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Accountable Administrative Decision-making: Revising the Federal Legal Duty to Consult in Australia – *Dayne Kingsford*

Two fundamental characteristics underpin modern democracy: the rule of law and political participation. Indeed, deliberative democracy requires free and equal participation between government and citizens to reach its idealised form. However, such participation is often omitted from the creation of Australian administrative and legislative instruments due to a lack of a duty, at common law or in statute, imposed on federal rule-makers to consult with the impacted population prior to the instrument's development and implementation. At common law, the consultation deficiency is due, partly, to administrative acts that affect a broader class being a policy matter, and often untouchable by the judiciary; whereas for administrative decisions that impact individuals, the rule-maker is likely bound by the rules of procedural fairness. In statute, attempts have been made through legislative amendments to impose a greater duty to consult with those impacted by administrative and legislative instruments; however, these have been unsuccessful. 162

Unincorporated Treaties in Judicial Review Proceedings: Some Post Teoh Arguments – *Oliver Jones*

The high profile case of *Minister of State for Immigration and Ethnic Affairs v Teoh* was delivered 25 years ago. It attracted enormous judicial and scholarly attention but was widely thought to have been consigned to history by the High Court decision of *Minister for Immigration and Border Protection v WZARH*. While Teoh has lost much of its authority, this article argues that unincorporated treaties, with some influence from Teoh remain relevant to judicial review. 178

The Ghost of Teoh – International Law and Domestic Discretionary Decision-Making – *Damien O'Donovan*

The High Court's decision *Minister of State for Immigration and Ethnic Affairs v Teoh* (Teoh) triggered extensive debate about the role international law plays in the exercise of statutory discretions. Since Teoh the High Court has repeatedly expressed doubts about the conceptual underpinnings of the decision yet the Federal Court has added significant content to the requirements for the lawful exercise of statutory discretions when international law principles are engaged. However, some key decisions in the last 12 months may have curtailed its influence. At present, Teoh has not been overturned and, so far as assessment of the best interests of children are concerned, it remains a binding authority, but a trend is emerging which gives discretionary decision-makers greater scope to place less weight or no weight on international law principles. 195

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