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ARTICLES

EXPERT MEDICO-SCIENTIFIC EVIDENCE BEFORE TRIBUNALS: APPROACHES TO PROOF, EXPERTISE AND CONFLICTING OPINIONS

Randall Kune and Professor Gabriel Kune

This article sets out the medico-scientific framework to assess the validity and weight of claims regarding causation of injury or illness. This framework will ease the difficulties faced by decision-makers who assess expert medico-scientific opinion evidence. The contrasting approaches to proof by medical science and administrative decision-makers are outlined. Cancer causation is used as a model. The rules of expert evidence, and the procedures for hearing such evidence are considered in the context of administrative law, particularly in cases where tribunals must evaluate conflicting expert opinions. Emerging and contentious fields of stress and illness, and of complementary and alternative medicine, are also discussed. 69

RECOVERING THE COSTS OF NON-LAWYER ADVOCATES

Matt Black

The law and practice relating to costs orders in administrative or specialist tribunals is different to that in most judicial proceedings. Generally, costs do not follow the event in specialist courts and tribunals, and parties often have a right to representation by non-lawyers. Courts and tribunals faced with applications for costs have shown varying degrees of willingness to allow the professional fees of non-lawyer advocates. This article considers the question of whether specialist courts and tribunals can or should be able to order costs in respect of non-lawyer advocates. It is argued that the costs of non-lawyer advocacy will generally fall within the scope of statutory costs provisions relating to specialist courts and tribunals in which parties have a right to utilise non-lawyer advocates. 80

WOOLWORTHS LTD v PALLAS NEWCO PTY LTD: A CASE STUDY IN THE APPLICATION OF THE RULE OF LAW IN AUSTRALIA

Elizabeth Carroll

Although the High Court of Australia has recognised the rule of law as a fundamental constitutional principle, it is rarely referred to by lower courts. The New South Wales Court of Appeal case, Woolworths Ltd v Pallas Newco Pty Ltd (2004) 61 NSWLR 707, provides an opportunity to assess the role of the rule of law in the Australian legal system. Woolworths was heavily based on Plaintiff S157/2002 v Commonwealth (2003) 211 CLR 476 and Enfield City v Development Assessment Commission (2000) 199 CLR 135, two High Court decisions which emphasised the central importance of the rule of law in our legal system. In Woolworths, the Court of Appeal refrained from explicitly utilising rule of law discourse and distinguished an aspect of the High Court's reasoning in Plaintiff S157. The author suggests that in order to ensure that appropriate regard is had to the rule of law, courts at all levels should engage in discussion of the concept. 87

STATE ADMINISTRATIVE TRIBUNALS AND THE CONSTITUTIONAL DEFINITION OF "COURT"

Graeme Hill

This article considers whether State administrative tribunals can be "courts" for the purposes of s 77(iii) of the Commonwealth Constitution. State tribunals that are "courts" will usually have authority to determine federal matters, such as matters involving the Commonwealth, matters arising under Commonwealth legislation, and constitutional matters. Existing case law tends to adopt a "court of law" or a "balance sheet" approach to determining whether a State tribunal is a court. It would be preferable to tie the definition of "court" to the requirements of Ch III of the Constitution. Those requirements indicate that: (a) a State tribunal is not a "court" unless it exercises judicial power in a manner consistent with the nature of a court and of judicial power; (b) a State tribunal is not a "court" unless its members have sufficient independence from the State legislature and executive government; and (c) a State tribunal that is not expressly established as a court will rarely, if ever, be a "court" for constitutional purposes. 106

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