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CURRENT ISSUES – Editor: Justice François Kunc

AUSTLII Turns 30	601
AustLII – 30 Years of Free Access to Law	602
The Curated Page	610

CONVEYANCING – Editors: Robert Angyal SC and Brendan Edgeworth

Continuity and Nuisance: Recent Developments in Private Nuisance in Australia and the United Kingdom	611
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ADMIRALTY AND MARITIME – Editor: Dr Damien J Cremean

Ships as Persons	616
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FROM THE LAW SCHOOLS – Editor: Emeritus Professor David Barker

Australasian Law Academics Association Conference 2025	620
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ARTICLES

LEGISLATIVE PURPOSE, FACT-FINDING AND PREVENTATIVE DETENTION FOLLOWING LIM-NZYQ

Ashleigh Barnes

The purpose of the law of preventative detention is two-fold: it aims to strike a balance between the protection of the community and individual liberty. To achieve this, a doctrinal framework that allows for the appropriate balancing of these dual objects is needed. In Australia, this balancing exercise is struck by Parliament and supervised by the judiciary. The judiciary requires a workable framework and set of standards against which to measure the constitutional validity of a preventative detention regime. This framework must be capable of being applied in a coherent and consistent manner. This essay argues that one problem with the Lim-NZYQ framework, as applied to the law of preventative detention in Australia, is that it rests on a fiction around constitutional facts. It should be clarified and reformed by reference to the cardinal principles of coherence and transparency in judicial reasoning.	621
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THE FEDERAL COURT'S DEFAMATION JURISDICTION: REVISITING CROSBY V KELLY

Myles Pulsford

The interpretation in *Crosby v Kelly* of s 9(3) of the Jurisdiction of Courts (Cross-vesting) Act 1987 (Cth) as a law of the Commonwealth for the purposes of s 76(ii) of the Constitution has had significant consequences for the Australian Judicature, including, most notably, the establishment of the Federal Court's defamation jurisdiction. This article considers and tests the conceptual underpinnings of *Crosby v Kelly*'s reasoning. While the Commonwealth Parliament undoubtedly has legislative power to confer jurisdiction on the Federal Court with respect to defamatory publications in the territories, this article argues that there is considerable doubt that, as a matter of statutory construction, that power was exercised in the enactment of s 9(3). If the Federal Court's jurisdiction cannot be sustained under s 9(3), this article argues that there would not appear to be a clear and established basis for the Federal Court to hear and determine defamation proceedings. 633

CIVIL PENALTIES: A NEW DOCTRINE OF DETERRENCE?

John Sheahan KC and Tim Rogan

The High Court's decision in *Australian Building and Construction Commissioner v Pattinson* established that deterrence is the sole purpose of civil penalties. While this was treated as confirmation of an orthodoxy dating back to the decision of French J in *Trade Practices Commission v CSR Ltd*, Pattison marked a departure from the pattern of established cases in civil penalties. The deterrence-alone paradigm in civil penalties presents new challenges for courts and litigants, the dimensions of which are not widely appreciated. This article seeks to outline the mode of addressing penalties that is called for by a deterrence paradigm, and to suggest some tools for addressing the challenges to which it gives rise. 650

Australian Law Journal Reports

HIGH COURT REPORTS – Staff of Thomson Reuters

DECISIONS RECEIVED IN JUNE 2025

MDP v The King ([2025] HCA 24) (<i>Criminal Law</i>)	969
Ravbar v Commonwealth ([2025] HCA 25) (<i>Constitutional Law; Industrial Law; Statutes</i>)	1000
Valuer-General Victoria v WSTI Properties 490 SKR Pty Ltd ([2025] HCA 23) (<i>Real Property; Valuation of land</i>)	955

