

## *Kable, the Dog that Won't be Silent*

Mr Gim Del Villar

(By James Illich)

In November 2013, I was one of a number of students from Western Australia who were fortunate enough to attend the 25<sup>th</sup> Conference of The Samuel Griffith Society. As always, the Conference was attended by leading figures from law, academia, politics, journalism and other areas. One of the speakers, Mr Gim Del Villar, a Barrister practising at the Queensland Bar, presented an engaging paper titled 'Kable: The Dog that Won't be Silent'.

The title to this paper is a reference to the case of *Kable v Director of Public Prosecutions (NSW)* (1996) 189 CLR 51. The case stands for the proposition that Ch III of the *Constitution* requires that State Parliaments cannot confer upon State courts functions which are 'repugnant to or incompatible with' the exercise of Federal judicial power. This is referred to as the 'Kable Principle'.

Mr Del Villar explained that the 'Kable Principle' is based on a number of propositions under Ch III of the *Constitution*. This includes s 77, which provides that the Commonwealth Parliament may vest Federal jurisdiction on State courts. The Kable decision was unexpected because, as Mr Del Villar explained, it had long been held that Commonwealth courts had 'to take State courts as they were'. Nevertheless, the High Court saw a need to protect the constitutional integrity of the State Supreme Court's. In *Baker v R* (2004) 223 CLR 513, Kirby J suggested that Kable may be 'a constitutional guard-dog that would bark but once'. However, the High Court has since upheld the 'Kable Principle' on a number of occasions. Relevantly, Queensland's new 'Anti-Bikie Laws' may be challenged on the ground that they violate the Kable Principle.

In concluding his speech, Mr Del Villar contended that there is no practical necessity for the 'Kable Principle'. Mr Del Villar cited the fact that, for the first 93 years of the High Court, the 'Kable Principle' was not needed. Mr Del Villar also said that it is unclear what the 'Kable Principle' actually stands for and means in practice. For instance, he questioned how courts can measure 'public confidence'.

With the Kable Principle frequently referred to by the State Solicitors-General during their panel discussion, Mr Del Villar's paper was ideally timed and very well received.