

# THE AUSTRALIAN LAW JOURNAL

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## **CURRENT ISSUES – Editor: Justice François Kunc**

Briefly Noted ..... 399

## **ENVIRONMENTAL LAW – Editor: Justice Rachel Pepper**

Legislative Chickens or Litigation Eggs: Which Comes First in the Fight against Climate Change? ..... 408

## **INTERNATIONAL FOCUS – Editor: Professor Stuart Kaye**

New Security Agreements in the Pacific ..... 417

## **ADMIRALTY AND MARITIME – Editor: Dr Damien J Cremean**

Contrasting Approaches to the Conferral of Jurisdiction in Admiralty ..... 422

## **PERSONALIA – Editor: Emily Vale**

Tom CJ: From top Commercial Silk to Legal Philosopher ..... 426

## **ARTICLES**

### **THE ROLE OF FOREIGN JUDGES IN THE PACIFIC: PAST, PRESENT AND FUTURE**

#### **The Hon AS Bell**

There is a long and fascinating history surrounding the role played by foreign judges in the courts of nations of the Pacific, both during colonial times and post-colonisation. That history is not uniform nor is it static. The common law and its preference for protecting the rights of individuals has sometimes created tension with customary rights especially in relation to land. While for the most part positive and invariably well-intentioned, the role played by foreign judges in the last three decades has often been ad hoc, has not always been appreciated and has occasionally been problematic. On other occasions, the treatment of some foreign judges has also been deeply problematic. The overall contribution has nonetheless been significant in the promotion of the rule of law and the development of local judiciaries. .... 432

## TRUSTEE SUCCESSION AND INDEMNIFICATION

**Jessica Hudson**

Trustee succession and indemnification are important to trust administration, but their interaction generates uncertainties about whether a former trustee: can retain against the successor trustee; has priority to indemnification; and is owed a fiduciary duty by the successor trustee. Also, there is the question of the relative claims of the trustees' respective creditors. This article answers these questions using a different conception of the trustee's indemnity to argue that succession fundamentally alters the process of indemnification of the former trustee who assumes the position of a (preferential) beneficiary. As with any other trust relationship, the successor trustee should be indemnified in priority to any other beneficiary, including former trustees; the successor trustee owes the former trustee fiduciary duties, the scope of which will be determined by the trust terms; and the distinction between the exoneration and reimbursement limbs, while often overlooked, are essential to resolving questions about retention and creditors. .... 454

# Australian Law Journal Reports

## HIGH COURT REPORTS – Staff of Thomson Reuters

### DECISIONS RECEIVED IN MARCH/APRIL 2024

Immigration, Citizenship and Multicultural Affairs, Minister for v McQueen ([2024] HCA 11) ( <i>Citizenship and Migration; Constitutional Law</i> ) .....	594
LPDT v Minister for Immigration, Citizenship, Migrant Services and Multicultural Affairs ([2024] HCA 12) ( <i>Administrative Law; Citizenship and Migration</i> ) .....	610
Miller v Minister for Immigration, Citizenship and Multicultural Affairs ([2024] HCA 13) ( <i>Administrative Law; Citizenship and Migration</i> ) .....	623
Public Prosecutions, Director of v Benjamin Roder (a pseudonym) ([2024] HCA 15) ( <i>Criminal Law</i> ) .....	644
Public Prosecutions (Cth), Director of v Kola ([2024] HCA 14) ( <i>Criminal Law</i> ) .....	632
Redland City Council v Kozik ([2024] HCA 7) ( <i>Local Government; Restitution</i> ) .....	544

