

TORT LAW REVIEW

Volume 25, Number 1

March 2017

CASE NOTE – *Grace TY Cheng*

The continuing triumph of “bright line” rules: Rothwell revisited 3

ARTICLES

The John G Fleming Lecture: The ebbs and flows of tort law – reflections on a half century of tort law – *Professor Emeritus Lewis Klar QC*
..... 8

Practitioner perspectives on continuing legal challenges in mental harm and medical negligence: Time for a no-fault approach? – *Tina Popa*

Tort reforms in 2002–2003 impacted medical negligence and mental harm claims through the introduction of significant injury thresholds, caps on damages and a statutory test of causation. Despite amendments to the Wrongs Act 1958 (Vic) in 2015, adjusting thresholds challenges continue, particularly in regards to mental harm. This article discusses these challenges through interviews with 24 senior tort lawyers. Analysis of the data shows that many lawyers view the adjusted injury thresholds as a continuing challenge in mental harm claims. Also, concerns were raised regarding continuing discrimination between physical and psychiatric injuries. The author argues for the further reduction of significant injury thresholds. In the alternative, the author posits the Victorian legislature should adopt a no-fault statutory scheme, similar to New Zealand, to address ongoing concerns in medical negligence and mental harm claims. 19

