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ARTICLES

The evolution of the duty of decision-makers to give reasons – *Ronald Sackville*

In *Public Service Board (NSW) v Osmond* (1986) 159 CLR 656, the High Court established that statutory decision-makers, other than courts, are not required to give reasons for decisions, unless the governing legislation provides otherwise. Thirty years later little remains of this common law principle. As a consequence of legislative reforms and judicial innovations, there is now relatively little difference between the duty of courts to give reasons and the duties imposed directly or indirectly, on statutory decision-makers. The obligation to give cogent reasons is well on the way to becoming universal. Increasingly, therefore, the focus is not on whether a decision-maker must give reasons, but on the adequacy of those reasons. This article examines the developments that have produced this outcome. 128

“JUDGES AND THE ACADEMY” SEMINAR ARTICLES

Is there a difference between “natural justice” and “procedural fairness”?

Earlier versions of the following three articles were presented at a seminar held at Melbourne Law School in September 2015, in which a number of judges and academics took part. The seminar was part of the “Judges and the Academy” series, jointly convened by Justice Chris Maxwell, President of the Victorian Court of Appeal, Professor Adrienne Stone of Melbourne Law School and Professor Jeff Goldsworthy of Monash Law School. 143

Why do we have rules of procedural fairness? – *James Edelman*

This article considers the theory underlying rules of procedural fairness. Although there is no magic in words, this area could best be understood by a clear nomenclature. A convenient language to adopt would be to separate the meanings of two expressions often

used interchangeably: procedural fairness and natural justice. Natural justice is one theory for the foundational principle for the rules of procedural fairness, deriving principle from practice and morality. There are difficulties for the theory, and it cannot explain important areas of doctrine which can only be explained by its competitor which is a utilitarian theory of rules of procedural fairness. Nevertheless, confronting the foundation for procedural fairness the rules can be developed and understood in a transparent and consistent manner. 144

Natural justice or procedural fairness – Justice Alan Robertson

This article traces the history of the terminology “natural justice” and “procedural fairness” and suggests it is preferable to use the term “procedural fairness”. Resort to “natural justice” does not assist in making the judgment of what is, or is not, procedurally fair in the circumstances of a particular case. “Procedural fairness” is a technical legal expression and, as such, is less likely to be confused with the “correctness” of the decision itself, whereas the term “natural justice” may readily translate into no more than disagreement with the result. 155

The stakes of procedural fairness: Reflections on Australian position – Kristen Rundle

The justification for the rules of procedural fairness is often explained in “dignitarian” terms that prioritise the dignity of the person or “utilitarian” terms that focus on the contribution of the rules to better decision-making outcomes. This article explores what might be at stake in these different justifications for the exercise of administrative authority specifically. 164

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