Index

Aboriginal law, rights and justice
constitutional recognition of Aboriginal and Torres Strait Island people
Joint Committee report on Bill (Cth), 71
South Australia, 142
sentencing & Aboriginality, 313

Administrative review
Anti-Doping Rule Violation Panel, 318
justices of the peace in QCAT, 230

Asylum seekers – see Migration law

Bias, apprehended
ICAC (NSW), 229
template paragraphs in multiple opinions, 77

Bill of rights
United Kingdom, 146

Book reviews
Ackermann, Laurie: Human Dignity: Lodestar for Equality in South Africa, 305-312
Morris, Caroline: Parliamentary Elections, Representation and the Law, 67-70

Child sexual abuse
Royal Commission, 81-86
judges, inquiries & separation of powers, 81-85

Citizen-initiated referenda
dangerous democracy or dangerous judiciary (California)
benefits of direct democracy, 249-250
constitutional debasement, 245-246
government unable to govern, 248-249
unrepresentative rule, 247-248

Common law
rights
compelling consent to giving bodily sample (WA), 316
examinations under Criminal Assets Recovery Act (NSW), 316

Confidential information
barrier to accessing environmental information under FOI, 12

Constitution (California)
citizen-initiated referenda, 245-246

Constitution (Cth)
Aboriginal and Torres Strait Islander people recognition
Joint Committee report on Bill, 71
discovery of confidential newspaper sources, 228
freedom of trade (s 92)
Cole v Whitfield, 97-107
Betfair (No 1), 99-102
Betfair (No 2) and Sportsbet, 102-103
implications, 105-107
freedom of political communication
“offensive” use of postal services, 143
restrictions on preaching (SA), 143
House of Representatives control over Money Bills constitutional history, 161-163
constitutional provisions, 161
local government recognition, 142
referendum not proceeded with, 225
separation of powers, 81-85
validity of vehicle forfeiture laws (SA), 315

Constitution (Papua New Guinea)
Parliamentary test of supremacy, 92-96
Allan Marat case, 95-96
East Sepik case, 93-94
principles under contention, 92-93
way forward, 96

Constitution (Singapore)
standing to challenge (Tan Eng Hong), 87-91
comparative connections, 90
personal wrong as necessary requirement, 87-88
violation of rights, 88-90

Constitution (South Australia)
recognition of Indigenous peoples, 142

Control orders, 182-208
Australian regime, 188-190
future of, 206-208
use of, 191-194
origins of control order regimes, 183-188
United Kingdom regime
compared with Australian regime, 194-200
reforms: TPIMs, 200-203
Australian control orders compared, 203-206
Index

Corporations law
insider trading legislation (Cth)
   relevance of international law, 72
jurisdiction of State courts, 228

Corruption
lawfulness of ICAC decision on “corrupt conduct”
   (NSW), 229
legislation to set up watchdog (SA), 73

Courts – see Federal Circuit Court of Australia;
   High Court; Jurisdiction; State courts

Criminal law
mandatory minimum sentences & Kable doctrine
   (NSW), 143
requirement of clear legislative intention for
retrospective legal duties to allow for criminal
liability to attach to failure to act at time when
no such legal duty existed, 142

Criminal organisations
scope of Commonwealth power
Queensland law & institutional integrity of
Supreme Court, 142-143

Democracy
direct – see Citizen-initiated referenda

Diplomacy
High Court judges, 136-138

Discrimination
sex discrimination legislation, 228

Elections
book review, 67-70
proportional representation (NZ)
   Electoral Commission report, 71

Environmental information – see Freedom of
   information

Examinations
Criminal Assets Recovery Act (NSW), 316

Executive power
freedom of information
   documents held by ministerial advisers (Vic),
   147
ministerial approval for expansion of mine &
   processing plant (SA), 317

ministerial discretion to grant Temporary Safe
   Haven visas, 226
ministerial oath or affirmation of allegiance, 314
ministerial power to intervene in granting visas, 75

Extradition
authority of Federal Circuit Court, 228

Federal Circuit Court of Australia
authority in extradition proceedings, 228
   complaints handling, 144
   establishment, 73

Federal distribution of power
inconsistency
   Queensland regulations & federal law
   possession of alcohol, 225
   scope of Commonwealth power
   criminal organisation laws & institutional
   integrity of Supreme Court (Qld), 142-143
   freedom of political communication
   “offensive” use of postal services, 143
   restrictions on preaching (SA), 143
   mandatory minimum sentences & Kable
documentation (NSW), 143

Federal magistrates
renamed as judges, 73

Freedom of information
barriers to accessing environmental information,
   10-16
   confidential information, 12
   intellectual property, 10-12
   public interest test, 13-14
   recommendations, 15-16
   UK law, 14-15
   documents held by ministerial advisers (Vic), 147
   Motor Accident Commission (SA) as “exempt
   agency”, 318

Freedom of political communication,
“offensive” use of postal services, 143
   restrictions on preaching (SA), 143

Freedom of trade
interstate – see Constitution (Cth)

Gay marriage – see Marriage
Governor-general
advice from Solicitor-General on Rudd’s appointment as Prime Minister, 289-304
correspondence, 289-291
commentary on letters, 291-303

Habeas corpus
procedure & constitution (NZ), 166-181
hermeneutics, 175-180
corpus, 175-176
detention, 176-178
legality, 178-179
release, 179-180
inherent jurisdiction, 170-72
judicial review, 172-175
jurisdictional conflict, 167-168
proceduralisation & democracy, 168-170

High Court
judges
extra-judicial activity (1903-1945), 125-141
“anomalous occurrences in unusual circumstances”, 138-141
diplomatic work, 136-138
existing accounts, 126-128
National Debt Commission, 135-136
Royal Commissions & executive inquiries, 129-135
State courts and
High Court as ultimate appellate court, 263-264

Human rights
Bill of Rights (UK), 146
control orders – see Control orders
human dignity
South Africa (book review), 305-312
infringement offences legislation (Vic), 145
principle of legality & self-incrimination, 229
refugees in detention
access to security assessments, 146
same-sex marriage – see Marriage
sex discrimination legislation, 228
UN Human Rights Committee criticism of
Australia’s indefinite detention policy, 316

Immigration – see Migration law

Indigenous people
Australia – see Aboriginal law, rights and justice

Individual rights – see Human rights

Intellectual property
barrier to accessing environmental information under FOI, 10-12

Judges – see also Judicial officers
Appointment – see Judicial appointments
Apprehension of bias – see Bias
Extra-judicial activity – see also High Court
inquiries & separation of powers, 81-85
State judges on federal commissions, 85-86
Federal Circuit Court of Australia, 73
Federal magistrates renamed as, 73
High Court – see High Court
inquiries & separation of powers, 81-85
template paragraphs in multiple opinions & apprehended bias, 77

Judicial activism
Australian discourse, 17-36
academic climate, 34-36
“converging factors” (Schlesinger), 18-20
in Australia, 20-24
legalism, 24-28
Dixon, 28-34

Judicial appointments
judicial diversity, 233-238
Australia, 233-234
United Kingdom, 234-238
amendments to appointment process, 237-238
implications for Australia, 238
part-time work, 236-237
positive action, 235-236
reserve judicial officers (Vic)
eligibility for appointment, 144

Judicial officers – see also Judges
appointment – see Judicial appointments
complaints procedure (Cth), 73
decisions outside judicial function amenable to judicial review, 315
removal
standard procedure for consideration of, 73
Judicial power
committing magistrates ordering dismissal or stay of criminal proceedings (Vic), 144
Industrial Relations Commission (NSW), 74
orders detaining Kable valid, precluding relief for false imprisonment, 227
private arbitrations and Kable doctrine, 144
prosecutorial discretion
choosing between simple & aggravated offences, 314
waiving mandatory costs orders, 227

Judicial review – see also Jurisdiction
appréhension of bias
ICAC (NSW), 229
coroner’s choice to refer to DPP (Qld), 75
decisions made under an enactment (Tas), 317
decisions outside judicial function amenable to judicial review, 315
habeas corpus (NZ), 172-175
as alternative, 74-75
Migration Act and Refugees Convention, 146
private incorporated bodies (NZ), 108-124
common law review & statutory review, 113-123
Judicature Amendment Act 1972, 110-113
protection obligations before removal of unlawful non-citizens, 146-147
public consultation process, 209-224
Australian courts, 212-222
problems avoided & benefits missed, 222-224
requirements & administration, 210-212
Treaty of Waitangi (NZ)
privatisation of State-owned hydroelectric company, 147
Wednesbury unreasonableness & Migration Review Tribunal, 147
wrongful imprisonment in place not prescribed by order, 146

Judiciary – see Judges

Jurisdiction
inconsistency between NSW laws, 145
jurisdictional error
failure to provide reasons, 77 functus officio doctrine, 74
jurisdictional facts, 37-66
definition in Australia, 38-48 avenues of judicial review, 41-43
categories, 38-41
Chevron doctrine, 47-48

Local government
constitutional recognition, 142
referendum not proceeded with, 225
corporate status & autonomy (Qld), 148
local law & planning scheme operate together to regulate land use (Vic), 230

Magistrates – see also Judicial officers
committing magistrates ordering dismissal or stay of criminal proceedings (Vic), 144
federal, renamed as judges, 73

Marriage
same-sex (ACT)
legislation & Commonwealth challenge, 315
same-sex (NSW)
power of State Parliaments, 226
same-sex (NZ), 145, 151-154
adoption by same-sex parents, 153-154
legislating for equality, 151-152
protecting rights of religious celebrants, 152-153

Migration law
asylum seekers
ministerial discretion to grant Temporary Safe Haven visas, 226
public interest criterion for granting protection visas (Plaintiff M47), 3-9
Al-Kateh, 7-9
legislative framework, 4
minority judgments, 6-7
reasons for decision, 5-6
hearing procedures (Plaintiff M47), 3-9
hearings, 157-158
possible exclusion of natural justice, 158-160
variable nature of fairness, 155-160
Migration Act (Cth)
EU not a “country”, 225
Migration Review Tribunal
Wednesbury unreasonableness, 147
ministerial power to intervene in granting visas, 75
protection obligations before removal of unlawful non-citizens, 146-147

(2013) 24 PLR 335
UN Human Rights Committee criticism of Australia’s indefinite detention policy, 316

Mineral resources
ministerial approval for expansion of mine & processing plant (SA), 317

Ministers – see Executive power

Natural justice – see Procedural fairness

New Zealand
judicial review – see Judicial review
same-sex marriage – see Marriage
voting system – see Elections

Papua New Guinea
Parliamentary test of supremacy, 92-96
Allan Marat case, 95-96
East Sepik case, 93-94
principles under contention, 92-93
way forward, 96

Parliament
extent of State liability for MPs (NSW), 71
minority government (Gillard/Rudd)
House of Representatives control over Money Bills, 161-165
constitutional history, 161-163
constitutional provisions, 161
laws appropriating revenue or moneys, 163-165
standing orders, 163
power of State Parliaments
same-sex marriage (NSW), 226
voting systems – see Elections

Parliamentary Budget Office, 267-288
Australian PBO, 273-278
challenges & opportunities for, 286-288
comparison with other IFIs, 278-286
independent fiscal institutions (IFIs) & the budget process, 268-273

Precedent
State court decisions interpreting Uniform Evidence Law, 227

Procedural fairness
alteration of liquor licensing laws, 76-77
hearing procedures (Plaintiff M47), 3-9
hearings, 157-158
possible exclusion of natural justice, 158-160
variable nature of fairness, 155-160
Kable principle and (Condon v Pompano), 239-244
legitimate expectations, 76
ministerial power to intervene in granting visas, 75
prosecutorial discretion, 75-76
template paragraphs in multiple opinions & apprehended bias, 77
unrepresented persons in AAT hearings, 76

Proportional representation – see Elections

Public interest
barrier to accessing environmental information under FOI, 13-14
criterion for granting protection visas (Plaintiff M47), 3-9
Al-Kateb, 7-9
case law, 4
minority judgments, 6-7
reasons for decision, 5-6

Religion
same-sex marriage
protecting rights of religious celebrants (NZ), 152-153

Remedies
certiorari for inadequate reasons, 78
clean hands as discretionary factor in denying, 317-318

Royal Commissions
Royal Commission into Institutional Responses to Child Sexual Abuse, 81-86
judges, inquiries & separation of powers, 81-85
– see also High Court
State judges on federal commissions, 85-86

Same-sex marriage – see Marriage

Sentencing
mandatory minimum sentences & Kable doctrine (NSW), 143
Index

Singapore
- anti-sodomy laws
  - standing to challenge (Tan Eng Hong), 87-91
  - comparative connections, 90
  - personal wrong as necessary requirement, 87-88
  - violation of rights, 88-90

South Africa
- human dignity (book review), 305-312

State courts
- decisions interpreting Uniform Evidence Law, 227
- jurisdiction under corporations legislation, 228
- nationalisation, 252-266
  - divergence & convergence, 252-253
  - freestanding principles & “top-down reasoning”, 260-261
- High Court as ultimate appellate court, 263-264
- integrated Australian judicial system, 261-262
  - as a principle, 264-265
- judicial review, 253-260
  - City of Enfield, 256-257
  - Kable, 254-256
  - Plaintiff S157 and Kirk, 253-254
  - Pompano, 259-260
  - Wainohu, 257-259
- single common law, 262-263

State Parliaments
- extraterritorial operation of State laws (WA), 313

Statutory interpretation
- consistency & ambiguity, 313
- definitions of terms in another statute (NSW), 72
- insider trading legislation (Cth)
  - relevance of international law, 72
- Migration Act (Cth)
  - EU not a “country”, 225
- requirement of clear legislative intention for retrospective legal duties to allow for criminal liability to attach to failure to act at time when no such legal duty existed, 142

Taxation
- Minerals Resource Rent Tax, 316-317

Terrorism
- control orders – see Control orders

Torts
- extent of State liability for MPs (NSW), 71

Tribunals
- unrepresented persons in AAT hearings, 76

United Kingdom
- barriers to accessing environmental information under FOI, 14-15
- Bill of Rights, 146
- control orders
  - Australian & UK control orders compared, 194-200
  - reforms: TPIMs, 200-203
  - Australian control orders compared, 203-206

Whistleblowers
- legislation (Cth), 226
- protection (Vic), 73