to Isaacs and their determination to oppose the appointment regardless of the views of the governments that advised them. For these lawyers, the imperial connection pervaded the Constitution, and only constitutional amendment could enable Australian ministers to become advisers of the King. 50

- DEVELOPMENTS 62

