

# PUBLIC LAW REVIEW

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## ARTICLES

**The legal recognition of same-sex unions in Australia: A constitutional analysis** – *Margaret Brock and Dan Meagher*

The *Marriage Equality Amendment Bill 2010* (Cth) currently before federal Parliament amends the present legislative definition of marriage to include same-sex unions. This article provides a constitutional analysis of the scope of the marriage power, s 51(xxi) of the Australian Constitution, through examination of the Bill and other existing and proposed legislation. It argues that if the High Court considered “marriage” to be a constitutionalised legal term of art, it could accommodate post-federation development at common law and in statute to the institution of marriage. It also argues that the presumption in favour of constitutionality ought to be at its strongest with federal legislation determining complex and intractable moral issues. The article explores the constitutional vulnerability of current same-sex union legislation and possible future legislation providing for recognition of the functional equivalent of “marriage”. In addition, the article considers the constitutional foundation of a national framework to provide official legal recognition of same-sex relationships. .... 266

**Government community service contracts: Restraining abuse of power** – *Myles McGregor-Lowndes and Amanda McBratney*

The use of grant contracts to deliver community services is now a significant feature of all Australian government administrations. These contracts are the primary instrument governing the provision of such services to citizens and are largely outside the usual parliamentary review mechanisms and constraints. This article examines the extent of the erosion of fundamental constitutional principles facilitated by the use of private contracts, by applying the principles used in scrutiny of delegated legislation to standard form federal and State community service contracts. It reveals extensive executive power which, if the relationship were founded in legislative instruments rather than in private contract, would have to be justified to Parliament at least and possibly not tolerated. .... 279

**Taxation by discretion** – *GT Pagone*

Parliament may enact a law with respect to taxation by reference to which the amount of tax payable is made to depend upon the Commissioner’s opinion about whether the application of a legislative provision is unreasonable, even where that opinion is formed by the Commissioner taking into account such matters, if any, as the Commissioner thinks

fit. The legal foundation for taxation by administrative discretion was laid down in <i>Giris Pty Ltd v Federal Commissioner of Taxation</i> . In 2011, what view should be taken of the constitutional limit of that discretion? .....	298
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