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SPEECH

Federal implications under the Australian Constitution – *Stephen McLeish SC*

The drawing of implications from the federal nature of the Australian Constitution has traditionally been resisted on the authority of the *Engineers* case. The High Court has deprecated reliance on the "federal balance" as an aid to interpretation, while endorsing the relevance of concepts such as "national concern". The article suggests that neither approach is especially useful in interpreting the Constitution, but that the federal nature of the Constitution is an important contextual consideration from which implications might be drawn in appropriate cases, including in relation to aspects of Commonwealth legislative and executive power and the operation of s 96 of the Constitution. 172

ARTICLES

Constitutional restraints to the development of privacy in Hong Kong – *Jojo YC Mo*

In Hong Kong, there is no specific legislation that recognises a general right to privacy but that does not mean that individuals are not protected in cases of privacy intrusions. Protection can be provided by the common law either by an extended breach of confidence action or a sui generis privacy cause of action. However, common law developments can be hindered by human rights instruments. This article seeks to identify the constitutional restraint that Hong Kong courts may face in developing actions in privacy and offers an alternative interpretation of Hong Kong's human rights instruments with a view to further enhance the development of privacy actions as between private individuals. 185

The constitutional validity of State Chief Justices acting as Governor – *Matthew Stubbs*

In the Australian States, a long tradition continues of the Chief Justice of the Supreme Court serving as acting Governor, either through formal appointment as Lieutenant-Governor or by statutory mandate as Administrator. This article examines the validity of the Chief Justice undertaking vice-regal functions as acting Governor in light of the *Kable* incompatibility principle. The history of, and objections to, this practice are outlined, before two potential justifications are examined: conferral under the *persona designata* doctrine, and a novel and untested argument arising from the history of the practice and s 106 of the Australian Constitution. It is argued that such appointments can be justified only in limited circumstances under the persona designata doctrine, and that the more extensive appointments which exist in the majority of Australian States at present are invalid. 197

BOOK REVIEW

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