

# THE AUSTRALIAN LAW JOURNAL

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## Corrigendum

Please refer to Volume 90 of the *Australian Law Journal*. An error appears in the article by Daniel Reynolds, “Construction of Contracts after *Mount Bruce Mining v Wright Prospecting*” (2016) 90 *Australian Law Journal* 190, page 204. The list of High Court Justices appearing in the first full sentence on that page should have included Justice Crennan. The author apologises for the omission.

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**ARTICLES**

**ENFORCEMENT OF FOREIGN JUDGMENTS: DOES AN ISSUE ESTOPPEL ARISE FROM A FOREIGN COURT’S DETERMINATION OF ITS OWN JURISDICTION?**

**Dan Butler**

Australian Courts, from time to time, are asked to enforce foreign judgments. A fundamental requirement for enforcement of a foreign judgment is that the foreign Court has exercised a jurisdiction which is recognised by Australian law. However, on an enforcement application in Australia, what is the effect, if any, of the foreign Court’s determination of its own jurisdiction? That is, if a foreign Court is asked by a defendant to rule on its own jurisdiction, and decides it does have jurisdiction, does an issue estoppel arise in local enforcement proceedings, preventing the judgment debtor from contending that the foreign Court did not have jurisdiction? This article considers the limited, and differing, authorities on this issue. It contends that an issue estoppel should not be permitted in those circumstances. .... 558

**“SEEKING EQUAL DIGNITY WITHOUT DISCRIMINATION” – THE AUSTRALIAN HUMAN RIGHTS COMMISSION AND THE HANDLING OF COMPLAINTS**

**Emeritus Professor Rosalind Croucher AM**

The complaint handling role of the Australian Human Rights Commission (AHRC) is one of the key ways of protecting human rights in Australia, but it is not well understood. This article seeks to fill that gap. There are actually three distinct streams of complaints, a fact that reflects the history of the Commission itself. There is the set of complaints that may be brought under the four federal Discrimination Acts, but there are also two other streams of complaints, based on the international instruments that are scheduled to the AHRC Act, rather than through domestic legislation. As is the story in most legal histories

of the development of legislation, it is not a linear narrative. Contemporary criticism or questioning also needs to be placed in the context of that history. An understanding of the role played by the Commission since its foundation also provides essential background for a consideration of improving human rights protections in Australia. .... 571

#### ALTERNATIVE FACTS IN THE COURTS

##### **The Hon Justice Stephen Gageler AC**

This article reflects on how our legal system deals with the phenomenon of the assertion of alternative versions of a fact. When a party in litigation asserts the existence of a fact which another party disputes, the question for the tribunal of fact is not the abstract question of whether the fact exists. The question for the tribunal is whether it is satisfied that the fact has been proved to the requisite standard. The tribunal’s judgment is made inevitably under conditions of uncertainty and involves the formation of a subjective belief. That subjective belief is an “actual persuasion” that the asserted fact exists. And it is the subjectivity of fact-finding that allows us to understand why a different, probabilistic approach to fact-finding cannot be the measure or the goal of what our courts do. .... 585

#### EXPLORING NEW AND OLD IDEAS ABOUT ESTOPPEL AND ELECTION

##### **The Hon K R Handley QC**

The author explores the interaction between old and new ideas in the test of unconscionability, statements about the future, agreements subject to contract, promissory estoppel, testamentary promises, the relevance of Hohfeld’s analysis of the nature of legal rights, and election between rights. .... 594

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