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Tino Rangatiratanga in Post-treaty Settlement Aotearoa: Challenges of Co-governance, and Evolving Treaty Partners – *Andrew Erueti*

This article considers the puzzle of the location of tino rangatiratanga in the post-Treaty settlements era in the context of current controversy in New Zealand over recognising Māori self-determination or tino rangatiratanga as guaranteed by Art 2 of the Treaty of Waitangi. On one level, the current political and legal struggles reflect a fundamental tension between Māori aspirations for tino rangatiratanga and the state's desire to maintain centralised sovereignty. At a deeper level, the government opposition to co-governance stems from questions about the evolving role of the Treaty – in particular the guarantee of tino rangatiratanga and its ability to apply to a much wider range of Treaty issues (other than natural resources) and Treaty partners; for example, non-tribal Māori collectives serving urban Māori and not bound like tribes by kinship ties. The Waitangi Tribunal, originally established to facilitate Treaty settlements, is now at the centre of this shift in thinking to expand the interpretation of tino rangatiratanga. In a recent series of reports, the Tribunal has recognised the diversity of Māori identity and the legitimacy of non-tribal collectives as Treaty partners, particularly when these organisations are created by and responsive to the socio-economic needs of Māori. The proliferation of Treaty partners thus raises issues of co-ordination and coherence – how do these many partners engage effectively with the Crown and is every Māori organisation a Treaty partner for the purposes of Art 2 tino rangatiratanga? And does provision of social services by these Treaty partners violate the right to equality? 23

Interest and the Multifactorial Test for Standing in Judicial Review – *Santanu Sabhapandit and David Tan*

Standing determines who can bring a judicial review action. It performs an important gatekeeping function regarding the availability of judicial review for administrative decisions affecting various interests. The general approach to determining standing is well settled. There is, however, significant uncertainties over standing for judicial review of decisions that affect public interests. Courts have developed a multifactorial test for such cases, that is based on the general approach to standing. In this article we raise

two concerns with the current multifactorial test – that it is in tension with the general approach to standing, and that there is lack of clarity if specificity is a requirement of the multifactorial test. In response to the first, we conceptualise two possible paths forward – one reconciliatory and the other separatist. As to the second concern, we suggest ways in which specificity may or may not be made a requirement of the multifactorial test. 40

Defining National Security: Still a Non-justiciable Problem? – *Dr Brendan Walker-Munro*

In the last 20 years, Australia has passed national security legislation on an unprecedented scale. Since the terror attacks on the World Trade Centre in 2001, Australia has passed significant amounts of legislation criminalising and regulating offences of espionage, sabotage, terrorism, foreign interference, spying and bribery of Commonwealth officials. Despite the many amendments to Australia's statute books, there appears a lack of academic scrutiny as to exactly what national security "is". This article intends to trace the evolution of non-justiciability of national security over time and to demonstrate that, even despite a substantial increase in national security legislation since 11 September 2001, Australian courts have begun to unpick the historically broad cloak of non-justiciability of those matters. By demonstrating that national security is no longer entirely non-justiciable, and identifying how the contours which seemingly still forms its core have changed over time, this article contributes to the broader discourse and discussion regarding the evolving nature of national security legislation. 58

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