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ARTICLES

Promoting tribunal excellence – *Iain Ross*

Excellent tribunals resolve disputes and decide cases in a fair, accessible and efficient manner. They interpret the law consistently, impartially and independently. The Victorian Civil and Administrative Tribunal (VCAT), Australia's largest tribunal, is on a journey to tribunal excellence. The formulation and successful implementation of a three-year strategic plan known as Transforming VCAT was part of that journey. The first task for a tribunal aspiring to be excellent is to define the concept of excellence to which it aspires. For tribunals, the Tribunal Excellence Framework performs this function. The Tribunal Excellence Framework draws on the work of the International Consortium that developed the International Framework for Court Excellence. The Council of Australasian Tribunals has substantially modified the Court Excellence Framework to better meet the needs of tribunals. In February 2012, VCAT will complete an assessment using the Tribunal Excellence Framework. This will involve an equal weighting of internal and external assessors, including VCAT's key stakeholders. The full results will be released on the VCAT website – in itself an important statement about the Tribunal's commitment to transparency and accountability. More broadly it will provide a roadmap for the next stage of VCAT's journey to tribunal excellence.

135

The role of directed verdicts in the criminal trial – *Natalia Antolak-Saper*

In Australia, the right to a trial by jury is central to preserving the liberty of an accused against oppression and injustice. A right that is typically retained for serious criminal offences, it is accorded protection at a federal level through the Australian *Constitution*. Where the right to a trial by jury is exercised, the jury acts as the trier of fact, and the judge acts as the trier of law. However, in limited circumstances, a trial judge is permitted to direct the jury to return a particular verdict. Although such a direction undermines the clear demarcation of judge and jury, it is currently permissible under Australian law. This article discusses the purpose, regularity and practice of judicially directed verdicts in Australia. It primarily draws upon recent developments in the United Kingdom and Canada for the purpose of considering relevant policy arguments and reform options. It is suggested that judicially directed convictions should be abolished in Australia, whereas judicially directed acquittals should be appropriately reformed, in order to establish an appropriate framework for directed verdicts.

146

The management of experts – *ME Rackemann*

The increasing significance of expert opinion evidence has led to efforts, across jurisdictions, to find ways to maximise the quality of that evidence and to achieve efficiencies in the way that it is obtained and utilised in the litigation process. Those efforts have tended to focus on the beginning of the process, when the expert is retained, or the

end, when opinion evidence is adduced at trial. This has spawned the single court-appointed expert model, to break the retainer relationship between an expert and one side of an adversarial dispute, and the concurrent evidence method of adducing evidence at trial, which promotes a discourse among differing experts. Queensland's Planning and Environment Court has instead focused on the management of experts in the period after their retainer but before trial reports are prepared. Experts formulate their opinions in a process of mutual peer review conducted at an early stage while quarantined from the parties and their representatives. The results of that process then inform the dispute resolution process. The success of this management approach challenges the assumptions which underlie the single court-appointed expert model while providing for a more satisfactory, useful and timely professional discourse than is achieved by reliance on concurrent evidence at trial. 168

Judicial views of foetal alcohol spectrum disorder in Queensland's criminal justice system – *Heather Douglas, Janet Hammill, Elizabeth Anne Russell and Wayne Hall*

Foetal alcohol spectrum disorder, or FASD, refers to a range of effects that can result from pre-natal exposure to maternal drinking. Under the umbrella of FASD there are several types of diagnoses which are associated with various cognitive and physical impairments. Research suggests that around 2% of the population have FASD and around 60% of those with FASD come into contact with the criminal justice system. However, unlike Canada and the United States, there is almost no mention of FASD in Australian criminal case law. This article reports the results of a survey of members of the Queensland judiciary about their understanding of FASD and how they deal with FASD in their judicial role. 178