

# PUBLIC LAW REVIEW

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## ARTICLES

### **The nationalisation of the State court system** – *Stephen McLeish SC*

Constitutional principles governing federal and State courts and judicial power have tended to converge in recent years, in what may be called a “nationalising” trend. The sources of that convergence are varied. To some extent they reflect conceptions about the nature of the Australian judicial system and the common law that derive from sources outside the Constitution. The *Kable* principle in particular has developed in a way which has moved from its original constitutional foundations. More recently, the High Court has emphasised that State courts are indeed different from federal courts and that federalism considerations have an important role in identifying the limits of the *Kable* principle. “Nationalisation” of the State court system is therefore by no means inevitable. .... 252

### **The Australian Parliamentary Budget Office: Shedding light on the dark arts of budgeting** – *Miranda Stewart and Holly Jager*

The newly established Australian Parliamentary Budget Office (PBO) has the potential to enhance the transparency and accountability of public finance by providing independent policy costings, budget analysis, and forecasts to the Parliament. This article examines the role and mandate of the Australian PBO and its record after one year in operation, including a federal election. We compare it to other “new generation” independent fiscal institutions in the UK and Canada and to the “veteran” budget institutions in the US and the Netherlands. Critical to the success and credibility of all such institutions is local ownership, political commitment and adequate funding. The political stars are currently aligned to support the Australian PBO even after a change of government, but it is too early to say whether this innovation will be integrated as a productive element in our fiscal constitution in the longer term. .... 267

### **Advice to the Governor-General on the appointment of Kevin Rudd as Prime Minister** – *Anne Twomey*

The advice by the Acting Solicitor-General to the Governor-General on the appointment of Kevin Rudd as Prime Minister raised important constitutional issues. These include: the status of advice by the outgoing Prime Minister on the appointment of his or her successor, particularly in a hung Parliament; how a Prime Minister’s resignation affects the status of the ministry; what conditions or assurances the Governor-General can require before appointing a person as Prime Minister; and the role of the Solicitor-General in advising the Governor-General. This article explores those issues, filling in the missing detail and relevant precedents, and coming to different conclusions. .... 289

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