Constitutional Centre Lecture Series 2014

The Constitutional Centre of Western Australia in conjunction with the University of Western Australia and the Australian Association of Constitutional Law invite you to a twilight seminar:

**Emmerson: The High Court, Kable and Criminal Property Confiscation Laws**

Constitutional Centre of Western Australia  
Wednesday 30 April  
6:00-7:15pm

**Speakers:**  
Dr Peter Johnston, University of Western Australia & Monash University, Barrister (Stone Chambers, Perth)  
Dr Natalie Skead, University of Western Australia

**Chair:**  
Richard Hooker, Barrister (John Toohey Chambers), Adjunct Professor (University of Western Australia)

*Attorney General (NT) v Emmerson* [2014] HCA 13 is the latest decision to come out of the *Kable* stable. *Kable* held that state courts must meet minimum standards of impartiality and independence from the state executive government and legislature. Under the *Kable* principle extreme state laws that drastically confiscated criminal property or include measures aimed at motorcycle gangs run the risk of impermissibly undermining the integrity of state courts. They may be held invalid as inconsistent with Chapter III of the *Commonwealth Constitution*. The *Kable* principle now extends also to territory courts. In the 18 years since *Kable* was decided the High Court has vacillated about the kind of laws that fall within its shadow.

In *Emmerson* the High Court upheld a Northern Territory law authorising the Territory Supreme Court to order confiscation of all the property of a person convicted of three drug-related offences. *Emmerson* is a bellwether case indicating that state or territory laws empowering confiscation of criminal property are likely to be held valid. That prospect does not mean, however, that other draconian laws, such as the Queensland laws aimed at motorcycle groups, will be upheld.

Dr Peter Johnston, who was counsel for Emmerson, will discuss the decision in terms of how *Kable* might apply to future politically contentious state laws. Dr Natalie Skead will comment on the broader policy and property law context of proceeds of crime legislation.


THE CONSTITUTIONAL CENTRE OF WESTERN AUSTRALIA  
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