



Crown
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Recent Tribunal Law Developments



- Reasons for decision – dos and don'ts
- Evidence in tribunals – a few hints
- Model litigants – what can you expect?



Reasons

- scope of obligation discerned from statute;
- assesses the extent of any implied duty;
- extent of the duty will affect the approach of a court exercising supervisory jurisdiction; and
- the consequences of failure to give reasons.

L & B Linings Pty Ltd v WorkCover Authority of New South Wales [2012] NSWCA 15 at [53]



Reasons should include

- Findings of fact particular to *that* matter
- Findings of applicable legal principles
- Aim for “clarity”



Reasons should **not** include

- Recitation of the evidence and then bare findings
- Wholesale copying and pasting of the submissions of a party

LVR (WA) v AAT [2012] FCAFA 90

Dimatos v Coombe [2011] VSC 619



Allowances will be made

- If reasons are given in strict timeframes
- If reasons are given in a repetitive decision making process
- Some matters of evaluative judgment don't lend themselves to precise reasoning

Seddon v Medical Assessment Panel (No 2) [2012] WASC 1,

Allianz Australia Insurance Ltd v Kerr [2012] NSWCA 13

Minister for Immigration and Citizenship v SZQHH [2012]

FCAFC 45



Good reasons

- Identify the matters in issue
- Address the right audience
- Help the decision-maker reach the right decision

LVR (WA) v AAT [2012] FCAFA 90

Dimatos v Coombe [2011] VSC 619

Jonathon Davison v Commissioner for Corrective Services
[2011] NSWSC 699



Accepting evidence in tribunals

- An expert's report only needs to identify the facts and reasoning process which justifies the opinion:
Hancock v East Coast Timber Products Pty Limited
[2011] NSWCA 11
- If the rules of evidence don't apply, admission of evidence is properly a matter of weight

Re Bailey and Blake No 2 [2012] NSWSC 394

Minister for Immigration and Citizenship v Li [2012] FCAFC



When do you accept evidence?

- It is appropriate to hear evidence and submissions about conduct and consequences in the same hearing – depending on the circumstances

King v Health Care Complaints Commission [2011] NSWCA 353

Sudath v Health Care Complaints Commission [2012] NSWCA 171



Model litigants

"...[T]here is, in the words of Griffith CJ, an 'old-fashioned traditional, and almost instinctive, standard of fair play to be observed by the Crown in dealing with subjects'. Its powers are exercised for the public good. It has no legitimate private interest in the performance of its functions. And often it is larger and has access to greater resources than private litigants. Hence it must act as a moral exemplar."

Australian Securities and Investments Commission v Hellicar[2012] HCA 17



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