AUSTRALIAN PRINCIPLES OF EVIDENCE pdf

1: Rules of evidence | ALRC

*Australian Principles of Evidence [Jeremy Gans, Andrew Palmer] on www.enganchecubano.com *FREE* shipping on qualifying offers. This book sets out the rules of evidence, as they apply in Australian courts, in a manner designed to be highly accessible and readily comprehensible.*

Four levels of proficiency introductory, basic, intermediate and advanced have been developed for the behavioural competencies. These are intended to define the competencies and the degrees of proficiency in those competencies for persons working within specific occupational clusters. To support the definition of degree of proficiency, lists of behavioural indicators have also been identified. These indicators are examples of successful observable performance in the competencies. Furthermore, defined competencies will support the development of evidence-based prevention and treatment systems and assist employers in the hiring and developing of staff i. Ultimately this will provide Canadians with a more consistent quality of service from its substance and addiction prevention and treatment agencies. Aptitude in evidence-based practice is essential to the attainment of behavioural competencies Although behavioural competencies are not explicitly taught, there are certain technical competencies that a person must possess in order to be proficient in the ascribed behavioural indicators. Furthermore, persons classified as Senior Management, being ultimately responsible for all decisions pertaining to policies, standards, programs, practice guidelines and services, require high levels of proficiency in many competencies requiring knowledge of, and skill in, EBP. Indicators associated with the competencies requiring knowledge of, and skill in EBP for Senior Management, are provided in Additional file 2. Includes critical thinking and reasoning skills. Creativity and Innovation Using evidence-based practices in innovative and creative ways to initiate both effective new ways of working and advances in the understanding of the field of practice. Innovation and creativity are achieved in translating research into practice to optimize improvements in service delivery and professional practice. Includes creation of a continuous learning environment that fosters positive growth in both work and public contexts among peers, clients, client families, communities, and other groups recipients. Effective Communication Articulates both verbally and in writing across a range of technologies in a manner that builds trust, respect and credibility and that ensures the message is received and understood by the audience. Includes active listening skills and congruent non-verbal communication. Self Care Deliberately and continuously apply professional and personal self care principles to oneself and, at times, others to sustain optimal productivity while maintaining physical, mental, spiritual and emotional health. Leadership Help others achieve excellent results and create enthusiasm for a shared vision and mission, even in the face of critical debate Ethical Conduct and Professionalism Provide professional services according to the principles and values of integrity, competence, responsibility, respect, and trust to safeguard both self and others. Includes the development of professionalism and ethical behavior in self and others individuals, groups, organizations, communities. Self Motivation and Drive Remain motivated and focused on a goal until the best possible results are achieved, with both passion for making a difference in the substance abuse field and persistence despite confronting obstacles, resistance and setbacks. Client-Centred Change Enhance, facilitate, support, empower and otherwise increase client motivation for positive change. Positive change is achieved by involving the client actively in the change process and encouraging the client to take responsibility for outcomes he or she achieves. Clients may be individuals, groups, communities and organizations. Client Service Orientation Provide service excellence to clients which can include individuals, groups, communities and organizations. In a paper was published [6] documenting wide variations in practice among physicians; the authors discovered that when different physicians were faced with essentially similar patients, they did not in fact, make similar recommendations. Another major concern noted was the significant lag time between clinical research and its application to clinical practice. It has been estimated that during this time period only 15 percent of medical practices were based on clinical trials [7]. Further, as the use of clinical trials increased, it was discovered that many of the procedures being performed by physicians were ineffective. The above mentioned factors helped to identify a need that would eventually be addressed through the work of the Evidence-Based

Medicine Working Group, led by Gordon Guyatt [8]. Its success in medicine lead to its integration into the competency profiles of most other health care professions, and its principles are now reflected in the curriculum framework of all Canadian degree-based health programs. In addition to helping the practitioner, the EBDM process has also provided a valuable tool in its capacity to support, at the organizational level, many aspects of healthcare decision-making. In recognition of its importance to many areas of healthcare, the definition of EBM has been broadened and the term EBP is now routinely employed. Today the EBDM process helps decision-makers in health care to collect and critically appraise all best evidence for the purpose of guiding decision making. A number of benefits have been ascribed to the use of EBP. These include, but are not limited to: Evidence-based practice and the process of EBDM assume two fundamental principles: First, scientific evidence alone is never sufficient to make a decision. Evidence-based decision making recognizes that the evidence from scientific research is only one component of the decision making process and in itself is not sufficient to inform next steps. Second, within each form of evidence, hierarchies exist and these hierarchies can guide decision making. Evidence-based decision making is a structured process that incorporates a formal set of rules for interpreting evidence. Simply put, EBP and the process of EBDM help decision makers in health care to collect and critically appraise all the best evidence for the purpose of guiding decisions. This approach is in contrast to traditional decision making, which in health care relies more on intuition and the use of information gained by consulting authorities e. The need for evidence-based practice in addictions The principles of EBP are inherent in the EBDM process; this process has been described extensively by others [12 â€” 14]. The process defines a set of skills which, when comprehensively applied, produce effective decision-making. The skills needed to apply the EBDM process include: The development of EBP and the process of EBDM emerged from the need for a more systematic approach for improving the quality of health care in an era of limited resources [15]. Today a number of issues continue to drive the need for the continued development of competency in EBDM in the substance abuse and related addiction disorder field. Significant delays between the time when new evidence becomes available and its application, when appropriate, to care also referred to as the knowledge-to-action gap [16 â€” 18]. Variations in practice within professions, despite significant advances in our understanding of effective prevention and treatment practices [19 , 17 , 20]. Health care systems must be prepared for constant change if they are to provide the highest standards of care, to the largest number of people, while minimizing the ever-burgeoning costs associated with such goals [21]. Competency in the skills defined by the EBDM process make addressing current challenges more manageable by supporting busy professionals in their capacity to find, critically appraise and integrate evidence, where appropriate. Such practice can lead to the development of effective systems, ones that are guided by evidence-based policies, standards, practice guidelines, programs and services [2 , 4 , 24]. Lack of skill in EBDM, and a failure to apply it when making decisions, may lead to the delivery of suboptimal or even ineffective programs, services, and supports, poor patient outcomes, and cost-ineffectiveness [16 , 17 , 25 â€” 28]. To provide a high standard of care for persons affected by substance abuse and addiction, the addictions workforce must possess knowledge of the principles of EBP and competency in the components of the EBDM process. However, to date, evidence pertaining to the understanding of the principles of EBP or competency in the EBDM process for this occupational cluster remains anecdotal. The objectives of the current study are: Methods The methodological orientation and theory of this study was guided by the principles of directed content analysis [29], a subtype of the qualitative research approach content analysis [30]. Content analysis is an effective method for analyzing interview data, and it has been suggested as a promising, effective approach when conducting research with health-related disciplines [31]. Directed content analysis is suggested for use when exploring phenomena for which existing theory or research exists, but is incomplete and would thus benefit from further description [29]. When analyzing data using directed content analysis, a coding scheme is developed in advance, and is then applied to the data. For this study, the coding scheme was developed from the EBP literature. Additional codes were developed using an iterative process as interview transcripts were examined and analyzed. The additional codes were applied retroactively to all previously coded transcripts to ensure the coding scheme was consistent. Interviewing is the most common method of data collection in qualitative research [32 â€” 34]. A semi-structured interview approach

was determined to be the most appropriate for this study. The choice to employ a semi-structured interview was based on a review of the literature as well as a review of qualitative research studies investigating related topics such as clinical decision making, and the use of EBP. A semi-structured interview was chosen because it uses predetermined questions, but allows the participant the time and scope to express their opinions on a particular subject [35]. Further, a semi-structured interview allows the interviewer to explore complex topics of interest by adding novel questions and prompts to the existing set of interview questions as the need arises; the interviewer is not held to the exact questions as appear in the guide. Evidence-based decision-making is a complex topic, yet it is also driven from a logical point of view. In this study, where participants had extensive experience with decision making, it was plausible to assume that they might be using a model of decision-making very much akin to that of EBP, but that the standard language of EBP would nonetheless appear foreign to them. To provide the researcher the opportunity to explore participant decision-making processes that may not have been captured in the original questions, the interviews needed to allow for deviations from the original guide. The semi-structured interview was the only option that would allow for such deviations. The best researched tools; the Fresno [36] and Berlin [37] have been validated for use, however, these tools have limitations that prevented their use in the current study. The Berlin tool evaluates only one component of EBDM, skill in critical appraisal, while validated variations on the Fresno tool include the use of case scenarios whose context are not suited to the intended audience of this study [38]. Further, a recent systematic review of tools that assess EBP behavior in healthcare professionals revealed that there is only one valid tool that can assess all five components of EBDM, and it has yet to be tested for reliability [39]. The idea that a semi-structured interview technique is the most effective means of assessing EBDM competency is further backed up by a compelling argument in a recent letter to the editor in the Journal of Education for Health [40]. The Principal Investigator PI of the study, Matthew Murphy MM , has experience with the qualitative interview process, and conducted the interviews for all participants. Analysis of the interview data was conducted by the PI and occurred simultaneously with data collection. Members of the research team contributed equally to question development and RG contributed to data analysis. Participants in this study were recruited from selected addiction services agencies in the province of Nova Scotia using a purposeful method. The participant pool was identified by matching the role description for the occupational cluster Senior Management, with the role descriptions of people working in addiction services agencies in Nova Scotia. In Nova Scotia, addiction services agencies jobs aligning with the above descriptions and expectations include:

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2: Editions of Australian Principles of Evidence by Jeremy Gans

This book sets out the rules of evidence, as they apply in Australian courts, in a manner designed to be highly accessible and readily comprehensible. Equal treatment is given to both the uniform evidence legislation - now applicable in Federal Courts and in the courts of the Australian Capital Territory, New South Wales and Tasmania - and the common law that applies in the remaining.

Implications of the Electronic Transactions Act for evidence Introduction Practice relating to documents as evidence in legal proceedings in Australia is complicated and varies according to jurisdiction. In other jurisdictions, the laws of evidence may vary. Some provisions of the Commonwealth Evidence Act also apply in State and Territory legal proceedings in relation to some documents. State or Territory legislation, policies and standards may also apply. The Commonwealth Evidence Act The Commonwealth Evidence Act provides for documents created and maintained in paper and electronic form to be admitted in evidence before federal courts. The Commonwealth Evidence Act relaxed and, in some cases, removed restrictions on evidence that can be admitted in proceedings so that a greater range of relevant evidence is available to courts for fact finding purposes. In relation to documentary evidence, the Commonwealth Evidence Act: The rules of evidence The laws of evidence prescribe standards to which a fact must be proved: The rules of evidence govern what information is able to be placed before a court for determination of an issue. These rules influence how a party goes about proving its case. Parties seek to persuade the court of a fact by producing evidence. In doing so, a party should consider three issues: The rules of evidence are mainly concerned with the first two issues: The admissibility of evidence in any proceeding is subject to compliance with the rules of admissibility and the interpretation placed upon them by the presiding judge. Assessment of the quality of evidence, and therefore of the weight to be given to it, is also matter for the presiding judge in each case. The distinction between admissibility and weight of evidence Although evidence of information about a particular fact may be admissible, the court will not necessarily believe or act on that evidence. If the information about a fact is the direct observation of a witness, the court may simply disbelieve the witness. This may occur for a number of reasons. For example, it may have been a long time since the events in question happened, the witness may give confused testimony, or may have some physical incapacity e. Instead it will be evidence that suggests, or from which it can be inferred, that a particular fact occurred. In this regard, the weight of evidence of a record can be adversely affected if it is not contemporaneous with the events it documents i. Minute to the Secretary The Commonwealth, in litigation, seeks to prove that a certain conversation took place. The Commonwealth has located a Minute to the Secretary of the agency which quotes from a file note of the conversation. However the actual file note of the conversation cannot be found. The Commonwealth produces the Minute in evidence. That document is found to be admissible. The weight given to that evidence however may vary and depend on other evidence e. Documentary evidence The rules of evidence apply to an ordinary document in writing, documents written in braille or shorthand and, importantly for modern records management systems, a document that is in a digital format. Draft Versions of a Record An agency involved in litigation has been ordered to give discovery of documents related to a particular issue. The agency performs reasonable searches across their records and identifies a number of records, as documents, that are potentially discoverable. Searches have also identified draft versions of a potentially discoverable record. The Commonwealth Evidence Act permits evidence of the contents of a document to be given in one of a number of alternate ways. These ways include tendering: Other ways may be used to give evidence of official documents, and documents that are unavailable to a party in the proceeding, for example, where they have been lost or destroyed. While it is not necessary that the original document be produced, parties may still be required to authenticate evidence of the contents of documents tendered in one of these ways. For example, in relation to a document in writing that is signed, it remains necessary to lead evidence if the point is contested that the signature appearing on the document is the signature of the person who has purported to sign it. In the case of digital records, it may be necessary to give evidence that the digital record is what it purports to be. While several provisions of the Commonwealth Evidence Act facilitate this authentication process, the Act

also set out procedures under which a party may test the authenticity of evidence of the contents of documents led under one of the alternate ways in a proceeding. Usually, these procedures would be used by a party against whom evidence of the contents of a document is, or might be, led in a proceeding. The procedures, which can be set in motion before the hearing of a proceeding, may result in the making of court orders against the party leading evidence of the contents of the document, including an order that: Systems Reliability An agency involved in litigation has presented a digital document as evidence from a system. The document is considered relevant to a key issue in the proceeding. Based on an apparent discrepancy in the timestamp metadata date created, etc. To address issues raised by the opposing party, the agency is required to divert resources from agency business and engage an independent expert to present evidence in relation to the reliability of the system, and authenticity of the presented document. The ultimate sanction for failure to comply with such an order is that the evidence of the contents of the document is not to be admitted in the proceeding. Not all jurisdictions have removed the requirement for the original document to be provided. Where the agency needs to provide evidence in a proceeding before a court that does not apply the Commonwealth Evidence Act, they should seek specific legal advice. How documentary evidence may become inadmissible A separate issue from how evidence of information in a document can be given is whether the court will permit the evidence to be given that is, whether the evidence is admissible in the proceeding before the court. Whether the evidence is admissible depends, initially, on whether it is relevant to a fact in issue in the proceeding. The most important exclusionary rule in relation to documents is the hearsay rule. The hearsay rule applies when evidence of what is contained in a document is being used to prove some fact asserted in it. Note for file Midway through the proceeding the file note quoted in the Minute to the Secretary is found. It contains the following words: James said that Alistair told him that he saw Pip taking home a secret work file. Five days later when news of a leak came through, it became apparent that the document leaked was from file x, the SMOJK file. The hearsay rule under the Commonwealth Evidence Act applies to any statement made by a person other than while giving evidence that is led or given to prove the existence of a fact that it can be reasonably supposed that the person intended to assert by the statement. There are many exceptions to the hearsay rule under the Act including: In such a case evidence of the statement can also be used as evidence of what is asserted by the statement; first-hand hearsay, the scope of the exceptions depending upon whether the proceeding is civil or criminal and whether the person who made the statement is available or not to give evidence; some categories of more remote hearsay that is, where the evidence is not necessarily first-hand hearsay , such as some statements in business records, some tags and labels or writing attached to, or placed on, objects including documents in the course of business and representations in electronic communications regarding the identity of the sender or receiver or time or date the communication was sent; and an admission made by a person who is or becomes a party to the proceeding. Some procedural safeguards apply for some of these categories of hearsay evidence. For example, for notifying the other parties if the person who made a statement admitted under one of the exceptions for first-hand hearsay is not to be called to give evidence in the proceeding, and other procedures under which a party may be required to call as a witness the person who made the statement. The majority of Commonwealth tribunals are not required to apply the laws of evidence. Most commonly, the statute under which the tribunal is created includes a provision to the effect that the tribunal is not bound by the rules of evidence, but may inform itself as it thinks appropriate. This will not necessarily mean that the rules of evidence are irrelevant to tribunal proceedings. Tribunals may, for example, have regard to what would be admissible had the proceeding been before a court, especially when the outcome of the proceeding may be subject to judicial review. In any event, a tribunal like a court or, indeed, any person or body with decision-making functions or responsibilities is unlikely to believe and act on records or other documents unless they can be demonstrated as accurate and reliable. The Electronic Transactions Act intends to promote confidence in electronic transactions by confirming that a permission or requirement under a law of the Commonwealth to provide information in writing, a signature, or to retain information can be met by electronic means unless specifically excluded by other Commonwealth legislation, or the Electronic Transactions Regulations Cth. For example, the Electronic Transactions Act provides that where a person is required to provide a document, the provision of that document will not be

invalid because it took place in an electronic communication. Similarly, it enables the recording, and retention of information in an electronic form to meet statutory requirements to retain a written record. The Electronic Transactions Act states that the integrity of information contained in a document is maintained if, and only if, the information has remained complete and unaltered, apart from the addition or endorsement, or any immaterial change which arises in the normal course of communication, storage or display. There are a number of exclusions from the Electronic Transactions Act, some of which are widely used in evidence, such as Statutory Declarations. In these cases, the original form of the record is still required for evidence.

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3: Australian Principles of Evidence - Jeremy Gans, Andrew Palmer - Google Books

Treats the uniform evidence legislation enacted by the Commonwealth, NSW and Tasmania as being of equal importance to the common law. This edition incorporates major developments in the law in each.

Rules of evidence Introduction However, these same rules often prevent witnesses from fully explaining their evidence. Some of the recommendations incorporate existing provisions of the Commonwealth Evidence Act and other State and Territory legislation. These recommendations are addressed to those jurisdictions in which the relevant amendments have not been made. The recommendations are directed not so much to securing uniform, general evidence law as to encouraging a more appropriate approach to child witnesses across jurisdictions. For example, Queensland and South Australia adhere to the traditional common law definition of competency to give sworn evidence. It defines this understanding as a belief in God and in divine vengeance, a formulation arising from eighteenth century cases. Both Acts deal with competency without reference to children. They state that every person is prima facie presumed psychologically and physically competent to give sworn evidence in civil and criminal proceedings. Additionally, the child must promise to tell the truth. In some States there is also the additional requirement that the witness appreciate the duty or obligation that the promise entails. For example, expert evidence may assist the judge to determine whether a particular child is capable of understanding and responding to certain questions. Recommendation 98 All children should be presumed prima facie competent to give sworn evidence. Oaths and affirmations should be simple and in language that the particular child understands. The Evidence Act is an appropriate model for these provisions. The Attorney-General through SCAG should encourage those jurisdictions that have not introduced legislation based on the Evidence Act to enact similar provisions. Recommendation 99 The child of a party should have the right to object to being called to give evidence against that party in any criminal and civil proceeding. The Evidence Act should be amended to reflect the above provisions. Corroboration and judicial warnings The court held that the trial judge should have permitted her to give unsworn evidence and then warned the jury about convicting on the uncorroborated evidence of the child given the circumstances of this case the child had shown some hesitation about whether she really understood the difference between the truth and a lie. It was repeatedly suggested that judges should be prohibited from giving these warnings. Recommendation Recommendation Corroboration of the evidence of a child witness should not be required. Judges should be prohibited from warning or suggesting to the jury that children are an unreliable class of witness and that their evidence is suspect. Judicial warnings about the evidence of a particular child witness should be given only where 1 a party requests the warning and 2 that party can show that there are exceptional circumstances warranting the warning. The Evidence Act should be amended to reflect these provisions. The Evidence Act should be clarified to reflect the above provisions. Hearsay and evidence of recent complaint Many allegations of criminal acts against children are not prosecuted or do not proceed because the child is presumed incompetent to give evidence or does not understand the duty to tell the truth in court, or because the trauma of testifying at trial prevents the child from giving evidence satisfactorily or at all. However, as patterns of disclosure among child victims of abuse often include disclosure of small pieces of information over periods of time, the current exceptions are not sufficient to get all relevant previous statements by children into evidence to prove the fact in issue at a trial. For example, in Queensland documentary evidence of statements by children aged under 12 that tend to establish a fact are admissible as evidence of that fact. Some corroborating evidence, for example other statements by the child, medical evidence or expert psychological evidence, must also be required. A person may not be convicted solely on the evidence of one hearsay statement admitted under this exception to the rule against hearsay. The Evidence Act should be amended to this effect. Tendency and coincidence evidence and joinder of trials The Evidence Act has essentially restated the common law restrictions on the use of tendency and coincidence evidence. In such cases the evidence of one charge should not be admitted as evidence in the trial of other charges. Together, these rules mean that separate trials are usually necessary in these cases and that the children involved may have to give evidence numerous times: One example was described by a mother of two children in this very

situation. The fact that there were two trials meant a duplicity [sic] of stress for my children. The second trial was mistrialed after two days Now my children have to go back to court [on a specific date] to suffer this hell once again. To this end, joinder rules and rules against tendency and coincidence evidence should be reviewed in light of the hardship these rules cause to particular child victim witnesses. Evidence Act Qld s Evidence and Procedure 5th ed Butterworths Sydney , Evidence Act Qld s 9A.

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4: Background | ALRC

BOOK REVIEW AUSTRALIAN PRINCIPLES OF EVIDENCE (2nd ed,), Jeremy Gans and Andrew Palmer Cavendish Publishing Limited By Lee Stuesser1 I write this review as an outside observer of Australia law.

Introduction Legal professional privilege is an important common law immunity of which companies and individuals may avail themselves in Australia and common law jurisdictions generally. Where regulators are investigating alleged conduct of companies or individuals, those parties would be well advised to seek legal advice first, before seeking other professional advice â€" so that where their communications are capable of being properly privileged, they may be. The UK Supreme Court has recently reminded us that legal advice privilege including litigation privilege is restricted to communications between legal adviser and client. Lord Neuberger in R v Special Commissioner of Income Tax 1 made it clear the privilege does not extend to confidential communications with accountants. It is now settled that legal professional privilege is a rule of substantive law which may be availed of by a person to resist the giving of information or the production of documents which would reveal communications between a client and his or her lawyer made for the dominant purpose of giving or obtaining legal advice or the provision of legal services, including representation in legal proceedings. The High Court then noted: Legal professional privilege is not merely a rule of substantive law. It is an important common law right or, perhaps, more accurately, an important common law immunity. Evidence Acts in Australia The provisions of the Commonwealth Evidence Act which deal with the subject of client legal privilege are sections and Section Legal advice Evidence is not to be adduced if, on objection by a client, the court finds that adducing the evidence would result in disclosure of a confidential communication made between the client and a lawyer or between two or more lawyers acting for the client â€" or the disclosure of the contents of a confidential document whether delivered or not prepared by the client, lawyer or another person 5 â€" for the dominant purpose of the lawyer or one or more of the lawyers providing legal advice to the client. Section Litigation Evidence is not to be adduced if, on objection by a client, the court finds that adducing the evidence would result in disclosure of a confidential communication between the client and another person or between a lawyer acting for the client and another person that was made â€" or the disclosure of the contents of a confidential document whether delivered or not that was prepared â€" for the dominant purpose of the client being provided with professional legal services relating to an Australian or overseas proceeding including the proceeding before the court or an anticipated or pending Australian or overseas proceeding, in which the client is or may be, or was or might have been, a party. The rationale for privilege The rationale for protecting evidence on the basis of privilege is to promote the public interest by preserving the confidentiality of communications between lawyer and client, and encouraging the client to make a full and frank disclosure of the relevant circumstances to the legal adviser. The existence of the privilege reflects, to the extent to which it is accorded, the paramountcy of this public interest over a more general public interest, that which requires that in the interests of a fair trial litigation should be conducted on the footing that all relevant documentary evidence is available. Where does it apply? Legal professional privilege applies to all forms of compulsory disclosure and is not confined to judicial or quasijudicial proceedings. In Grant v Downs, the majority further noted: As a head of privilege legal professional privilege is so firmly entrenched in the law that it is not to be exorcised by judicial decision. None the less there are powerful considerations which suggest that the privilege should be confined within strict limits. As Deane J stated in Baker v Campbell: It is a settled rule of construction that general provisions of a statute should only be read as abrogating common law principles or rights to the extent made necessary by express words or necessary intendment. After the introduction of the Commonwealth and NSW Evidence Acts in , there was tension between the legislative dominant purpose test and the common law sole purpose test. Before Esso, the position was that the adducing of evidence in court proceedings where the Evidence Act applied was covered by the dominant purpose test whereas discovery and inspection of documents was covered by the common law sole purpose test as espoused in Grant v Downs. The position now at common law is that the dominant purpose test applies. In Esso, a majority of the High Court, held: As a practical matter, the choice presently

confronting this court is between sole purpose and dominant purpose. The dominant purpose test should be preferred. Communications The authorities make it clear that privilege at common law applies to communications. It attaches to a communication, written or oral, and it is the communication that is at issue. While it is natural to speak of legal professional privilege in terms of documents, it is the nature of the communication within the document that determines whether or not the privilege attaches. Confidentiality It is a requirement of legal professional privilege that the communication must have an element of confidentiality. There was no controversy at common law that for advice privilege the communication must have an element of confidence. Under the Evidence Acts the position is very clear, as sections and refer to confidential communications and documents. Waiver of privilege may be express or implied. Ordinarily, a waiver of privilege by express words or conduct is likely to be uncontroversial. Accordingly, most of the case law dealing with waiver has been in relation to implied waiver. Waiver may be implied in two ways: Waiver may be express or implied. Disputes as to implied waiver usually arise from the need to decide whether particular conduct is inconsistent with the maintenance of the confidentiality which the privilege is intended to protect. This means that the law recognises the inconsistency and determines its consequences, even though such consequences may not reflect the subjective intention of the party who has lost the privilegeâ€¦ What brings about the waiver is the inconsistency, which the courts, where necessary informed by considerations of fairness, perceive, between the conduct of the client and maintenance of the confidentiality; not some overriding principle of fairness operating at large. Where you need the assistance of other professionals in Australia it is wise to consult your lawyers first and then have your lawyers instruct experts to assist them. Lord Neuberger gave the lead judgment for the majority, holding that legal advice privilege should not be extended to communications in connection with advice given by professional people other than lawyers, even where that advice is legal advice which that professional person is qualified to give. These questions should be left to Parliament in order to be considered through the legislative process, with its wide powers of inquiry and consultation and its democratic accountability. These Acts are sometimes termed the Uniform Evidence Acts although there are some differences between them. Disclosure requirements are defined as including summons or subpoenas, pre-trial discovery, non-party discovery, interrogatories, notices to produce, requests to produce documents under Div 1 of Part 4.

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5: www.enganchecubano.com - BSBLEGA - Apply the principles of evidence law

Equal treatment is given to both the uniform evidence legislation - now applicable in Federal Courts and in the courts of the Australian Capital Territory, New South Wales and Tasmania - and the common law that applies in the remaining Australian jurisdictions.

LBC, , 1st ed. LBC Nutshells are the essential revision tool: Written in clear, straightforward language, the authors clearly explain the principles, and highlight key cases and legislative provisions for each subject. Observed facts This is more a general principle that any specific rule however, it has important ramifications. A witness may only give evidence of facts that the witness has actually observed. Relevant evidence This is a general principle that is usually stated in the form that only evidence that is relevant to a fact in issue is admissible. The evidence will be relevant only if it is capable of assisting the inquiry, one way or the other, when determining the existence of an alleged fact. It also has a corollary in that all relevant evidence is admissible in the proceedings unless that evidence is specifically excluded by some other principal or by some discretionary rejection. This general principle and its corollary provide an overall framework namely, that all relevant evidence is admissible unless specifically excluded by a particular exclusionary principle. It also serves the purpose of excluding some factual information concerning the genesis and development of the legal dispute that has no evidential value in relation to the facts in issue. Generally, it is our experience of life, including any technical or scientific knowledge that we may have, that permits us to decide what is relevant and what is not. Evidence may be relevant for any number of reasons and of course it will depend very much upon the circumstances surrounding each fact we are inquiring into. The question of whether evidence is relevant mainly arises when a party attempts to prove a fact in issue by tendering circumstantial evidence and the other side objects to the tender of this evidence on the basis that it is incapable of assisting the inquiry into the existence of the fact in the issue. Hearsay If evidence amounts to hearsay it is excluded. Whether or not evidence is hearsay is a fairly complex issue. Thus, a witness may not say in evidence what someone else told that witness about the occurrence of the fact in issue and a document is not admissible if it contains a statement about the occurrence of that fact in issue. Both will be rejected as hearsay if the purpose of the evidence is to prove the fact asserted therein. The general rationale of this exclusionary rule is to confine the evidence to direct testimony, that is, to evidence by a witness who actually observed the event happening. Equally, if the purpose of the document is only to prove what another person wrote, and nothing more, the statement in the document is not hearsay because it is not thereby intended to prove the truth of the fact being asserted. In both these instances the evidence does not even amount to hearsay in the first place. Rather, it is classified as "original evidence". Also note though that even if evidence is tendered which is hearsay it may nevertheless be admitted by reason of one of the many qualifications to the exclusionary nature of the hearsay rule. These qualifications are generally referred to simply as exceptions to the hearsay rule. Thus the hearsay rule excludes relevant evidence if it be hearsay in nature unless an exception to the hearsay rule applies. Basically, this is a question of form as a witness may always narrate the acts of a person which the witness directly observed. The witness however cannot go further and proffer the opinion that those facts amounted to carelessness as to do so is really to draw an inference from observable facts or to reach a conclusion. This rule though is qualified; for example, where expert evidence is called for an expert is entitled to express an opinion. Public interest The common law has long recognised the need in appropriate circumstances to prohibit disclosure of facts where such disclosure would be unduly adverse to the public interest. This prohibition has taken two quite distinct forms: This is referred to as public interest immunity; and b where evidence has been obtained illegally or improperly, that evidence may be rejected in the exercise of a discretionary power to do so. Privilege Equally, the common law prohibits the disclosure of facts that fall within one of the recognised privileges the privilege against self- incrimination, marital privilege and legal professional privilege. The same applies to statements made "without prejudice". Even at common law there are exceptions and qualifications to these propositions. This type of evidence is to be distinguished from propensity evidence, that is, from evidence where a witness deposes as to specific acts which are often

wrongful or improper acts done by a witness in the past. Propensity evidence often referred to as a similar fact evidence is governed by its own specific rules. All these types of evidence tend to show character, whether good or bad. This area is conceptually very difficult and perhaps the best way to approach it is with the basic idea that evidence which shows character is not admissible unless: The antiquity of the rules relating to Character Evidence have tended to allow them to fall into obscurity in modern times and to give a concise overview of the principles upon this point is difficult. However, as a broad statement it can fairly confidently be said that evidence as to the character of parties and witnesses cannot be lead in evidence except that: This broad statement of the relevant principles though is no more than a starting point and further elaboration will be necessary. Propensity evidence In addition to the above, there is a very old rule at common law that will exclude any evidence which tends to show that an accused in criminal proceedings has a disposition towards wrongdoing either of a civil or criminal nature. The rationale for this rule is that it is not acceptable to try and prove that the accused committed the crime the subject of the proceedings by proving that he or she committed crimes, or did other wrongful acts, in the past. The best way to approach this rule is to see it as one which excludes any evidence which falls within its parameters. There are several well established exceptions to this exclusionary rule all of which basically come into play when the evidence is relevant for some other reason than that it shows disposition towards wrongdoing. This principle is often referred to as the "similar fact evidence" exclusion rule, which is somewhat of a misnomer. This principle most frequently arises in criminal proceedings where evidence is tendered by the prosecution which shows that the accused has committed a similar, or some other, crime in the past. Note that any evidence which shows disposition will always, at least to some extent, show character as well. Therefore this exclusionary rule and the general rules concerning character evidence need to be compared to see whether they are compatible and, if not, the relationship between them must be analysed. Other aspects of the laws of evidence Apart from the issues as to relevance and admissibility which have been summarily mentioned above the laws of evidence govern many other aspects of the process of persuading a tribunal of fact to find that a particular fact occurred. All these issues are within the province of the laws of evidence and they are considered in the text that follows under their traditional headings. Jurisdictional variations The principles of evidence that developed at common law are subject to statutory modification in all Australian jurisdictions, each jurisdiction having its own Evidence Act as well as other statutes which contain certain specific provisions affecting the laws of evidence. For convenience these several Acts are referred to compendiously as the Uniform Acts. They have come very close to a codification, however the common law still has significant application both in its own right and in explanation of many of the statutory provisions. The other jurisdictions apply common law principles save to the extent that they are modified by applicable statutory provisions. The variations that are to be found in these jurisdictions are not as extensive as the variations effected by the Uniform Acts. Despite these statutory provisions a sound knowledge of the common law evidentiary principles is still necessary in order to understand the nature of the modifications that have been effected and to present evidence properly when the statutes are silent.

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