

Tribunals can step on rights

John Roskam's Opinion piece (February 26) on the Fair Work Australia unfair dismissal case (Quinlivan v Norske Skog Paper Mills) makes the point that under the rule of law the courts must not establish different rules for different people based on gender, family circumstances or age, as Fair Work Australia did in that case.

The outcome for the employer in this case is as unfair as the outcome for the employer at the NSW Industrial Court which was recently overturned by the High Court of Australia (Kirk v WorkCover Authority NSW).

In Kirk's case the prosecuting agency did not provide the defendant Kirk with the basic factual ingredients of the offence for which he was criminally charged. Also, Kirk was called as a witness for the prosecution, which was a breach of his right to remain silent.

In his comments High Court Justice Heydon expressed a concern about the operation of specialist tribunals, quoting from academic Geoffrey Walker's seminal text on the rule of law: "History teaches us to be suspicious of specialist courts and tribunals of all descriptions. They are usually established precisely because proceedings conducted in accordance with normal judicial standards of fairness are not producing the outcomes that the government wants.

"From the Court of Star Chamber to the multitude of military courts and revolutionary tribunals in our own century, this lesson has been repeated time and time again."

Richard Gilbert
Chief executive
Rule of Law Association of Australia
Sydney NSW