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ARTICLES

THE WIDENING NET OF PREVENTATIVE DETENTION AND THE UNFIT FOR TRIAL

Kerri Eagle and Andrew Ellis

There has been an increasing trend in Australia towards using preventative detention legislation to supervise and detain high risk offenders. This has now been extended to forensic mental health legislation and in particular to those found unfit for trial. There are strong arguments both for and against such legislation but the potential for unfairness and injustice, particularly in relation to the most vulnerable such as those with mental impairments who are unfit for trial, is significant. In this article a review of the current legislation is undertaken and an attempt made to canvass some of the legal, clinical and jurisprudence issues relevant to any debate regarding the utility and role this type of legislation should have in Australia, particularly with regard to those with mental impairments. 172

CONSTRUCTION OF CONTRACTS AFTER MOUNT BRUCE MINING V WRIGHT PROSPECTING

Daniel Reynolds

Since *Codelfa Construction Pty Ltd v State Rail Authority (NSW)* (1982) 149 CLR 337 was handed down over 33 years ago, a debate has existed as to whether a written contract must be shown to contain ambiguity before a court may have regard to extrinsic evidence in construing it (the “ambiguity gateway” question). The High Court’s decision in October 2015 in *Mount Bruce Mining Pty Ltd v Wright Prospecting Pty Ltd* (2015) 89 ALJR 990; [2015] HCA 37 did not resolve that debate. However, it did reinforce the ascending view, which this article argues is more tenable in light of recent High Court authorities, that the ambiguity gateway is not an extant requirement in Australian law, and that courts may instead admit all extrinsic evidence on a provisional basis in order to decide which evidence can be of use, and for what purposes. 190

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