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Who is sovereign now? The Momcilovic Court hands back power over human rights that Parliament intended it to have – Julie Debeljak

The decision of *R v Momcilovic* concerned the rights-compatibility of a reverse legal burden of proof under drug control legislation. The Victorian Court of Appeal held that the reverse onus provision was an unjustified limit on the right to the presumption of innocence under s 25(1) of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) (Charter) and issued a declaration of inconsistent interpretation under s 36(2) of the Charter. This test case sought to resolve many fundamental issues concerning the Charter mechanisms relating to the human rights-compatibility of legislation, including strength of the s 32(1) interpretation obligation, and the appropriate methodology for the statute-related mechanisms under the Charter. This article will critique the court's resolution of these broader issues, arguing that the court has sanctioned a rights-reductionist method to the statute-related Charter mechanisms, undermined the remedial reach of the s 32(1) interpretation obligation, and considerably muted the institutional dialogue. Most significantly, however, is the fact that this is all done despite clear parliamentary intention to the contrary. 15

The Governor-General's role in the formation of government in a hung Parliament – Anne Twomey

The power of the Governor-General to appoint a Prime Minister, while a reserve power, is circumscribed by convention. The scope of these conventions becomes uncertain when there is a hung Parliament, with no leader holding majority support in the lower House. This article considers matters such as whether the Governor-General acts on the advice of the outgoing Prime Minister, the advantages of incumbency, the relevance of popular support and broken election promises and the circumstances in which the Governor-General may accept or reject advice for a fresh election. It analyses in detail two cases of hung Parliaments from Tasmania in 1989 and 2010 and argues that they should not be relied upon as precedents for future occasions. 52

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