

PUBLIC LAW REVIEW

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ARTICLES

The physics of jurisdictional error – *Steven Forrest*

The doctrine of jurisdictional error has undergone an expansion over the last 15 years in Australia. That expansion has amplified a recurrent quandary: what are the consequences of jurisdictional error? This article argues that philosophical attempts to reconcile the legal and factual realities of erroneous administrative decisions misdirect the focus away from the fundamental jurisdictional question. To invoke a theory of legal relativity in order to explain the consequences of jurisdictional error requires the postulation of a secondary source, albeit temporally, of the legal force and effect given to the impugned administrative action. This article argues that such postulation is unnecessary: there are other satisfactory hypotheses that do not stretch the boundaries of logic in the way necessitated by a truly relativistic approach. 21

Expert panels, public engagement and constitutional reform – *Paul Kildea*

Following the 2010 federal election the Gillard government established expert panels to inquire into and report on the constitutional recognition of Aboriginal and Torres Strait Islander peoples, and the constitutional recognition of local government. This article assesses whether the expert panels were effective vehicles for fostering community engagement in connection with their respective constitutional issues, and asks how their experience might inform the design of future constitutional review processes. It does this through an analysis of a range of sources, including the final reports of both panels, survey data, consultation notes, media coverage and ministerial speeches. The article argues that both panels demonstrated the potential of expert bodies to run effective consultation programs on constitutional reform, but that future bodies may look to be more interactive in their approach to public meetings and online engagement. It also contends that both panels suffered from an important external constraint in the form of poor political management by the Gillard government, which manifest itself in the form of inadequate resourcing, poor promotion and lack of responsiveness. 33

State tribunals within and without the integrated federal judicial system – David Rowe

This article provides an analysis of when State tribunals may be integrated within the federal judicial system, and the consequences of exclusion from that system. The article considers (i) case law to date on the circumstances in which State tribunals may be considered “courts of a State” within s 77(iii) of the Constitution; and (ii) on what basis tribunals which do not meet that definition might, as is assumed by current authority, be barred from exercising non-federal jurisdiction over the subject matters listed in ss 75-76. A unified approach is suggested to these two questions which accords with broader developments in Ch III jurisprudence. 48

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