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A Comparison of the Right to Protest and Its Constitutional Protection: COVID and Beyond – *Anthony Gray*

The question of the right to peacefully protest is a perennial one, given renewed currency by the COVID pandemic era, continued world conflict, and strong community sentiment about a range of contentious issues. The right to so protest is considered fundamental in a democratic society. This article considers the extent to which the right to protest has been protected in fact in Australia. It reveals that, often, the right to protest has been curtailed in favour of other interests. Sometimes, content-based restrictions on speech have apparently been applied. In contrast, comparable jurisdictions have often upheld the right to peacefully protest in a more robust fashion. The article suggests constitutional difficulties with the existing schemes by which protest and assembly are regulated in Australia, based on the rule of law and implied freedom of political communication. 58

Certiorari against Abolished Bodies – *Oliver Jones*

In *AXG18 v Minister for Immigration and Multicultural Affairs*, the parties agreed that the Immigration Assessment Authority, before its recent abolition, had made a jurisdictional error. Judge Doust accepted this but refused to issue certiorari against the Authority. Certiorari in her Honour's Court, as in the High Court, takes the traditional form of requiring the decision-maker to produce the record for judicial consideration. Judge Doust would not make such an order against a body that did not exist. This article explores her Honour's reasons, particularly as a source of inspiration for replacing all certiorari with quashing orders. 77

Model Litigant and Assistance Rules in VCAT – What Do They Require? – *Matthew Groves*

Claims involving governments and their agencies are often quite different to all others. There is a range of reasons for this, including: the unique and uniquely complex functions of government; the singular impact that the decisions of public agencies can have; and the vast resources that governments and their agencies can hold when compared to those who challenge their decisions. The powerful position of government is offset, to some extent, by special obligations that fall onto public sector litigants. One is the duty of government parties to act as a model litigant. Another is the duty of parties to tribunal cases to assist the tribunal. Most of the attention given to these duties have focused on the federal level, by reason of the detailed Model Litigant Rules approved by the Commonwealth Attorney-General under the *Judiciary Act 1903* (Cth) and the longstanding duties of parties in federal tribunal proceedings to assist the relevant tribunal. Victoria has adopted a modified version

of model litigant guidelines based on the federal model, but they have received far less judicial and academic analysis. The legislation governing the key Victorian merits review body (VCAT – the Victorian Civil and Administrative Tribunal) does not include a duty of parties to assist VCAT. This article examines how the incomplete application of two well-settled federal principles to VCAT operate and how they could be reformed. The article argues that changes to specific procedural duties should occur as part of a wider ranging review of the *Victorian Civil and Administrative Tribunal Act 1998* (Vic). The article also considers how these issues may be affected by the absence in the VCAT Act of a provision that expressly states the objectives of VCAT. 82

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