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CURRENT ISSUES – Editor: Justice François Kunc

The Year Ahead	7
And What Is New for 2021?	9
Nuclear Weapons	10
The Curated Page	11

ADMIRALTY AND MARITIME – Editor: Dr Damien J Cremean

Ship Construction Claims in Admiralty	13
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EQUITY AND TRUSTS – Editor: Justice Mark Leeming

Injunctions in Criminal Law	18
Novel Remedies for Dissipation, Absent Notional Estate	21

ARTICLES

THREE KEY ISSUES ARISING OUT OF THE ENGINEERS CASE: A REPLY

Nicholas Aroney

This article addresses three key issues arising out of the Engineers Case: the extent of Commonwealth legislative powers vis-a-vis the legislative powers of the States; the immunity of the States from Commonwealth interference; and methods of constitutional interpretation. These key issues were raised in articles recently published by Sir Anthony Mason, Professor Sarah Murray, and Professor Ros Dixon and Dr Brendan Lim in response to the author's recently published centenary assessment of the Engineers Case. 25

UNEXPLAINED WEALTH ORDERS IN AUSTRALIA LIMITS TO TRANSPARENCY AND RESPONSIBILITY FOR OTHER PEOPLE'S WEALTH

Paul Latimer

An unexplained wealth order (UWO) is a court order, conviction-based or non-conviction based, to direct a person to explain the source of their financial circumstances or face the risk that their assets may be seized by the government. UWOs reverse traditional legal values by accepting, for example, deemed guilt, the abolition of the privilege against self-incrimination, retrospectivity and the reverse burden of proof. The legislation is similar but different in Australia's nine jurisdictions with, for example, differences in agencies, definitions and procedures. These raise procedural issues such as procedural fairness,

miscarriage of justice, civil liberties, constitutional law and the rights of innocent third parties like spouses who may be affected by an order. Those recommending and designing UWOs must remember that they must take the courts as they find them, which include the principle of legality, legal representation, the right to appeal and ensuring that justice is done among all parties. 36

CLIMATE CONSCIOUS LAWYERING

Hon Justice Brian J Preston SC

Climate change is a multi-scalar problem with both global and local dimensions. Climate change is a global problem, with the combined effect of many local actions contributing to global climate change. It is also a local problem as the impacts of climate change are experienced locally. This interaction between scales highlights how local actors and action can influence global, national, subnational and local governance. Lawyers are one group of actors who can meaningfully contribute to climate change action. Climate change places a responsibility on lawyers to adopt a climate conscious rather than a climate blind approach in their daily legal practice. A climate conscious approach requires an active awareness of the reality of climate change and how it interacts with daily legal problems. Consistent with legal ethics, there are at least five ways in which lawyers can implement this climate conscious approach in their daily legal practice. Each of these ways challenges common conceptions (or rather misconceptions) about the role and duties of a lawyer. 51

ADOPTION IN AUSTRALIA: PAST, PRESENT AND CONSIDERATIONS FOR THE FUTURE

Amy Conley Wright, Betty Luu and Judith Cashmore

Australia has a troubled history with adoption, arising from the legacy of forced and “closed” adoptions and the systematic removal of Indigenous children, known as the “Stolen Generations”. Evidence from national inquiries and research shows that closed and forced adoptions denied children connection to their roots and had detrimental effects on children, birth parents, and their family and community networks. In recent years, the steady increase in the number of children in out-of-home care has prompted reconsideration of adoption, emphasising its purpose as a service to the child. Policy and legislative reforms to out-of-home care across Australian jurisdictions are promoting legal permanency for children who would otherwise grow up in care. Yet, issues continue to be debated about the “best interests of the child”, and the trade-offs of adoption compared with alternative legal orders, and the ethics of dispensing with birth parents’ consent. The adoption of Indigenous children remains very contentious. 67

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Australian Law Journal Reports

HIGH COURT REPORTS – Staff of Thomson Reuters

DECISIONS RECEIVED IN NOVEMBER/DECEMBER 2020

Chetcuti v Commonwealth (<i>Citizenship and Migration; Constitutional Law</i>) ([2020] HCA 42)	1
Clayton v Bant (<i>Estoppel; Family Law and Child Welfare; Private International Law</i>) ([2020] HCA 44)	34
Home Affairs, Minister for v Arthur as litigation representative for BXD18 (<i>Citizenship and Migration</i>) ([2020] HCA 43)	14
Home Affairs, Minister for v CHK16 (<i>Citizenship and Migration</i>) ([2020] HCA 46).....	54
Home Affairs, Minister for v DJA18 as litigation representative for DIZ18 (<i>Citizenship and Migration</i>) ([2020] HCA 43)	14
Home Affairs, Minister for v DMA18 as litigation guardian for DLZ18 (<i>Citizenship and Migration</i>) ([2020] HCA 43)	14
Home Affairs, Minister for v DUA16 (<i>Citizenship and Migration</i>) ([2020] HCA 46)	54
Home Affairs, Minister for v FRX17 as litigation representative for FRM17 (<i>Citizenship and Migration</i>) ([2020] HCA 43)	14