

THE AUSTRALIAN LAW JOURNAL

Volume 97, Number 2

February 2023

CURRENT ISSUES – Editor: Justice François Kunc

An Unsatisfactory Outcome for Everyone	85
Religion, Politics, and Job Security	89
Referendum Diary	93
The Curated Page	94

LETTERS TO THE EDITOR

Australia's First Law Lecturer	95
A Reply	95
Love v Commonwealth	95

FAMILY LAW – Editor: Richard Ingleby

Use It or Lose It: Limitation of Actions and the Right to Repayment of Moneys Loaned.....	97
---	----

STATUTORY INTERPRETATION – Editor: The Hon John Basten

The Continuing Influence of Sir Gerard Brennan – Interpreting Provisions Adopting an International Treaty	99
---	----

PERSONALIA – Editor: Emily Vale

New South Wales	
Justice Elisabeth Peden	103
Justice Nicholas Chen	103
Senior Counsel Appointments	103
Queensland	
Justice Lincoln Crowley	104
South Australia	
Justice Sandi McDonald	104
Senior Counsel Appointments	104
Victoria	
Justice Andrea Tsalamandris	104
Justice Lisa Hannan	105

ARTICLES

CALDERBANK.AI: TOWARD THE FAIR RESOLUTION OF CIVIL LITIGATION USING MACHINE LEARNING AND PROCEDURAL MECHANISMS

Aaron Snoswell, Anthony Skelton and Dan Hunter

Supervised machine learning models offer great promise for the prediction of legal case outcomes; however, thus-far these methods have seen limited adoption due to several unique challenges posed by the legal domain. In this article we present a novel approach that combines social-legal and technical methods to train machine learning models that are accurate and acceptable. Using the domain of Australian family provision law – the statutory and common law domain that interprets testator intent and beneficiary need to rewrite testamentary dispositions – we present machine learning techniques to create accurate, predictive classifiers in law, addressing the challenges of sparse and expertise-bound data. We situate this model inside the civil procedure mechanism of Calderbank offers which we argue can mitigate socio-legal issues of acceptance of deep learning models in law. 106

THE RECOMMENDED NATIONAL STANDARDS FOR WORKING WITH INTERPRETERS: ENHANCING ACCESS TO JUSTICE IN COURTS AND TRIBUNALS

The Hon Justice Melissa Perry

The second edition of the Recommended National Standards for Working with Interpreters in Courts and Tribunals (Standards) was launched in April 2022. The Standards recognise the critical role that interpreters play in the administration of justice in courts and tribunals in Australia’s multilingual and multicultural society. The article places the development of the Standards in its broader context from the perspective of international human rights law and procedural fairness, before canvassing key features of the Standards and the practices they seek to promote for the administration of justice by courts and tribunals. 121

SECRET MINISTRIES AND THE CONSTITUTION: AN IMPLIED REQUIREMENT OF PUBLICATION?

Fiona Roughley and Megan Caristo

While he was Prime Minister, the Hon Scott Morrison MP was appointed by the Governor-General to administer five additional departments of State unbeknownst to the other institutions of Australia’s constitutional government and the public. This article considers whether the Constitution contains an implied requirement that any appointment of a person to administer a department of State be made public within a reasonable period, and whether that requirement limits the executive power in s 64 to appoint a person to administer a department of State. Such an implication arguably arises from the text and structure of the Constitution, and in particular, the form of representative and responsible government prescribed by ss 1, 6, 7, 8, 13, 23, 24, 28, 30, 49, 50, 62, 64, 75(v), 83 and 128. If the implication be accepted, and if it gives rise to a limitation on the power to appoint in s 64, absence of publication of an appointment within a reasonable period results in invalidity of the appointment. The implication may also have other consequences for the exercise of other executive (and legislative) powers. 128

BOOK REVIEW – Editor: Angelina Gomez

<i>Making Commercial Law through Practice 1830–1970</i> , by Ross Cranston	143
--	-----

OBITUARY

John Michael Bennett (7 December 1935–17 July 2022)	146
---	-----

Australian Law Journal Reports

HIGH COURT REPORTS – Staff of Thomson Reuters

DECISIONS RECEIVED IN DECEMBER 2022

<i>Realestate.com.au Pty Ltd v Hardingham</i> ([2022] HCA 39) (<i>Contracts; Intellectual Property</i>)	40
<i>Data Pty Ltd v Hardingham</i> ([2022] HCA 39) (<i>Contracts; Intellectual Property</i>)	40