

JOURNAL OF CIVIL LITIGATION AND PRACTICE

Volume 11, Number 3

2024

EDITORIAL – AUSTRALIA – *General Editor: Professor Michael Legg*

Cross-examination of a Witness by Multiple Counsel 77

EDITORIAL – NEW ZEALAND – *General Editor: Roderick Joyce QSO KC*

Greenhouse Gases: Targeted Climate Change Litigation 79

ARTICLES

The Assessment by Courts of the Appropriateness of Agreed Penalties in Civil Penalty Proceedings – *Lloyd Freeburn and Ian Ramsay*

There is a longstanding debate about the approach the courts should adopt in civil penalty proceedings when considering submissions from parties proposing an agreed penalty. This debate is reflected in the views of some commentators and some judges that courts too readily accept these submissions, leading to suggestions that courts “rubber stamp” agreed penalties. The approach courts should adopt has been stated by the High Court in *Commonwealth of Australia v Director, Fair Work Building Industry Inspectorate* and, more recently, by the Full Federal Court in *Volkswagen Aktiengesellschaft v Australian Competition and Consumer Commission*. The authors examine the debate about the courts’ role in assessing agreed penalties, including the important public policy considerations that lie on both sides of the debate. They also consider all agreed civil penalty cases since the Full Federal Court decision. They observe that it is only in rare cases that agreed civil penalties are rejected by the courts. The authors argue that concerns about whether courts too readily approve agreed penalties can be addressed by clearer application of the test adopted by the High Court. 80

Ethical and Effective Witness Preparation – *Michael Legg*

The aim of witness preparation is to efficiently adduce relevant and reliable evidence. A witness is a potential source of facts, and as a result evidence, for establishing or defending a party’s claims. As a result effective witness preparation is a key step in litigation. However, witness preparation also involves ethical dilemmas. This article provides practical and ethical guidance as to witness preparation through 10 key lessons or steps. 101

CASE NOTE – NEW SOUTH WALES – *Editor: Michael Legg*

Are “Views” against COVID-19 Vaccinations “Political” Views? That Depends on the Proper Construction of the Statute in Question: *Western Sydney University v Thiab* (2023) 111 NSWLR 241; [2023] NSWCA 57 – *Jeremy Harrison* 115

CASE NOTE – UNITED KINGDOM – *Editor: Michael Legg*

United Kingdom – Compulsory ADR Supported by Court of Appeal: *James Churchill v Merthyr Tydfil County Borough Council* – *Lara Bishkov* 118