PUBLIC LAW REVIEW

Volume 34, Number 1

2023

COMMENTS – SYMPOSIUM ON THE VOICE – *Guest Editor: Professor Gabrielle Appleby*

A First Nations Voice and the Exercise of Constitutional Drafting – *Gabrielle Appleby, Sean Brennan and Megan Davis* 3

Membership of the Voice – *Elisa Arcioni* 10

Federalism and a First Nations Voice – *Stephen McDonald* 15

Justiciability and the Voice – *Scott Stephenson* 21

ARTICLES

Environmental Damage as a Threat to National Security: Australia's Legal Vulnerability to Enviro-Terrorism and Enviro-Sabotage – *Sarah Kendall and Brendan Walker-Munro*

This article examines whether Australia's domestic criminal laws effectively address the threat of environmental damage that is intended to undermine our national security. It focuses on two specific types of conduct – enviro-terrorism (destruction of the natural environment to further the political and/or ideological agendas of terrorist organisations) and enviro-sabotage (damage to the environment caused by foreign powers seeking to harm Australia's national security). Through an analysis of Australia's federal sabotage offences, State and Territory sabotage offences and crimes under environmental protection legislation, the article shows that Australia's domestic laws fail to adequately protect Australia's diverse and irreplaceable natural environment from deliberate attack by terrorists or foreign powers. The article concludes by making recommendations for law reform to better protect Australia's natural environment from attacks intended to undermine our national security. 26

The Constitutional Concept of an Alien – *Jamie Blaker*

The Commonwealth Parliament has a constitutional power to make laws with respect to aliens. Our understanding of that power is in disarray. It has been settled and then upheaved in epicycles, for thirty years. For now, the understanding rests, uneasily, upon two facially inconsistent principles. The first is that the word "aliens" in the Constitution has a variable meaning, in that the Parliament can choose who is and is not an "alien[]" referred to by that constitutional word. The second is that the word "aliens" in the Constitution has a fixed meaning the penumbra of which sets limits on the Parliament's aforementioned choice. Despite appearances, those established principles can be reconciled. Seen from an adjusted perspective – a perspective that distinguishes the constitutional concept of an alien from legislated conceptions of that concept – the established principles are coherent and appealing. We can rest where we stand. These are the terms of a settlement. 48

The High Court and Judicial Appointment Reform Comparatively Recast – *Rosalind Dixon and John Lidbetter*

The most important test of a system of judicial appointment is its capacity to ensure the selection of suitably qualified and independent judges; on this measure, Australia has a long record of success. However, appointment processes must also be fair and transparent, while simultaneously seeking to promote diversity and democratic accountability within the judiciary. On this measure, Australia's current system of judicial appointment leaves clear room for improvement. This article canvasses potential models for reform and establishes a typology of systems based on the degree to which they involve one-stage versus two-stage and legal versus political models of appointment. Furthermore, comparative insights are explored concerning the benefits and drawbacks to different two-stage models of appointment involving an independent judicial commission. Drawing on this analysis, it argues for the desirability of a South African rather than UK-style model of judicial appointment as a potential template for reform efforts in Australia, especially at the High Court level. 61

BOOK REVIEW – *Editor: Edward Willis*

Common Good Constitutionalism (1st ed), by Adrian Vermeule – *Reviewed by Renato Saeger M Costa* 78

DEVELOPMENTS 84