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# Australian Law Journal

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# THE AUSTRALIAN LAW JOURNAL

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### **DOES JUDICIAL INDEPENDENCE MATTER?**

**Hon Marilyn Warren AC**

This article explores the concept of judicial independence in a contemporary Australian context. It ponders the meaning of judicial independence and its relationship with the rule of law. It examines the role of judicial independence in the protection of human rights. The article considers the constitutional foundations and protections of judicial

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independence in Australia, at State and federal levels. It reflects on the modern threats to judicial independence, such as the manner in which courts are funded and resourced and the pressures on judges arising out of media portrayal of the courts. The article concludes that judicial independence continues to be a central pillar of a free and democratic society. .... 481

#### THE PRIVATISATION OF CIVIL JUSTICE

**Peter L Murray**

Civil justice, traditionally considered a function of democratic government, has had, it is argued in this article, its decision-making function largely supplanted by a system of dispute resolution by private, profit-making actors and agencies, relating to both arbitrators and mediators. This development, allowed to thrive in an atmosphere of deregulation, is explored in this article. The author highlights issues such as the delegation of public power, lack of transparency, the danger of impartiality, the subtle influence of repeat players and inequality in bargaining power, raising serious issues about civil justice and even the rule of law, before briefly offering possible solutions. .... 490

#### AUSTRALIA'S OFFSHORE CONSTITUTIONAL LAW: TIME FOR REVISION?

**Michael White and Nick Gaskell**

The seas off the Australian coast are governed by a matrix of Commonwealth, State and Northern Territory laws that are in serious need of revision. These laws are jumbled, overlap geographically and by activity and are generally complex and inefficient. Following a major 1975 High Court case, decided in favour of the Commonwealth having jurisdiction offshore from the low-water mark or historic boundaries, the 1979 Offshore Constitutional Settlement was agreed with the States. This article examines the operation of the Offshore Constitutional Settlement and proposes a reconsideration of the division of jurisdiction between the Commonwealth and the States by discussing various possible models. Prior to any changes there needs to be a full and far-reaching inquiry the reports from which would lay a sound basis for offshore constitutional legislative change. .... 504

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