

PUBLIC LAW REVIEW

Volume 20, Number 4

December 2009

COMMENTS

- Of newspapers and law reviews** – *James Allan* 251
- The sources and scope of Commonwealth power to spend** – *Cheryl Saunders* 256

ARTICLES

Taming the beast: Why a return to common law procedural fairness would help curb migration litigation – *Alice Ashbolt*

There has been an enormous increase in recent years in the number of applications made to Australian courts seeking reviews of migration decisions. This increase comes at a great cost and inconvenience to governments, and the inherent uncertainty it gives rise to is a burden to the courts, the applicants and their lawyers and advisers. This article examines the contributing factors that have led to this increase, and the efforts undertaken by governments and the courts to attempt to reduce the litigation. While there is some inevitability in the existence of migration litigation, the article argues that a return to common law procedural fairness rules would provide the most useful relief from some of the burdens and tensions that have arisen. 264

Due process, natural justice, Kable and organisational control legislation – *Anthony Gray*

On 25 September 2009, by a 2-1 majority the Supreme Court of South Australia invalidated part of the legislative attempt by the South Australian Parliament to criminalise association between groups as declared by that State's Attorney-General. It is submitted in this article that the court was correct in doing so. Given that an appeal to the High Court has been filed against this decision, and the existence or planned existence of similar legislation in other Australian States, the article considers constitutional difficulties with this kind of legislation. In particular, the extent to which such legislation is consistent with the right to due process and natural justice will be considered, as well as the compatibility of such legislation with the so-called *Kable* principle. 290

BOOK REVIEW

- Human Rights in the South Pacific: Challenges and Changes** – *Reviewed by Suranjika Tittawella* 306

- DEVELOPMENTS 312

VOLUME 20 – 2009

- Table of Authors 321
- Table of Cases 323
- Index 333

Submission requirements

All contributions to the journal are welcome and should be emailed to the Production Editor, *Public Law Review*, at LTA.plr@thomsonreuters.com for forwarding to the Editor.

Licences

- It is a condition of publication in the journal that contributors complete a licence agreement. Licence agreements can be downloaded at http://www.thomsonreuters.com.au/support/as_contributors.asp and emailed with the submission or mailed separately to the Production Editor, *Public Law Review*, Thomson Reuters (Professional) Australia Limited, PO Box 3502, Rozelle, NSW 2039.

Letters to the Editor

- By submitting a letter to the Editor of this journal for publication, you agree that Thomson Reuters, trading as Lawbook Co, may edit and has the right to, and may license third parties to, reproduce in electronic form and communicate the letter.

Manuscript

- Manuscript must be original, unpublished work that has not been submitted or accepted for publication elsewhere, including for online publication.
- Personal details (name, qualifications, position) for publication and a delivery address, email address and phone number must be included with the manuscript on a separate page.
- Manuscript must be submitted electronically via email in Microsoft Word format.
- Manuscript should not exceed 8,000-10,000 words for articles or 1,500-2,500 words for section commentary or book reviews.
- An abstract of 100-150 words must be included at the head of articles.
- Authors are responsible for the accuracy of case names, citations and other references. Proof pages will be emailed to contributors but excessive changes cannot be accommodated.
- **Graphics** (diagrams and graphs) to be grayscale; in .jpeg format; no more than 12 cm in width; within a box; of high resolution (at least 300 dpi); font is to be Times New Roman, no more than 10pt. The heading for a graphic should be placed outside the box.

Peer review

- This journal complies with the Higher Education Research Data Collection (HERDC) Specifications for peer review. Each article is, prior to acceptance, reviewed in its entirety by a suitably qualified expert who is independent of the author.

Style

1. **Levels of headings** must be clearly indicated (no more than four levels).
2. **Unpointed style** is to be used – there are no full stops after any abbreviation or contraction.
3. **Cases:**
 - Where a case is cited in the text, the citation follows immediately after the case name, not as a footnote.
 - Authorised reports must be cited where published, and one other reference can be used in addition.
 - For “at” references use media-neutral paragraph numbers within square brackets whenever available.
 - For international cases best references only should be used.
4. **Legislation** is cited as follows:
 - *Trade Practices Act 1974* (Cth), s 51AC (including in full within footnotes).
5. **Books** are cited as follows:
 - Ross D, *Ross on Crime* (3rd ed, Lawbook Co, Sydney, 2006) pp 100-101.
 - In footnotes do not use *ibid* or *op cit*. Repeat author surname and add footnote reference to first mention.
 - ¹ Hayton D, “Unique Rules for the Unique Institution, The Trust” in Degeling S and Edelman J (eds), *Equity in Commercial Law* (Lawbook Co, Sydney, 2005) p 284.
 - ² Hayton, n 1, p 286.
6. **Journals** are cited as follows:
 - Kirby M, “The Urgent Need for Forensic Excellence” (2008) 32 Crim LJ 205.
 - In footnotes do not use *ibid* or *op cit*. Repeat author surname and add footnote reference to first mention.
 - ³ Trindade R and Smith R, “Modernising Australian Merger Analysis” (2007) 35 ABLR 358.
 - ⁴ Trindade and Smith, n 3 at 358-359.
 - Wherever possible use official journal title abbreviations.
7. **Internet references** are cited as follows:
 - Ricketson S, *The Law of Intellectual Property: Copyright, Designs and Confidential Information* (Lawbook Co, subscription service) at [16.340], <http://www.thomsonreuters.com.au/default.asp> viewed 25 June 2007. Underline the URL and include the date the document was viewed.

SUBSCRIPTION INFORMATION

The *Public Law Review* comprises four parts a year.

The journal is available for subscription via paper and/or online. An online subscription can include access to archived volumes of the journal dating back to 1990 and has the following benefits: all content is fully searchable; PDF versions are provided for easier reading; users can subscribe to an RSS feed to be instantly informed of updates.

For further information on how to subscribe:

Visit www.thomsonreuters.com.au
Tel: 1300 304 195
Email: LTA.Service@thomsonreuters.com

Advertising inquiries:

Contact Andrew Parsons on (02) 8587 7462 or email a.parsons@thomsonreuters.com

Editorial inquiries: Tel: (02) 8587 7000

Customer service and sales inquiries:

Tel: 1300 304 195 Fax: 1300 304 196
Web: www.thomsonreuters.com.au
Email: LTA.Service@thomsonreuters.com

Head Office

100 Harris Street PYRMONT NSW 2009
Tel: (02) 8587 7000 Fax: (02) 8587 7100



THOMSON REUTERS

© 2009 Thomson Reuters (Professional) Australia Limited
ABN 64 058 914 668

Lawbook Co.

Published in Sydney

ISSN 1034-3024

Typeset by Thomson Reuters (Professional) Australia Limited, Pyrmont, NSW

Printed by Ligare Pty Ltd, Riverwood, NSW