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COMMENTS

The Commonwealth and the chaplains: Executive power after Williams v Commonwealth – *Benjamin B Saunders* 153

Using representative government to bypass representative government – *Amanda Sapienza* 161

ARTICLES

Some aspects of native title as compensable property – *Sturt Glacken*

This article deals with certain aspects of the loss or impairment of native title. It considers the scheme provided by the *Native Title Act 1993* (Cth) for the validation of past acts that affect native title and whether such validation involves an acquisition of property within the scope of s 51(xxxi) of the Constitution. The article then examines the requirement to provide compensation for the effects of past acts under the *Native Title Act*, a matter yet to be determined by any court. The article deals with whether, in view of the character of the past act validation provisions, the just terms override in s 53 of the Act may require departure from compensation criteria in compulsory acquisition statutes and adoption of general law compensatory principles for trespass to land. 167

Section 6(2)(b) of the Victorian Charter: A problematic provision – *Timothy Lau*

The focus of this article is on s 6(2)(b) of the *Charter of Human Rights and Responsibilities Act 2006* (Vic). In light of the Victorian government's review of the Charter, this article adds to the growing weight of commentary urging the government to reform and strengthen Charter provisions. In particular, s 6(2)(b) should be amended in order to clarify which "functions" courts and tribunals are subject to under "Part 2". This article argues that courts and tribunals should have the power to apply and enforce those Pt 2 rights that are explicitly and exclusively addressed to court and tribunal proceedings. 181

International law in constitutional interpretation: A theoretical perspective – *Brent Michael*

Domestic courts have greater access than ever before to a wealth of international legal materials in a world with a plethora of international laws and courts. In this context, the question of what role international law should play in Australian constitutional interpretation is an important issue. This article explores the dilemma from a theoretical perspective, drawing on a distinction between the reliance on international law as a source of ideas, on the one hand, and reliance on international law purely because of its status as international law, on the other. It is argued that international law can be used legitimately as a source of ideas, and may have a limited role as a moral yardstick for considering public values where the Constitution requires examination of community standards. In all other situations, the author argues, the role of international law in constitutional interpretation should be carefully confined. 197

Symmetric entrenchment of manner and form requirements – *Thomas Roszkowski* and *Jeffrey Goldsworthy*

State Parliaments currently have power to entrench legislation by using the ordinary legislative process to enact manner or form requirements. This power can be abused by a political faction, with a temporary majority in Parliament, using the ordinary legislative process to prevent its opponents from later amending or repealing the legislation in the same way. This article examines one method of minimising the risk of abuse: prescribing the principle of "symmetric entrenchment", which requires that, to enact any new manner or form requirement, a State Parliament must comply with that same requirement. The article shows that this would not require extraordinarily difficult constitutional reform, such as an amendment of the Commonwealth Constitution or the Australia Acts. It could be achieved in each State by legislation that would be given binding force by s 6 of the Australia Acts. The article also shows that symmetric entrenchment is preferable to two alternative methods of minimising the risk of abuse, which we call fixed entrenchment and asymmetric entrenchment. 216

DEVELOPMENTS 223