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ARTICLES

ANTI-SEMITISM, HATE SPEECH AND PT IIA OF THE RACIAL DISCRIMINATION ACT

Ronald Sackville AO QC

In Australia, hate speech laws such as Pt IIA of the Racial Discrimination Act 1975 (Cth) have always generated controversy. Those laws and the international human rights regime that underpin them have been strongly influenced by the experience of the Holocaust and by the dangers of anti-Semitism. An understanding of the nature of anti-Semitism and of the Australian case law dealing with anti-Semitic speech sheds light on the debate as to whether the curiously drafted Pt IIA should be retained, amended or discarded. The article argues that there are powerful policy reasons for retaining Pt IIA and other hate speech laws, but that the legislation should be amended to substitute objective tests for

subjective criteria. The amendments would achieve a more defensible balance between the legitimate protection of vulnerable groups from serious hate speech and the values of free speech. 631

LIQUIDATOR REMUNERATION, CREDITOR DIVIDENDS AND THE PUBLIC INTEREST: RECENT NSW SUPREME COURT DECISIONS AND THE CONTINUING NEED FOR REFORM

A Keith Thompson

In insolvency practice, there is tension between the interests of creditors and liquidators. In his 2011 article ("Peak indebtedness" theory: An abuse of the "running account" defence? (2011) 85 ALJ 374) the author explained how liquidators were using the "peak indebtedness" doctrine to intimidate "mum and dad" creditors despite their "running account" defences. In this article, he draws attention to the ongoing concerns of the New South Wales Supreme Court about liquidator charging practices. Palmer J expressed concerns about the potential for liquidators to "churn and burn" in his decision in Hall v Poolman (2007) 215 FLR 243 and Brereton J expressed similar concerns in a string of cases in 2014. Though Palmer J's direction that there be an inquiry into the liquidator's practice in Hall was appealed, it was not wholly overruled and the Court of Appeal concurred in much of what he said. More recently, Brereton J has interpreted post-2008 amendments to the Corporations Act to mean that the Court should not approve liquidator remuneration claims premised only on standard liquidator and lawyer charge out rates. None of these decisions have been appealed. That may mean that the insolvency profession has accepted Brereton J's adaptation of 1960s scale and value billing practices even though they are not expressly prescribed by the Corporations Act. 649

SHOULD LOWER COURT JUDGES BIND MAGISTRATES AND TRIBUNALS?

Oliver Jones

It is over 20 years since the Supreme Court of New South Wales, in Valentine v Eid (1992) 27 NSWLR 615, overruled previous authority and held that the reasons for judgment of the District Court of New South Wales were not binding on the magistrates of that State. Valentine continues to be applied in Australia, most recently by the Queensland Magistrates Court and, in relation to the Federal Circuit Court, by the Commonwealth Administrative Appeals Tribunal. This article argues that Valentine cannot withstand contemporary scrutiny. The reasons for judgment of the District Court of a State should, with the exception of South Australia, bind the magistrates of the State. Those reasons should also be applied by District Courts and magistrates interstate. On the other hand, a federal tribunal should only consider itself bound by the Federal Circuit Court where the tribunal is subject to the supervisory jurisdiction of that Court. 663

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