

AACL

Australian Association of Constitutional Law

PROGRAM OF EVENTS 2009/2010

22 SEPTEMBER 2009

Forum on the Pape Case

In *Pape v Commissioner of Taxation of the Commonwealth of Australia* [2009] HCA 23, a 6–1 majority dismissed a challenge to the Commonwealth’s ‘household stimulus’ package; but the ratio of the case may be more difficult to discern. The reasons for decision traverse fundamental aspects of the character and form of appropriation under the Australian Constitution (ss 81 & 83) and the interaction of these sections with the incidental legislative power (s 51(xxxix)) and the executive power (s 61). Central to the judgments is an analysis of the character and boundaries of the executive power, the ‘implied nationhood power’, and the operation of these powers within the federal system. The reasons make extensive reference to legal and constitutional history.

Introduction: **Dr David Bennett AC QC** (Sydney Bar)

Commentators: **Dr Nicholas Seddon** (Special Counsel, Blake Dawson)

Associate Professor Anne Twomey (University of Sydney)

Chair: **The Hon Murray Gleeson AC**

Court 18D, Federal Court, Queens Square, Sydney at 5.30 pm (seminar open to the public).

22 OCTOBER 2009

The Entrenched Minimum Provision of Judicial Review and the Rule of Law

Paper presented by **Associate Professor Leighton McDonald** (Australian National University):

In *Plaintiff S157/2002 v Commonwealth* (2003) 211 CLR 476, the High Court held that s 75(v) of the Constitution entrenches a ‘minimum provision of judicial review’ which limits the effectiveness of statutory attempts to impair the judicial review of Commonwealth administrative action and constitutes a ‘textual reinforcement’ of the rule of law. This paper identifies two possible ways in which the ‘rule of law’ might give content to the idea the minimum provision of judicial review. The paper proceeds primarily through an analysis of the High Court’s reasons in *Commissioner of Taxation v Futuris Corporation Ltd* (2008) 247 ALR 605. The paper distinguishes and analyses a number of different statutory techniques aimed at restricting judicial review.

Commentators: **Emeritus Prof Mark Aronson** (University of New South Wales)

Mr Alan Robertson SC (Sydney Bar)

Chair: **The Hon Murray Gleeson AC**

Court 18A, Federal Court, Queens Square, Sydney at 5.30 pm (members only)

NSW Convenor: tel (02) 9223 0185 • fax (02) 9221 3788 • DX Sydney 395 • mantziaris@wentworthchambers.com.au
Eighth Floor Selborne Chambers, 174 Phillip Street, Sydney, NSW 2000.

National Secretariat: c/o Dr Madeline Grey • tel (03) 8344 1011 • fax (03) 8344 1013 • law-cccs@unimelb.edu.au •
Melbourne Law School, 185 Pelham Street, University of Melbourne, Vic 3010.

17 NOVEMBER 2009

Reflections on the Republic and Executive Power: The Evolution of the Winterton thesis

Paper presented by **Associate Professor Peter Gerangelos** (University of Sydney):

Professor George Winterton's proposals for constitutional amendment to accommodate an Australian republic were based on a careful analysis of three key issues: (i) the scope of the executive power conferred by section 61 of the Constitution and the importance of the Crown's common law powers in determining the "depth" of the "execution and maintenance" limb of s 61; (ii) the extent of the legal separation between legislative and executive power and the accommodation of responsible government; and (iii) legislative ouster of executive power: *Attorney-General v De Keyser's Hotel Ltd* [1920] AC 508; *Barton v Commonwealth* (1974) 131 CLR 477. This paper will explore the intimate connection between Professor Winterton's constitutional jurisprudence and his considered position on republican government. Other positions will be considered by way of counterpoint.

Commentators: **Mr Ian Knight** (Crown Solicitor (NSW))

The Hon Justice Ronald Sackville (New South Wales Court of Appeal)

Chair: **The Hon Murray Gleeson AC**

Court 18A, Federal Court, Queens Square, Sydney at 5.30 pm (members only)

9 MARCH 2010

The High Court and Aboriginal Land 2008/09 – Constitutional Issues and the Strength of Aboriginal Property Rights

Paper presented by **Mr Sean Brennan** (Senior Lecturer, University of New South Wales)

In 2008–09, the High Court determined four Aboriginal land rights and native title cases: *Northern Territory v Arnhem Land Aboriginal Land Trust* (2008) 236 CLR 24; *Griffiths v Minister for Lands, Planning and Environment* (2008) 235 CLR 232; *Minister Administering the Crown Lands Act v New South Wales Aboriginal Land Council* (2008) 249 ALR 602; and *Wurridjal v Commonwealth* (2009) 252 ALR 232 (the 'Intervention' case). This paper considers several important issues of constitutional and statutory interpretation raised by the cases: the meaning of 'acquisition of property on just terms' (s 51(xxxi)) in the context of Aboriginal property rights and the amendment of land rights legislation, the reinterpretation of the territories power (s 122), and the intersection of Territorial fishing licences and exclusive possession rights in the intertidal zone. The paper will also address broader public law issues such as the use of compulsory acquisition powers to transfer land from one private owner to another, whether traditional canons of interpretation protect Aboriginal property rights, and how far governments have to go to put land beyond claim. It also offers observations on the resulting contrast between the federal system of native title and property rights conferred under NSW and NT land rights legislation.

Commentators: **The Hon Justice John Basten** (New South Wales Court of Appeal)

The Hon Justice Jayne Jagot (Federal Court of Australia)

Chair: **The Hon Murray Gleeson AC**

Court 18B, Federal Court, Queens Square, Sydney at 5.30 pm (members only)

APRIL 2010

Pending constitutional litigation — State and federal

Mr Michael Sexton SC (Solicitor General for New South Wales) will identify and discuss cases of constitutional interest before State and federal courts as at April 2010. The precise content of this seminar will be determined closer to the event. Depending on the number and nature of the cases to be addressed, other speakers might join Mr Sexton SC.

Federal Court, Queens Square, Sydney [members only — time and location to be announced in 2010]

MAY 2010

[Event to be announced in 2010]

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MEMBERSHIP OF AACL

Why you should become a member

The *Forum on Paper* (22 September 2009) is open to the public. All subsequent seminars are restricted to members of AACL. Copies of papers will be distributed to members in advance of the seminar by email. Members also receive benefits not related to the seminar series, such as newsletters and updates on constitutional law developments and events throughout the year.

I invite you to become a member of AACL. The association was formed in 1998 as a forum for scholars and practitioners of constitutional law throughout Australia. It now has some 220 members throughout Australia. More information on AACL may be found at www.law.unimelb.edu.au/aacl/

Eligibility

A person may become an ordinary member by applying for membership and paying the annual subscription. The annual subscription is **\$50.00** (concession \$35.00).

Membership is open to a person who is:

- a judge, legal practitioner or government legal officer;
- a current or former teacher of constitutional law or scholars engaged in research in the field of constitutional law or a related discipline;
- a member of an association which is a member of the International Association of Constitutional Law or similar foreign associations as approved by the Council; or
- someone who is adjudged by the Council as having a sufficient interest, whether by reason of practical experience or occupation, in the field of constitutional law.

Application form and nomination

Under the current rules of the Association, an application for membership must be nominated and seconded by existing members. So, if you would like to join AACL, please:

1. Complete and execute the *attached* application form (*page 5*), making sure you authorise the deduction of the subscription fee from your credit card.
2. Forward the application form by DX, post or email (scanned copy) to *any one* of the following persons for nomination:

- Danielle Gatehouse: danielle.gatehouse@ags.gov.au • Australian Government Solicitor, Level 42, 19 Martin Place, NSW 2000 • DX 444 Sydney.
- Nick Gouliaditis: nick.gouliaditis@ags.gov.au • Australian Government Solicitor, Level 42, 19 Martin Place, NSW 2000 • DX 444 Sydney.
- Stephen Lloyd: stephen.lloyd@sixthfloor.com.au • 6th Floor, Wentworth Chambers, 180 Phillip Street, Sydney, NSW, 2000 • DX 398 Sydney.
- Andrew Lynch: a.lynch@unsw.edu.au • Gilbert + Tobin Centre of Public Law, Faculty of Law, UNSW, NSW 2052.
- Christos Mantziaris: mantziaris@wentworthchambers.com.au • Eighth Floor Selborne Chambers, 174 Phillip St, Sydney, NSW • DX 395 Sydney.
- Denise Meyerson: Denise.Meyerson@law.mq.edu.au • School of Law, Macquarie University, W3A, North Ryde, NSW 2109.
- Heather Roberts: Heather.Roberts@anu.edu.au • ANU College of Law, Australian National University, Canberra, ACT 2600.
- Mark A Robinson: mark@robinson.com.au • Third Floor, Wentworth Chambers, 180 Phillip St, Sydney NSW 2000 • DX 392 Sydney.
- Ashley Tsacalos: ashley.tsacalos@deacons.com.au • Deacons, Grosvenor Place, 225 George Street, Sydney, NSW 2000 • DX 368 Sydney.

We will take care of the seconding of your nomination and forwarding it to the National Secretariat for approval. Within a few weeks, you should receive confirmation of your membership from the National Secretariat.

Telephone enquiries

For all telephone enquiries regarding **membership**, please contact the National Secretariat, c/o Dr Madeline Grey (tel **03- 8344 1011**) or Dr Heather Roberts (tel **02 - 6125 0624**).

I hope you can join us for an exciting year ahead.



Dr Christos Mantziaris
Eighth Floor Selborne Chambers

Convenor, NSW Chapter of AACL

27 July 2009

AUSTRALIAN ASSOCIATION OF CONSTITUTIONAL LAW

ABN 11 717 363 928

MEMBERSHIP APPLICATION FORM

Surname			
Name			
Title	<i>(please circle title)</i> Chief Justice / Justice / Sir / Lady/ Prof / Assoc Prof / Dr / Mr / Mrs / Ms / Miss		
Position			
Institution			
Address			
State		Postcode	
Phone	[]	Fax	[]
Email	<input type="checkbox"/> I request that notices be sent to me by e-mail when possible.		

I hereby apply for Membership of the *Australian Association of Constitutional Law*.

..... (signature) (date)

Proposed by*: (signature) (please print name clearly)

Seconded by*: (signature) (please print name clearly)

* Must be a current AACL member

PAYMENT DETAILS

\$50.00 full membership \$35.00 concession membership

Please indicate concession type:

Student Unemployed Retired

I wish to pay the total of \$.....for AACL membership from 1 July 2009 – 30 June 2010.

Cheque, made payable to AACL Inc, or (preferred):

Credit card Bankcard Visa Mastercard

Card number:...../...../...../.....

Name of card holder:

Expiry date:.....

Signature:

.....

Please forward form and payment to one of the persons listed on page 4 for nomination, seconding and processing.

Fully executed forms may be sent to the National Secretariat of AACL: law-ccs@unimelb.edu.au • Melbourne Law School, 185 Pelham Street, University of Melbourne, Vic 3010 • tel (03) 8344 1011 • fax (03) 8344 1013