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ARTICLES

Trespass, Recordings, and Freedom of Speech in Australia: Balancing Private Law, Criminal Law, and Constitutional Freedoms – Joachim Dietrich

The *Surveillance Devices Act 2007* (NSW) criminalises trespass to land (especially by installing surveillance devices) but significantly, it also criminalises the communication or possession of records of activities or private conversations (or reports thereof) if those records were obtained by entry onto premises or interference with goods without the owners’ consent. In *Farm Transparency International Ltd v New South Wales* (Farm Transparency), the High Court was asked to consider the constitutional validity of those provisions. The majority of the High Court found that the provisions in question did not infringe the implied constitutional freedom of communication on governmental and political matters. This article concludes that the majority failed to adequately balance the constitutional implied freedom of political communication against the rights sought to be protected by the Act. In reaching that conclusion, this article explores the complex interaction of private law, criminal statute, and constitutional freedoms. 211

A “Grand Inquest” of a State? The Parliamentary Grand Inquest Inquiry Power in Australia – Stephen James

Only a handful of works have explicitly explored the applicability of the parliamentary “grand inquest” inquiry power in Australia, and fewer still at the State level. This article builds on those works by examining the grand inquest power through close examination of the 1855 edition of Thomas Erskine May’s classic treatise on parliamentary privilege, contemporary 19th-century scholarly works, and Australian parliamentary procedure and practice manuals. It addresses the following key questions: What is the grand inquest power? How, if at all, is it limited? What is its applicability and scope in the Australian context, particularly at the State level? The article concludes that States that linked their powers,

privileges and immunities to those of the House of Commons possess that chamber's grand inquest power in full measure, not limited to their parliaments' legislative powers. Significantly, this is consistent with parliaments' diverse non-legislative functions. 228

Convergence and Divergence: The Influence of American Constitutionalism on Sir Owen Dixon – *Aryan Mohseni*

Sir Owen Dixon's increasing disillusionment with the state of the English judiciary during his tenure as Justice, and later Chief Justice, of the High Court of Australia is well known. What is less well known is his admiration for early American constitutional law scholarship. This article explores that theme with particular reference to Dixon's friendship with Justice Felix Frankfurter of the US Supreme Court, both of whom had a similar judicial cast of mind and were fascinated by the unique analytical complexities posed by a federal system. It will be seen that Dixon's treatment of three constitutional issues – the common law and the Constitution, intergovernmental immunities, and federal judicial power – bore all the hallmarks of American thought in these areas. But Dixon's disillusionment with the composition of the US Supreme Court, and his aversion to the growing prominence of "Due Process", tempered this enthusiasm with scepticism in his later years. 241

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