

PUBLIC LAW REVIEW

Volume 26, Number 1

March 2015

EDITORIAL	3
COMMENTS	
The 2014 counter-terrorism reforms in review – Gabrielle Appleby	4
The use of “legislative rules” in preference to regulations: A “novel” approach? – Stephen Argument	12
ARTICLES	
An Australian spectrum of political rights scrutiny: “Continuing to lead by example?” – Laura Grenfell	
Most Australian Parliaments promote the view that they are the institutions best positioned to scrutinise and protect the human rights of all. This article examines the varying standards of rights review being performed by parliamentary committees across the nine Australian jurisdictions. In mapping the diversity among Australian Parliaments in this regard, it points out that in four Australian Parliaments there is no parliamentary committee providing formal or systematic scrutiny of all Bills on a rights basis or indeed any basis.	19
Resisting the siren song of the Hansen sequence: The state of Supreme Court authority on the sections 5 and 6 conundrum – Hanna Wilberg	
The purpose of this article is to establish the state of authority on the role of s 5 in applying the <i>New Zealand Bill of Rights Act 1990</i> – a point on which there is ongoing uncertainty. The leading Supreme Court decision in <i>Hansen v The Queen</i> confirms that the justified limits provision in s 5 plays a central role in determining what the Bill of Rights requires, and that the rights-consistent interpretation requirement in s 6 must be read subject to it. It further sets out sequenced tests to use for this purpose. But that decision also contains dicta contemplating exceptions to the approach it sets out, and the Supreme Court’s subsequent decisions in <i>Brooker v Police</i> and <i>Morse v Police</i> appear to involve alternative approaches. As a result, the role of s 5 continues to be questioned in the lower courts. On the best reading of these cases, the <i>Hansen</i> dicta contemplating exceptions only apply to the sequenced tests, not to the central role of s 5. The different approach in <i>Brooker</i> and <i>Morse</i> and other cases involving provisions that are capable of a “continuum” of meanings is consistent with that. The “continuum type” provisions are read subject to an “implicit proviso”: the provision applies only where any resulting limits on rights can be justified in terms of s 5. This approach enables s 5 to be given its central role without following the <i>Hansen</i> sequence (either modifying the order in which ss 5 and 6 are applied, or dispensing with the first step in the <i>Hansen</i> sequence).	39

BOOK REVIEW

The New Commonwealth Model of Constitutionalism: Theory and Practice by Stephen Gardbaum – Reviewed by Anna Dzedzic	61
DEVELOPMENTS	67