

PUBLIC LAW REVIEW

Volume 33, Number 2

2022

COMMENT – *Editor: Dan Meagher*

Accessing Documents of Former Ministers – Plugging the Accountability Gap – Daniel Casey	91
Constitution, Land, and Sovereignty: Love as a “Race Relations” Case? – Kate Galloway and Melissa Castan	97
Reasons, Fairness and Hearings – Matthew Groves	104

ARTICLES

Cabinet Conventions and National Cabinet – Anne Twomey

The National Cabinet is an intergovernmental body comprised of the heads of government of the Commonwealth, the States and the self-governing Territories. Yet the Commonwealth Government has claimed that it is a committee of the Federal Cabinet, for the purpose of attracting to it the protection of Cabinet confidentiality. This article addresses that contention by considering whether the National Cabinet meets the definition of a Cabinet and whether it attracts the legal protection afforded by convention to Cabinet documents. In doing so, it considers the fundamental constitutional principles and conventions that underpin the Cabinet and justify the application of cabinet confidentiality. It also discusses the contradictions in the Commonwealth Government’s arguments and Cabinet Handbook concerning the status and operation of the National Cabinet. 111

Services Australia’s Single Touch Payroll Program: The Enduring Legacy of Robodebt, or a Fundamentally Different System? – Asher Wright and Yee-Fui Ng

The Robodebt debacle has been universally decried as a major failing in Australian government administration. It involved an online compliance system that resulted in more than 470,000 incorrect welfare debt calculations. The Robodebt decisions made on the sole basis of income averaging were ruled to be irrational by the courts, resulting in the government agreeing to implement a new system. This article critically examines the various iterations of the Robodebt scheme within the context of social welfare policy in Australia, and compares it to the successor to Robodebt, the Single Touch Payroll (STP) program. It argues that while the STP program appears to be an improvement from the Robodebt system in some ways, issues pertaining to transparency and accountability continue to persist under the STP program. The authors suggest that further reform is required to ensure compliance with the administrative law requirements of rationality, lawfulness, transparency and accountability. 127

Open Justice during a Pandemic – The Role and Risks of Remote Hearings –
Michael Legg, Anthony Song, Lyria Bennett Moses and Richard Buckland

Open justice is a fundamental principle of the Australian justice system. The public administering of justice allows members of the community to be present and personally observe hearings. However, with the advent of the COVID-19 pandemic, stay-at-home orders, social distancing, and closure of court houses meant that judges could not sit in public as they traditionally had. To continue operating, courts turned to technology to conduct hearings remotely. This article examines this experience and considers the consequences of remote hearing technology as a substitute for traditional in-person attendance, including an analysis of both the role and risks that remote hearings can have for open justice. 143

BOOK REVIEW – *Editor: Edward Willis*

Keeping the Peace of the Realm, by Samuel White, LexisNexis – Reviewed by
David Letts 163

DEVELOPMENTS 166