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COMMENTS

ARTICLES

What's left of Cole v Whitfield? – *Justin Gleeson SC*

Some 25 years ago, the High Court in *Cole v Whitfield* laid the foundations for modern jurisprudence under s 92 of the Constitution. This article examines how that jurisprudence has been re-examined and restated by the court, with a new focus on markets and competitive forces, in the dual *Betfair* decisions of 2008 and 2012. It concludes with an indication of some of the possible future developments under s 92. 97

Privately public – *Dean R Knight*

This article considers the amenability of private incorporated bodies to judicial review in New Zealand, along with the related question of the relationship between common law review and the statutory recognition of judicial review in the *Judicature Amendment Act 1972* (NZ). In particular, it analyses whether the Act confers jurisdiction to review such bodies, without an assessment of their "publicness" as would otherwise be required under common law review. It is argued that the text, purpose and scheme, policy, and constitutional considerations weigh against the Act being jurisdiction-conferring. In other words, even if a body appears to meet the language of the Act, the courts must still assess its publicness when determining whether it is amenable to review. The Act is better understood as providing procedural support for judicial review only. 108

"Anomalous occurrences in unusual circumstances"? Extra-judicial activity by High Court justices: 1903 to 1945 – *Fiona Wheeler*

The conventional wisdom is that, with some important exceptions, the justices of the High Court of Australia have generally refrained from extra-judicial work. This has been to preserve their independence from government, in particular by avoiding association with political matters. This article, however, challenges this dominant reading of the historical record. Focusing on formal assignments outside the courtroom – such as service by High Court justices as Royal Commissioners, on other executive bodies, or in diplomatic roles – it argues that when the court's first 40 years are considered, there is evidence of a more substantial history of participation by its members in outside work than is frequently acknowledged. In advancing this viewpoint, the article shines a light on several largely forgotten instances of extra-judicial service by members of the court in its formative decades. It also explores some of the factors shaping the early court's engagement in such work and the contrast with High Court practice today. 125