THE AUSTRALIAN LAW JOURNAL

Volume 95, Number 4

April 2021

CURRENT ISSUES – Editor: Justice François Kunc

Family Court Merger Becomes a Reality 243

Australia at the UN Human Rights Council 243

A Federal Judicial Commission 244

Choice of Counsel a Fundamental Matter 244

The End of the Cardinal Pell Media Saga 245

A Turn Up for the Books? 245

Anzac Lawyers 245

Remembering the Hon Mr Justice Russell Le Gay Brereton 246

The Curated Page 247

CONVEYANCING AND PROPERTY – Editors: Robert Angyal SC and Brendan Edgeworth

The Limits of Expert's Participation in a Leasing Dispute 249

CONSTITUTIONAL LAW – Editor: Anne Twomey

Who Is Responsible for Quarantine under the Constitution? 253

ARTICLES

FROM MIDDLE EAST BATTLEFIELDS TO THE WAR CRIMES TRIBUNALS IN BORNEO: THE WAR LETTERS OF THE HON JUSTICE RUSSELL LE GAY BRERETON, 1940–1946

Tony Cunneen

This article is based on the personal letters of Russell Le Gay Brereton, who was later a judge of the Supreme Court of New South Wales, written to his family during his service overseas in World War II. Brereton, who served in the Middle East and Pacific theatres, was a key lawyer in the establishment of the War Crimes Tribunal on the island of Labuan in 1945. These letters give a rare personal insight into the formative experiences of a man who was a well-known judge for over 20 years. 257

GLORY WITHOUT POWER: THE NATIONHOOD POWER AND COMMONWEALTH SPENDING ON SPORT

Daniel Goldsworthy

The constitutional dimensions of federal spending on sport have yet to be considered by the courts, the academy or various parliamentary inquiries. The current Senate Select Committee on Administration of Sports Grants Inquiry provides an opportunity to consider the constitutionality of federal spending on sport, which has not been contemplated since the seminal decisions of Pape, Williams (No 1) and Williams (No 2). In the absence of express or concurrent legislative powers regarding sport, this article considers whether the Constitution's implied nationhood power might support Commonwealth funding in this area. An appropriate constitutional challenge would likely call into question, and possibly fracture, existing aspects of Commonwealth spending on sport for want of necessary constitutional power. Were the validity of Commonwealth spending on sport to be challenged, the High Court would have recourse to consider whether, constitutionally at least, Australia is truly a sporting nation. 274

THE POWER OF "NATIONAL UNIFORM LEGISLATION": WHAT IS ITS RATE OF PROLIFERATION AND WHAT FACTORS ARE DRIVING IT?

Dr Guzyal Hill and Dr John Garrick

This research examines the rate of proliferation of national uniform legislation and driving forces behind this proliferation. Although national uniform legislation, as a complex legal phenomenon, has advantages and disadvantages, it is an inevitable occurrence in today's legal landscape. National law reform debate takes place against a backdrop of ever more complex and heated challenges, both local and global. New and even frightening challenges to sovereign nations have emerged. Yet one thing remains clear: a continued growth of national uniform legislation is foreseeable. Critical forces driving harmonisation have been identified and grouped into four categories: political, economic, social and technological. The list of driving forces we have identified is not exhaustive, but recent developments in connectivity (and serious contestation over who may be allowed to provide new technology to government systems and major infrastructure development) are only likely to add impetus to a further proliferation of national uniform legislation. The ongoing challenges of 2020 and beyond – bushfires, floods, global warming, COVID-19 pandemic and major international trade disputes – all serve to intensify debate over reform directions. 286

THE KING V SMAIL GOLDEN JUBILEE: THE FAILURE OF THE HIGH COURT "TO DEVELOP AND CLARIFY THE LAW" OF THE TORRENS VOLUNTEER IS NO CAUSE FOR JUBILATION

MM Park and Serene Ho

The year 2008 marked the 150th and 50th anniversaries respectively of the original South Australian Torrens registered land title statute and the Victorian Supreme Court decision in King v Smail. The year before the High Court of Australia had rendered its unanimous decision in Farah Constructions. The King decision was doubtful law even though it was decided a decade before the Privy Council and the High Court pronounced upon the issue of immediate indefeasibility of registered title. It is now 13 years since the High Court, in Farah, articulated upon the immediate indefeasibility of title of the registered volunteer. It is a cause for regret that the High Court in Farah and the later case of Cassegrain has

not availed itself of the limited opportunity to expressly decide upon the indefeasibility (or otherwise) of the title of the registered volunteer throughout the Australian Torrens jurisdictions. 292

BOOK REVIEW – Editor: Angelina Gomez

Philosophical Foundations of the Law of Equity, by Dennis Klimchuk, Irit Samet and Henry E Smith (eds) 303

Australian Law Journal Reports

HIGH COURT REPORTS – Staff of Thomson Reuters

DECISIONS RECEIVED IN MARCH 2021

Home Affairs, Minister for v Benbrika (*Constitutional Law; Criminal Law; High Court and Federal Court*) ([2021] HCA 4) 166

Immigration, Citizenship, Migrant Services and Multicultural Affairs, Minister for v AAM17 (*High Court and Federal Court*) ([2021] HCA 6) 292

Palmer v Western Australia (*Constitutional Law*) ([2021] HCA 5) 229