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Pragmatism and Precision: Psychology in the Service of Civil Litigation

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While forensic psychology is commonly associated with the criminal and family law domains, its ambit to offer skills and knowledge at the legal interface also makes it particularly suited to the civil law domain. At this time, civil law is arguably the least represented legislative area in terms of psychological research and professional commentary. However, it is also a broad area, with its very breadth providing scope for research consideration, as urged by Greene. The purposes of this article are (1) to review the broad role of the psychologist in the conduct of civil litigation matters in Australia; (2) to assist the novice to the area by indicating a non-exhaustive list of potentially ambiguous terms and concepts common to the conduct of professional practice; and (3) to highlight, as an example, one area of practice not only where legal direction demands professional pragmatism but also where opportunity arises for psychological research to vitally address a major social issue.

Key words: assessment; civil law; expert evidence; psychological injury.

What is already known on this topic

1 Forensic psychology is commonly associated with the criminal and family law domains.
2 The legal issues related to expert psychological evidence in the criminal and family law domains have been explored.
3 Civil law is the least represented legislative area in terms of psychological research and professional commentary.

What this paper adds

1 Addresses the lack of knowledge about the role of psychological science in the civil law domain.
2 Reviews the role of the psychologist in the conduct of civil litigation matters in Australia.
3 Discusses ambiguous terms and concepts common to the conduct of professional practice within civil litigation in the context of seminal case law.
4 Discusses the legal obligations of psychologists in the civil law domain.
5 Discusses the hazards associated with providing expert evidence related to codification, risk of biased opinion, and the demand to be pragmatic in the legal context, despite conflict with the scientist-practitioner model.

Most Practising Registered Psychologists Work Within the Civil Domain

While many practising psychologists may reject or resist the notion of offering their expertise within civil litigation matters, it is to be noted that their clients or their legal representatives may have access to case notes and documents in the event of becoming party to a legal action. Clients may become involved in civil litigation matters if they have been injured or are in dispute with their workplace, to give but two examples. This access, of course, will vary with relevant state and national legislation. However, under many circumstances, psychologists may become "witnesses of fact" and be requested or compelled to offer notes or opinion. This occurs because the psychologist's notes and reports represent a potentially fruitful source of information for lawyers. However, it is also to be noted that the client or their legal agent may then be obliged to then disclose this client material to other parties to the action. Indeed, legal advocates and briefed experts to the acting parties (who may be other psychologists) may be at times partially reliant on the primacy of the evidence of the treating practitioner. On such basis, it may be argued that registered psychologists in practice inherently work within an environment that is of a latent civil litigation form.

Perhaps problematically, the scope of dispersal of information in note and other form is then rendered beyond the psychologist's control. Thus, a matter of concern could be of how a treating psychologist ought to proceed when faced with requests, demands, and directives from legal entities representing parties to an action. In particular, the focal concern for the psychologist would be how the demand to disclose material can be reconciled with the confidential client relationship. It is also

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noted that the psychologist's actions are further defined by codes and legislation, with the provisions of the Privacy Act, the Psychologists Registration Act, and current Ethical Codifications obvious examples.

On such basis, an effective appreciation of the import of legal actions such as the subpoena of notes may be useful. It is of associated importance that the psychologist be conscious of the need to ensure that client consent is suitably obtained in all respects consistent with defining legislative and ethical parameters. Given the variable legal frameworks applicable in each state, it is not here possible to offer a succinct resolution on how to proceed. However, it is worth noting the general legal and ethical obligations associated with the subpoena process. A subpoena is a court order to produce documents and may also require the psychologist to provide oral evidence under oath in a court of law. A subpoena may be personally delivered and served by the solicitor's representative or a bailiff or be received by post.

First, it is usually the case that there is no legal obligation to comply with a request from a solicitor for copies of a client's documents unless that request is accompanied by a subpoena. However, it is to be noted that information may be provided with the consent of the client and given that suitable payment for costs associated with providing the documentation can be agreed. Alternatively, the psychologist may consider writing a polite letter providing reasons for declining to provide the client's documentation.

When a solicitor subpoenas a client's documentation, the psychologist is thereby mandated to provide the documentation, and the consent of the client to release the information is not required. However, if possible, the client could or should be advised that documents have been subject to subpoena. Also, the psychologist may object to the release of documents on the grounds of relevancy, privacy concerns, on the basis of possible negative impact or because the notes are of overly wide scope given the nature of the information requested. Any psychologist's objection could be made to the lawyer requesting it (informally) or be made to the court (formally). In the latter case, the court will review the material that has been subject to subpoena and decide on the relevancy, impact, and scope of the material requested. The judge has the power to decide if the information requested is not relevant or if only parts of the information are relevant to the case. If the court so decides, then only those parts of the documentation that are considered relevant to the case may be released to the solicitor. Action can also be taken to protect the privacy of persons mentioned in the documentation if deemed necessary. Finally, the psychologist is entitled to the costs associated with the subpoena, which can include the cost of producing the documents and costs associated with giving oral evidence (e.g., travel and lost work time).

Expert Evidence . . .

While the participation of the treating psychologist in legal action may be subject to request or be compelled, the psychologist offering expert evidence is a willing participant. It is important to note that, within the civil jurisdiction, psychological expertise continues to play a substantive role in the contesting of an array of legal actions, such as in personal injuries (PI) litigation. This particular domain of practice is of recurring public and professional interest. This is because of the considerable media attention given to compensation results, also the ongoing claims of economic pressures applied to insurers. The latter concerns and insurance crisis of the early 2000s led to the formal review of the Ipp Report of 2002 (Committee of Eminent Persons into the Law of Negligence, 2002) that has in turn inspired significant legislative changes.

While the practice of psychology within the civil jurisdiction dominantly involves the provision of expertise in the resolution of contests pertaining to workers compensation and PI matters, psychological expertise within the civil jurisdiction may address a much broader range of questions than this. This may include (but is by no means restricted to) matters concerned with: discrimination, defamation, professional competence (psychologist and others), civil detention, deception, testamentary competence, financial competence, competence to manage affairs, competence to make health decisions or enter into contracts and various forms of testing of capacity (such as for a Weapon's Act application). Thus, the potential scope in this domain for psychologists to apply expertise, also actively conduct research, is broad indeed.

It is also to be born in mind that there are some inherent peculiarities involved in working professionally in civil jurisdiction matters, much akin to the criminal jurisdiction. One prominent example is that, while the psychologist's opinion may be utilised by the decider of fact in the deciding of civil matters such as related to competence and traumatic shock, the psychologist must bear in mind that these are in this context legal terms, thus be suitably restrained in not speaking to the ultimate issue directly. This is similar to the criminal domain, where the psychologist may provide a report but not speak directly to a legal term such as insanity or automatism. Thus, the psychologist is restrained from directly addressing many concepts in a decisive matter (again, as the psychologist is not usually the decider of fact). This is illustrative of the psychologist acting in the service of the law, whereby the psychological is substantially the subservient discipline. The psychologist who steps beyond this subservience may encounter legal hazards. However, opportunities to illuminate psychological complexities and to educate legal professionals exist and may be considered by the diligent practitioner.

. . . and Its Hazards

In most respects, the expert opinion of psychologists in civil matters may be seen as a commodity to be purchased by the competing legal parties. The expert opinion may be on the form of reports and testimony in proceedings wherein the psychologist's opinion may be of significance in determining the financial outcome of a claim (Warren, 2004). To curb the potential excesses of adversarial bias (the provision of biased opinion), Uniform Civil Procedure Rules obligate a primary allegiance to the court and provide the (rarely taken) opportunity for either a single expert to be appointed or for hot-tubbing of experts (who must meet and resolve differences of opinion. It need hardly be stated here that the necessity to remain objective in reporting is essential to the profession, practitioner, and the legal matter at hand. However, the temptations to err are clear,

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and it would be naïve to ignore that the experts ethical practices may be seen as possibly in tension with those of the legal professionals involved and the potential financial reward of acquiescence. The accreditation of expertise is one possible solution, but as always, it remains unclear of who would be expert suffice to accredit experts, and as noted by Woolf, such a mechanism risks narrowing the range of experts available to the court.

Problems are not only of financial or commodity form. There are also many conceptual problems, with the psychologist best prepared for work in the area by an understanding of the differing culture and language between the law and psychology. It is worth considering the case that legal professionals struggle at times with psychological concepts and psychological expert evidence (Eastman, 2004; Freckelton, Reddy, & Selby, 1999, 2001; Gaughwin, 2004).

Conceptual and Language Problems

Eastman (2004), a psychiatrist, describes the differing conceptual paradigms in legal and mental health practice and has used the term "translation problems" to refer to the struggle to make sense of each other's domain. Eastman has further expanded this metaphor to the notion that each professional works in mental-land or legal-land. However, there would seem little equality between these terrains, as the mental-land is legislatively bound to and in respects governed by legal land. Thus, the psychologist is obliged to abandon some psychological terms to their legal usage. Many conceptual difficulties for the psychologist thereby arise. It is useful to examine several key examples, with some legal background provided:

- Pure psychological or psychiatric injury: Pure psychological or psychiatric injury refers to a recognisable mental injury or harm that is independent of or not caused or related to any physical injury. In the seminal decision of *Jaensch v. Coffey* (1984) 54 HCA 52, the high court recognised that there was a duty of care to avoid causing pure mental harm in the absence of physical injuries, particularly where the psychological harm was shocked induced (i.e., caused by sudden sensory perception which is so distressing that results in a recognisable psychiatric illness. In the *Jaensch v. Coffey* case, the respondent wife became psychiatrically ill after observing the serious injuries sustained by her husband following a motor vehicle accident caused by the negligent driving of the appellant.
- Nervous shock: This term is not specifically defined in statue or case law but generally refers to a recognisable psychiatric/psychology injury suffered as a result of a sudden shock from witnessing a loved one injured or killed as a result of the negligence of the other party. The *Jaensch v. Coffey* case was interpreted to indicate that a psychiatric injury had to be the result of a sudden shock and direct perception of the accident causing the injuries/death or witnessing the immediate aftermath of the accident. In the *Jaensch v Coffey* case, the respondent wife did not directly witness her husband being injured in the motor vehicle accident but only observed his injuries when she attended the hospital after being advised of the accident. Hence, the respondent's wife witnessed the immediate aftermath of the accident and, as a consequence, developed a recognised psychiatric/psychological illness after viewing her husband's injuries and being subjected to and told about her husband's critical medical situation over a 24-h period.

  The law in nervous shock cases more appropriately referred to as sudden shock is complex and varies across Australian jurisdictions. The decision in the *Jaensch v. Coffey* case was reviewed in the *Tame v. New South Wales* (2002) HCA 35 and *Annetts v. Australian Stations Pty Ltd* (2002) HCA 35 and extended a damages claim to include recognisable psychiatric injuries that developed over time. The high court decided that there was a duty of care to avoid exposing persons closely associated (i.e., family, affectionate friends, and work colleagues) with the injured party to a reasonably foreseeable recognisable psychiatric injury. In the Annetts' case, the parents were advised that their 16-year-old son had disappeared while working alone as a jackaroo on a remote cattle station in Western Australian. It was some 5 months before the body was located. As the parents had sought assurances that their son would be supervised at all times, the employees had breached their duty of care by allowing him to work alone, and the shock of the boy's disappearance and subsequent death resulted in a recognisable psychiatric injury to the parents. Sudden shock and direct perception were removed as preconditions to succeed in recovering damages but could be considered as factors in determining the nature of the relationship between parties.

  Due to Annetts' decision, there was concern about the legal floodgates being opened in nervous shock cases and increased insurance premiums. A parliamentary panel chaired by Justice Ipp was commissioned to review tort law and recommended legislating laws that would narrow or limit tort damages claims. For instance, among a number of recommendations, it was recommended that there would be no mental harm unless it consisted of a recognised psychiatric illness and not one that was just recognisable. The former illness needs to be specific such as those identified by the Diagnostic Manual of Mental Disorders (DSM) while the latter term was vague. Further, the defendant ought to have foreseen that a person of normal fortitude might in the circumstances suffer a recognised psychiatric illness if reasonable care was not taken. Most Australian jurisdictions adopted some of the recommendations (New South Wales adopted all) and developed their own coded laws that were not nationally uniform but to some extent limited the decisions in the Annetts and Tame cases. Queensland and the Northern Territory did not adopt any of the Ipp review recommendations and remain guided by the common tort law.
- A person of normal fortitude: This phase is not clearly defined in case law but generally refers to a person who is not particularly vulnerable to psychiatric illness. In other words, the term can be taken to mean how a person of normal disposition and character would react when hearing of, or witnessing the injury/death of, a person they are emotionally close too. Duty of care will only arise if it was reasonably foreseeable that a person of normal disposition and character would have suffered a psychiatry injury (Annetts and Tame cases). Hence, damages for nervous shock was only recoverable if the injured party was of normal fortitude unless it was known by the negligent party that the injured party was

vulnerable to a psychiatric injury. In *Jaensch v. Coffey,* the normal fortitude test was referred to, but its applicability was not decided. Judges in the Annetts' case had varying obiter dicta opinions as to whether normal fortitude should be a requirement or only a factor to be taken into account in deciding the case. In the Tame case, the normal fortitude test was considered a relevant consideration but not a precondition of liability. There has also been legal debate about whether the proof of normal fortitude should be decided by the judiciary or expert opinion. This debate has not been settled authoritatively. An objective test similar to the reasonable test would require a consideration of how a hypothetical person of normal character and disposition would react if placed in the same circumstances as the plaintiff.

- Consequential psychological injury: This is an injury that follows on a physical injury such as when a person becomes depressed as a result of being physically incapacitated due to an accident. Hence, the psychological injury is not pure as it is not independent of the physical injury.
- The fit and proper person test: This test is often used to decide if persons are suitable for obtaining registration or licence to practice in certain professions, businesses, or trades or to hold a statutory licence or permit. For instance, the various Australian jurisdictions have enacted legislation with respect to the practice of psychology under the Health Practitioner Regulation National Law Act, and these jurisdictions require psychologists to be fit and proper persons to hold registration in the profession. The fit and proper person test allows the authorising agency to have regard to the applicant's suitability and legal eligibility to undertake the profession, business, or activity. Hence, consideration can be given to the applicants' or registrants' criminal background, honesty, and knowledge as well as mental and physical fitness to carry out activities in a competent, diligent, and safe manner.
- Decision-making competence or capacity (e.g., financial and testamentary): All Australian jurisdictions have laws in place requiring persons to have the requisite legal competence/capacity to sign contracts, make a Will, provide evidence in a court of law, stand trial, and make decisions about their medical treatment. Mental status is an important element in deciding the legal competence/capacity of a person as is having obtained adults status in some instances. The person is considered to have the legal competence/capacity if he or she understands the risks and consequences of their decision. For example, in respect to testamentary capacity to make a Will, the person must have the eligible status (adult and married minors) and the personal competence which means that the testator is of sound mind, memory, and understanding. The formula set out in *Banks v. Goodfellow* (1870) 5 QB 549, at 565, has been accepted for determining testamentary capacity and requires the testator to understand the nature of the act and its effects, understand the extent of the property that is being disposed, comprehend and appreciate the claims, and not be influenced by any disorder of mind in disposing of the property. If there is a question about the competence/capacity of an individual, this is settled by a judge, and the judge seeks expert psychiatric or neuropsychological opinion for guidance.

Demanding Professional Pragmatism: The Psychiatric Injury Rating Scale (PIRS) Example

When seeking to answer legal questions, psychologists' expert evidence is usually required to conform to legal parameters, with some degree of subservience to legal demands that may be contrary to scientific practice and the primacy of utilising an evidence-based approach. By import, psychologically sound opinion may not prevail in a legal matter—due to overriding legal principles rather than any absence of scientific vigour. Problematically, for our profession, dominant legal outcomes (ubiquitously in financial form within the civil domain) may also override therapeutic outcomes (Birgden, 2002; Fox, 1997).

In the former case, a problematic example arises from the usual from of lawyers litigating in plaintiff civil action to generate a claim based upon specific heads of damages (matters accepted within the legislation as compensable). In most cases, this is inclusive of an assessment of level (or percentage) of impairment arising from injury, also an assessed quantum of treatment and anticipation of prognosis given treatment. The former is difficult, and the latter is arguably speculative. The assessment of impairment has been noted by the Australian Psychological Society (1997) as a complex area of professional activity.

In order to assess impairment, the psychologist may be requested to utilise frameworks such as the American Medical Association Guide to Impairment, 5th Edition (Cocchiarella & Andersson, 2001), the Diagnostic and Statistical Manual of Mental Disorder, Fourth Edition, Text Revision (DSM-IV-TR) of the American Psychiatric Association (APA, 2000) or be obligated to use the Psychiatric Injury Rating Scale (PIRS). The latter instrument (Parmegiani, Lovell, Skinner, & Milton, 2001) is mandated within the Civil Liabilities Act (Q'ld), 2003 as preferred by the courts as the mechanism of assessing psychological or psychiatric impairment in Queensland.

Problematically, this tool was constructed without and remains without a substantive research base (Davies, 2008) and is restricted in use to persons suitably trained (again legislated). While the general intention of the tool would seem to have been the introduction of a standardised, objective methodology for the assessment of level of impairment in a notoriously complex domain, it is questionable if this has been achieved. The tool and its system has drawn considerable criticism from the Australian Psychological Society (APS, 2003a,b) and Australian Plaintiff Lawyers Association (2003) among others for its effect of curbing assessments of impairments due to its structure and form. Perhaps this tool was derived from the mood of the time, seeking to wind back the purportedly high compensations previously awarded. However, wind-back took the form of introduced thresholds for the award of psychological damages in PI matters with a determination of psychological injury. In Victoria, there is a minimum threshold for a psychological and denial of award for secondary psychological injuries. Such limitations do not apply in Queensland, and indeed variable state legislation has led to a patchwork of provisions and conditions within the civil domain.

The PIRS system essentially utilises a similar framework to the American Medical Association's Guides to the Evaluation of

Permanent Impairment, 5th Edition (AMA Guides 5) with six distinct domains to be assessed within five classes of severity, as follows:

- Self care and personal hygiene;
- Social and recreational activities;
- Travel;
- Social functioning;
- Concentration, persistence, and pace; and
- Adaptation.

However, while the PIRS instrument is purportedly a measure of impairment, it more directly maps onto the allied construct of disability. Usually, impairment is understood as a reduction in some capacity or function, assessed by a suitably expert clinician. However, disability is usually understood as how that reduction in capacity may impede a person in terms of their functioning. Following this, the PIRS most properly is understood as an assessment of disability.

Further, the PIRS seeks to determine a level of impairment that is to some extent (restrictively) based upon a median of level of impairment among the six domains. By the PIRS tool, percentage impairment is related to (1) an aggregate of scores allocated within the six classes or domains and (2) the median class of impairments. The crucial final percentage of impairment offered by PIRS in fact varies based on a combination of how the aggregate score is variably treat within bands of score associated with the median class awarded. To obtain a PIRS score, aggregate scores are sequentially ordered, and the median class is identified as the average of the third and fourth value—and is rounded up if a fraction is determined. In consequence, the final impairment percentage score is to some extent liable to be affected by this central tendency. It could be argued that such a dominant role of the centralised tendency is inappropriate, as it has an effect of minimising the greatest impairment that an individual may be confronted by—and that may be most likely to reflect the greatest functional limitation and arguably psychological distress.

This issue is best exemplified by consideration of client A, who may have assessed class impairments as identified below, with a median class of 3. Within the range of percentage impairments specified by the PIRS tool, an aggregate of 12 at median class 3 produces a PIRS percentage of 6% (note that correspondence values may be located in the Civil Liability Regulation, 2003, Queensland).

Client A
Classes in ascending order:
Median class
1 1 2 2 3 3 = 2
Aggregate score impairment: Total %
1+ 1+ 1+ 2+ 3+ 3+ 12 = 6

However, if client B has five similar class impairments, but is maximally limited in one domain (such as totally impaired and cannot work at all, producing an impairment class 5, a serious impairment indeed), the centralising tendency allows for only one additional percentage of impairment. This seems a rather unfair outcome, again noting that client B cannot work at all due to their impaired state.

Client B
Classes in ascending order:
Median class
1 1 2 2 3 5 = 2
Aggregate score impairment: Total %
1+ 1+ 1+ 2+ 3+ 5+ 12 = 7

Thus, the psychologist is faced with the pragmatic need to adhere to a problematic tool.

In terms of resolving the problem, several solutions are available to the psychologist. First, it is pragmatically of little value to simply refuse to utilise an essentially mandated tool, as to do so requires the fact-finder to prefer any view within an alternative report that does utilise PIRS. Thus, a PIRS-less report is of no substantive value to a referring party or Judge.

Second, on occasion, a referring agency may request usage of the system within the AMA Guides 5. These Guides are now in their sixth edition, but with varied legislation and workers compensation bodies still mandating the use of the fifth edition of the Guides. The AMA Guides are precursors to the PIRS tool and offer similar problems to those as indicated above, thus the usage of the AMA Guides 5 over PIRS takes us nowhere. There is also the problem of the questionable recourse to the use of the Guides by practitioners who have not been trained in its usage. Anecdotally, the lead author is aware of several psychologists who have offered AMA Guides 5 impairments for psychological injury, also those who have declined on the basis that it is not a tool designated for psychologists use.

The third avenue is to offer an additional view on impairment via another models, such as the Global Assessment of Functioning (GAF; Axis V within the *DSM-TR-IV*). This could be then offered in addition to PIRS, as again it is noted that there is a legislative requirement for the courts to prefer a report that utilises the PIRS instrument.

Finally, the psychologist may offer a PIRS but also comment on the limitations of the PIRS tool specific to the matter at hand, and even or in general. Such a commentary may be offered with or without an additional assessment of impairment via a GAF score, or via any other suitable measure of impairment.

These latter two solutions seems the more elegant, as the legislation does not restrict additional comment on the PIRS, nor reference to the GAF (as an example) within any given report. It would seem also preferable that helpful comment on the strengths and weaknesses of the PIRS mechanism ought be with regard to the client matter at hand. In this regard, it is finally appropriate to note that (justifiable) scepticism about a system that purports to offer an objective measure in this domain is not restricted to psychologists. As noted by White, J. *Clark v. Hall and Anor* (2006) QSC 274 (26 September 2006),

> *As can be seen, the assessment of general damages, rarely a matter of great dispute between the parties or of particular complexity at common law in this State, has been made difficult by legislative attempt to bring some consistency into this area of the law of personal injury. The time involved in traversing the labyrinthine structure of the CLA and Regulation has cast a larger burden than hitherto on the medical and legal professions and the courts. It is to be hoped that the reduction in general damages awards will have the anticipated effect of reducing premiums and the affordability of insurance will be*

achieved. Otherwise it seems to be a rather vexing exercise in over prescription with nothing much to see for it.

Conclusion

The intention of this article has been to illuminate some of the common issues faced by psychologists offering expertise within the civil domain. This has commenced by seeking to inform or remind all practising psychologists that their work occurs within legal jurisdiction, and this is subject to subpoena at the very least. Further conceptual matters have been reviewed for the psychologist who willingly offers expertise to the court, some of which arise from the dominant role of legal domain over the psychological domain—many based upon the appropriation of common or psychological terms for legal purposes. Several key terms have been highlighted that have distinctively psychological inference but are in fact of legal significance.

Three common hazards of working to provide expert evidence have been identified, relating to the commodification of opinion, associated risk of biased opinion and the legislative demand to conform to mechanisms that may be inconsistent with best practice in terms of the scientist-practitioner model. One example highlighted here has been the overshadowing of precise professional opinion by the pragmatic need to adhere to a less research-based system of assessment of impairment as represented by the PIRS.

On brighter notes to conclude, while the psychologist may be at some level of obligation to work pragmatically with the PIRS, this does not preclude the psychologist (indeed also psychiatrists) seeking to offer an informative view on that system and to offer an additional mechanism for appreciating impairment. Also, as encouraged by Greene (2003) the form of difficulties here provides a potent scope for psychological research within this complex domain of practice.

References

Annetts v. Australian Stations Pty Ltd [2002] HCA 35.

American Psychiatric Association (APA). (2000). *Diagnostic and statistical manual of mental disorders*, (4th ed., text revision). Washington, DC: American Psychiatric Association.

Australian Plaintiff Lawyers Association. (2003). National Workers' Compensation and Occupational Health and Safety Frameworks, June 2003. Productivity Commission submission.

Australian Psychological Society (APS). (1997). *APS working group on the measurement of psychological impairment*. Melbourne: Australian Psychological Society.

Australian Psychological Society (APS). (2003a). *Submission to the proactivity commissions inquiry into national workers' compensation and occupational health and safety frameworks*. Melbourne: Australian Psychological Society.

Australian Psychological Society (APS). (2003b). *Supplementary submission to the productivity commissions inquiry into national workers' compensation and occupational health & safety frameworks*. Melbourne: Australian Psychological Society.

Banks v. Goodfellow [1870] 5 QB 549, at 565.

Birgden, A. (2002). Therapeutic jurisprudence and "good lives": A rehabilitation framework for corrections. *Australian Psychologist*, *37*(3), 180–186.

Civil Liability Regulation. (2003). *Queensland*. Retrieved from http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/C/CivilLiabR03.pdf

Clark v. Hall and Anor [2006] QSC 274.

Cocchiarella, L. & Andersson, G. (2001). *Guides to the evaluation of permanent impairment* (5th ed.). Chicago: AMA Press.

Committee of Eminent Persons into the Law of Negligence (2002). *Review of the Law of Negligence: Final Report (Ipp report)*. Canberra: Commonwealth of Australia.

Davies, G. R. (2008). The Psychiatric Impairment Rating Scale: Is it a valid measure? *Australian Psychologist*, *43*(3), 205–212.

Eastman, N. (2004). *Translating Mental Health Science into Law.* Conference Workshop presented at the 2004 Australian New Zealand Association of Psychiatry, Psychology and The Law, 24th Annual Conference. Port Douglas, Australia.

Fox, D. (1997). Psychology and law: Justice diverted. In D. Fox & I. Prilleltensky (Eds.), *Critical psychology: An introduction* (pp. 217–232). London: Sage Publication.

Freckelton, I., Reddy, P., & Selby, H. (1999). *Australian judicial perspectives on expert evidence: An empirical study* ("Judges' Study"). Melbourne: Australian Institute of Judicial Administration.

Freckelton, I., Reddy, P., & Selby, H. (2001). *Australian magistrates' perspectives on expert evidence: An empirical study* ("Magistrates' Study"). Melbourne: Australian Institute of Judicial Administration.

Gaughwin, P. C. (2004). Beyond the noise and smoke: Some challenges for mental health professionals entering the forensic arena. *Psychology, Psychiatry and the Law*, *11*(1), 44–49.

Greene, E. (2003). Psychology in civil litigation: An overview and introduction to the special issue. *Law and Human Behavior*, *27*(1), 1–4.

Jaensch v. Coffey [1984] 54 HCA 52.

Parmegiani, J., Lovell, D., Skinner, Y., & Milton, R. (2001). *Psychiatric impairment rating scale*. NSW Australia. Retrieved from http://www.cmspecialists.com.au/PIRS-1.pdf

Tame v. New South Wales [2002] HCA 35.

Warren, W. G. (2004). Ethical considerations in private practice psychology forensic work: An Australian perspective. *International Journal of Forensic Psychology*, *1*(2), 14–20.

Woolf, M. R. (1996). *Access to Justice, Final Report of the Lord Chancellor on the Civil Justice System in England and Wales*. London: HMSO.