

# PUBLIC LAW REVIEW

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COMMENT – *Editor: Dan Meagher*

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ARTICLES

**An Analysis of the Enforcement of Duties Owed by Public Sector Officials – Benjamin B Saunders and David Lau**

The purpose of this article is to assess the extent to which the duties applicable to public officials and directors of public sector entities have achieved their aim of strengthening public governance in Australia and bringing the applicable standards more closely in alignment with the standards prevailing in the corporate sector. We undertake an analysis of all cases in which a breach of a public sector duty was alleged, focusing on the duties owed by directors of government corporations and the duties owed by officials under public sector legislation. We found a very small number of cases in which a breach of the duties was alleged and only one case where a breach was made out. We conclude that the public governance duties do not significantly contribute to public sector governance. .... 313

**Cyberspace as a Place of Protest and the Constitutional Implied Freedom of Political Communication – Dr Jacob Deem and Dr Alexandra McEwan**

This article combines legal analysis with insights from legal geography and deliberative democracy scholarship to develop a perspective on cyberspace as a “place” in which protest occurs, exploring the consequences of cyberspace as “place” for the implied freedom of political communication. Recent amendments to the *Criminal Code Act 1995* (Cth) introducing “ag-gag” provisions and the decision in *Commissioner of Police (NSW) v Gray* provide case studies to consider cyberspace as a “place” where political communication is regulated. As background, we consider the meaning of “protest” and examine how

place functions in a physical protest in the context of recent High Court decisions. We focus on the Court’s view that the place in which protest is held can be integral to the political communication itself, and then demonstrate that protests in cyberspace can fulfil similar functions. Thus, the internet can operate as a “place” at which protest, and political communication occur. .... 331

**The Significance of the Defence Force Discipline Appeal Tribunal: Analysis of Its Activity over Four Years – Pauline Collins**

The Defence Force Discipline Appeal Tribunal (DFDAT) is an administrative body, established under the *Defence Force Discipline Appeals Act 1955* (Cth). The Tribunal hears appeals from courts martial and Defence Force magistrate hearings for service offences by Australian Defence Force personnel under the *Defence Force Discipline Act 1982* (Cth). The Tribunal provides the highest-level “appeal.” The Full Court of the Federal Court of Australia can be accessed for questions of law. An appeal from the Federal Court’s decision to the High Court requires special leave. Both types of appeal occur infrequently. Otherwise, the Tribunal’s determination is final. Little academic interest in this specialised area provides minimal scrutiny of the decisions of the Tribunal. This article provides an overview of the type of matters heard in the last four years and the issues highlighted for military discipline. It reveals any current challenges for justice and the rights of military personnel. .... 348

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