

PROCTOR



Queensland
Law Society

November 2016 – Vol.36 No.10

Queensland set for class actions | Heavy weapons in the war
on drugs | The disgruntled beneficiary... | Framing the future

Butler and Holt's INDICTABLE OFFENCES QUEENSLAND

**EXCLUSIVE
MEMBER OFFER**
SAVE 10% on online, eSub
and looseleaf subscriptions
Don't forget to quote **QLSIOQ**
and mention this advert
Offer ends 31st December 2016.
Terms and conditions apply.

Your essential guide to the law governing serious crime in Queensland

Why Indictable Offences Queensland?



Thematic overview: Easily navigate your way through complex criminal provisions with a unique theme-based index, and clear and consistent annotation headings.



Focus on current law: Access up-to-date, concise annotations to the *Criminal Code* and essential legislation.



Authors in the know: District Court Judge Brendan Butler and Saul Holt QC lead an author team of experienced barristers and bring more than 50 years' experience to the service.



Portability: Save space and time with our portable two-volume work (one go-to-court volume) with only essential material included.



Cross-references to related products: Broaden your research options with links and cross-references to other Queensland criminal law essentials, including *Summary Offences Queensland*, *Queensland Sentencing Manual* and *Evidence Law in Queensland*, 11th Edition.



Formats available:

Online – Westlaw AU
eSubscription – ProView
Two-volume looseleaf

“This is a service written by practitioners for practitioners. A team of practising criminal barristers has written fresh, up-to-date but succinct commentary to the Criminal Code and associated criminal statutes. The emphasis is on supplying the current law in a portable and accessible format.”



Judge Brendan Butler AM SC

General Editor, Indictable Offences Queensland

PROCTOR

Heavy weapons in the war on drugs 14

Serious drug offence certificates and confiscation orders

Queensland set for class actions 16

Practical issues and implications

The disgruntled beneficiary... 20

and the executor seeking commission or discharge from beneficiaries

Framing the future 22

Summary of Queensland Law Society Annual Report 2015.16

Law		News and editorial	
Professional standards –	24	President's report	3
Negligence as a disciplinary issue		Our executive report	5
Workplace law – Pre-employment	26	News	6-9
check failure blocks dismissal		Advocacy	10
Back to basics – Leave to appeal	28	In camera	12
to the Court of Appeal			
Succession law – Days of the dead	30		
Your library – Register with SCLQ	32		
to access great benefits			
Alternative dispute resolution –	34		
Advocate's immunity curtailed?			
Practice and procedure –	36		
Court directs costs assessor			
to file certificate			
High Court and Federal	38		
Court casenotes			
Ethics – Personal pressures may	41		
lead to professional consequences			
Family law – Parenthood from	42		
de facto's egg donation			
On appeal – Court of	44		
Appeal judgments			

News and editorial

President's report	3
Our executive report	5
News	6-9
Advocacy	10
In camera	12

Career pathways

Diary dates	50
New members	52
Career moves	53
Practice spotlight – Marrawah Law	54
Practice management –	56
Keep it simple	

Outside the law

Classifieds	57
Wine – Victorian bubbles	61
for the Cup	
Crossword – Mould's maze	62
Humour – Did you want	63
wheels with that?	
Contact directory, interest rates	64



LEXUS CORPORATE PROGRAMME

Lexus represents an incomparable driving experience and the Lexus Corporate Programme builds upon this by providing a service uniquely tailored to our corporate clients.

It is with pleasure the Lexus of Brisbane Group offers the Lexus Corporate Programme to Queensland Law Society members across the entire Lexus range including luxury sedans, coupes and SUVs.

FEATURES OF THE LEXUS CORPORATE PROGRAMME:

- 3 year/60,000km complimentary scheduled servicing¹
- Factory support across the entire range²
- Reduced dealer pre-delivery fee
- Access to Lexus Corporate Evaluation Vehicles
- Priority ordering and allocation

LEXUS CORPORATE PROGRAMME INCORPORATES ENCORE PRIVILEGES PROGRAMME:

- Complimentary service loan vehicles or pick-up/drop off during servicing
- Lexus DriveCare providing 24 hour roadside assistance
- Lexus Exclusive Events
- "Beyond by Lexus" Magazine

ADDITIONAL BENEFITS FOR QUEENSLAND LAW SOCIETY MEMBERS:

- Priority invitations to Lexus of Brisbane Group corporate events
- Dedicated Lexus of Brisbane Group representative for all enquiries
- Access to the Lexus of Brisbane Group's Airport Valet Parking - collection and return service from Brisbane Airport³

The Lexus of Brisbane Group looks forward to our partnership with Queensland Law Society and their members. To discuss these benefits offered to you as a Queensland Law Society member, phone or SMS our dedicated Lexus of Brisbane Group representative Derek Klette today.

Derek Klette | Group Sales Manager

derek.klette@lexusofbrisbane.com.au | 0419 723 937



CORPORATE PROGRAMME

LEXUS OF BRISBANE
lexusofbrisbane.com.au

LEXUS OF SOUTHPORT
lexusofsouthport.com.au

LEXUS OF SPRINGWOOD
lexusofspringwood.com.au

LEXUS OF MAROOCHYDORE
lexusofmaroochydore.com.au

¹ Complimentary scheduled servicing expires at 3 years or 60,000km from the date of first registration, whichever occurs first. Conditions apply. See your Lexus dealer for further details.

² Eligible employees must provide such documentary evidence as Lexus or the Lexus Dealer may require to confirm entitlement to receive preferential pricing. Terms and conditions apply. See your Lexus dealer for further details.

³ Visit <http://www.lexusofbrisbane.com.au/about/about-us/benefits> for full terms and conditions.

Why we're committed to committees

A strength to be proud of



The person who said a camel was a horse designed by a committee obviously had nothing to do with Queensland Law Society.

Here, our members are the lifeblood of the Society and those who serve on our committees are the skeleton that supports the body of our Society. Our committees are effective, functioning groups of members that give form and substance to our catchcries of good law and good lawyers.

They are made up of good lawyers assisting their Society in setting professional standards, developing just and workable laws through submissions to government, promoting the development of good public policy and much more.

In essence, our hundreds of committee members represent a deep well of goodwill and expertise that flows through the Society to our Queensland communities. In total, we have some 60 committees and working groups, covering operational and policy roles, specialist accreditation and other functions.

We regularly report on the advocacy efforts of our QLS policy committees (qls.com.au/committees) both in *Proctor* and on our website (qls.com.au/submissions). This year has seen some outstanding contributions and notable achievements by many of these.

The law, as I often say, is a very large house in which there are many rooms, so the reality is that there are many policy committees, almost as numerous as there are areas of law. Some would argue that there is even room for more, and as specialist issues arise we often form working groups that can sometimes then morph into committees.

The committees sit under the QLS Council, which sets the aims and policies of the Society, usually creating the various committees so that they can help to develop policy in areas of significant interest to both the Society and to the community at large.

The committees then formulate submissions, liaise with government and in turn the president of the Society signs and helps formulate submissions that are then sent to government. When there are matters of significant intention, the entire Council may decide whether a committee's submission fits within the overall framework of the Society's direction.

In 2015-16, our policy committees notched up some impressive stats – there were 297 members and 149 meetings representing 4701 hours of engagement at a commercial value of \$1,786,000. The average success rate per submission was an amazing 0.928!

There are also many other committees and groups with a broad range of functions, not necessarily related to policy. For example, the Ethics Committee has been involved in a huge body of work, including the recent release of Guidance Statement No.6. The Human Rights Working Group made very significant contributions earlier this year and now the Reconciliation Action Plan Working Group is at full speed. There's the Love Law Live Life Working Group, *Proctor* Editorial Committee and 11 committees covering the various areas of specialist accreditation.

To be fair, I should be naming all of our committees and working groups here – because they all deserve recognition and thanks from the Society and our members.

Actually, to recognise the ongoing commitment and contributions from our committees and working groups, their members were invited to a thank-you function we held at the Brisbane Marriott Hotel last month. This was a great evening that celebrated their achievements and dedication. We also had a guest speaker, Queensland's first Chief Entrepreneur and Blue Sky Alternative Investments founder Mark Sowerby.

What amazed me at the event, and continues to amaze me, was being reminded of how these busy people are happy to give so generously of their time and experience.

Of course, the unpaid work of all these committee and working group members sits

beside the vast body of pro bono delivered by Society members across Queensland. In my view lawyers give back more to their communities than any profession, some through structured programs within their firms, others through community legal centres and others still through boards or community clubs, and some just by helping out.

The commitment of our members to their Society and to the community at large is something that is noble and shows the very great strength of the solicitors' branch of the profession in Queensland. We have much to be proud of.

An encore for PMC graduates

While we're talking about members and their involvement with the Society, this year we have also developed an alumni association for the graduates of the QLS Practice Management Course (PMC).

I admit it is a demanding course that requires substantial effort from participants, and the establishment of an alumni body acknowledges both the hard work of participants and the desirability of an ongoing relationship for them.

To wrap up this year, our graduates are invited to a PMC Encore event which provides the opportunity to gain further insights into topical practice management strategies, as well as networking with fellow course participants, peers and presenters.

Our PMC alumni also receive tailored ongoing support to assist with the management of day-to-day challenges and ensure they achieve practice success. The benefits include:

- free information and support on practice management and structures, professional indemnity insurance, and regulatory support
- personalised advice on ethical issues, and trust and general accounting issues.

Bill Potts

Queensland Law Society president

president@qls.com.au

Twitter: @QLSPresident

Are your clients' legal disbursements tying up your cashflow and profit?

Let Legal Funding Australia help fund your clients' legal disbursements!

Legal Funding Australia is a licensed credit provider and specialist lender who can provide funding for claimants' out-of-pocket legal expenses and disbursements.

We provide legal disbursement funding nationally for your clients' personal injury, family law and class action claims, which can help you better manage practice cashflow and maximise your profit.

With a quick and easy loan approval process for claimants and competitive rates, most approvals are processed within 2 business days and no repayments are required until settlement of the matter.

Our legal disbursement finance service can help you:

- > Reduce Practice Overdraft
- > Reduce Practice Interest Costs
- > Improve Practice Cashflow
- > Increase Practice Profitability
- > Free Up Cash & Security For Practice Growth

Stop funding your clients' legal disbursements, improve your practice cashflow and maximise your profit today!



LEGAL FUNDING AUSTRALIA

For more info call (07) 3151 2950
or visit legalfundingaustralia.com.au

ASIC Credit Provider (Licence No. 417231). Member of Credit Ombudsman Service Limited (Member No. M0015582).

Legal revolution on the small scale

Is there a new role for the Society?



It was only a decade ago that we were concerned about the dwindling number of sole practitioners and the growth of international mega-firms that, some feared, would see small-to-medium firms squeezed out of the legal market.

Like any number of dire predictions, it didn't pan out that way, and today we find ourselves facing a quite different scenario.

While there has in general been continuing growth mixed with consolidation for the mega-firms at the very top of the market, at the other end there are distinct trends emerging, nurtured by the ubiquitous internet.

Over the last decade the commercial realisation of the internet's potential has grown at a staggering rate. We are seeing a rapid decrease in time to market and time to achieve market penetration. Using the '50 million metric' to illustrate, when Facebook launched it took 1300 days to reach 50 million users; Pokemon Go this year took 19 days.

For the legal profession, which customarily lags behind commerce in the adaptation of new technology, the growth in virtual legal firms and 'freelance' lawyers is already significant.

I know of people developing 'Uber for lawyers' – just open the app and enter some details to connect directly to a lawyer ready to handle your matter.

We are seeing young practitioners starting their own virtual firms the same year they are admitted, and other practitioners opting out of the long hours and rigid structures of established firms to create their own virtual offices where they see flexible hours as the first of many benefits.

We have given serious consideration to the role of Queensland Law Society in this new legal landscape. How can we better utilise our assets to support our members?

The rise in virtual offices and remote working arrangements see practitioners missing out on the interaction with colleagues and co-workers that occurs within law firms. This contact is critical to the professional development of the skills and experience that characterise a well-rounded practitioner.

Collaboration amongst practitioners is emerging as a strong trend. We recently engaged a consultant to assess Law Society House and re-examine our options in the current economic climate, including allocation of space.

One outcome was a suggestion that we look at developing co-working spaces to better service the changing needs of our members within Law Society House, or a QLS 'Law Hub'.

Besides providing the traditional office facilities such as client meeting rooms, co-working spaces also allow the opportunity for professional interaction and learning from each other. Co-working facilities at QLS could be specifically tailored for the legal profession, taking into consideration unique complexities such as client confidentiality and security.

Ancillary to this is development of the Law Hub concept within the building, bringing together like interests in the same environment. We have already welcomed Working Women Queensland and Prisoners' Legal Service into Law Society House as commercial tenants.

What I would value at this stage is input from our members on these suggestions. Would co-working spaces within the Law Society House precinct meet your needs? Do you have alternative suggestions? Please email your thoughts to me.

Love Law, Live Life

In an ever-changing legal landscape, the wellbeing of our members is always a concern, and you will be aware of the substantial resources available to all at qls.com.au/lovelawlivelifelife.

A key focus for our Love Law Live Life Working Group this year has been working

with the Centre for Corporate Health to develop a two-hour workshop premised on the fact that 60% of our wellbeing at work depends on the quality of our relationships.

This program aims to build awareness with leaders in the legal industry on how they can have a positive impact on the mental fitness and wellbeing of those who work with them through being aware of their behaviour, looking for the signs of mental health issues, and understating how to best manage them within the workplace.

Six QLS staff and the working group have been trained to facilitate this program and we are looking forward to running pilot programs before Christmas, then kicking it off for the profession next year.

The technology challenge

Technology trends emerging require us to analyse and understand the challenges and opportunities they might bring for our members. Smart products, robotics and artificial intelligence, cloud and security and privacy are some areas we must consider.

I am pleased to announce a collaboration with The Legal Forecast, a Queensland not-for-profit entity organised by a group of law students and early-career professionals with the aim of advancing legal practice through technology and innovation.

To assist our members, the group will regularly contribute an article that explores and explains new ideas and technology. Turn the page to see the first contribution, which introduces 'blockchain' and explains how it may become relevant to the profession.

Amelia Hodge
Queensland Law Society CEO
a.hodge@qls.com.au

An introduction to blockchain

Blockchain 101 – cracking the code

by Angus Fraser, The Legal Forecast

Everyone is talking about blockchain, with some heralding it as the biggest force of disruption to face the banking and finance, and legal sectors.

But what is blockchain really about and why should lawyers care? This article takes a look at the basics.

Bitcoins and blockchains

Blockchain originated as the software underpinning the virtual cryptocurrency 'Bitcoin'. Bitcoin has occasionally been associated with illicit activity because of the user anonymity it provides (although the virtual currency is widely used for a variety of legitimate purposes). It is the largest currency of its type in terms of market value.

Blockchain is the essential technology that allowed the elusive developer of Bitcoin, operating under the pseudonym Satoshi Nakamoto, to create an escrow service without a centralised authority to distribute money between transactions. To understand how blockchain works, a simplified explanation of Bitcoin is therefore appropriate.

Bitcoin is a decentralised currency designed to remove the third-party presence of banks from monetary transactions. It works by publicly broadcasting to all computers on a connected network that a bitcoin transaction has been made. The role of the blockchain is to provide a way for these distributed computers to reach a consensus on what transactions have occurred, and trust that it is correct, without the assistance of an intermediary.

How does the blockchain work?

Blockchain's practical effect is to record transactions. However, the process by which it does this is a little convoluted:

1. Transactions made over the Bitcoin protocol are collected by each computer into a timestamped 'block' identifiable by a unique 'hash' code.
2. Computers on the network then race to discover the correct hash for their particular block. This 'proof of work' process requires significant processing power.
3. Once solved, a block is broadcast to other computers and accepted if the transactions in it are valid and not already spent.

4. An accepted block is then linked to the existing chain of blocks, with its hash being used as the previous hash for the next block in the chain.

In this way, each new block of information is inextricably connected to the last. This ongoing chain is shared by every computer on the network, functioning as a public record of every transaction from the first block to the present. Anyone on the network can inspect this ledger. Even if they do not reach all computers at first, transactions eventually end up added to a block.

A computer that successfully adds another block to the chain is rewarded with 25 bitcoins and the transaction fee associated with that block. This incentivises 'miner' computers to continue processing transactions.

Securing the blockchain

In order to prevent malicious activity, blockchain always prioritises the longest chain on the network as being the correct one. This is because it has necessarily required the most processing power to generate the greatest amount of valid blocks. In order to falsify a block a malicious actor would have to generate the entire chain of blocks that came before it, including the proof-of-work of each block, and then outpace the continually growing main chain.

Hash functions are also irreversible, which makes recreating the chain even more difficult. Moreover, their complexity has increased over time. In fact, the kind of computer hardware needed nowadays to work out a hash is incredibly powerful compared to the kind of personal computers found in an office or home, and is customised specifically for the task.

Unless a malicious entity controls a majority of the CPU power on a network of thousands of these computers, or their own somehow more powerful network, it therefore becomes computationally impractical to try to create a dishonest chain. Even if a party could somehow do this, they could only return their own money anyway. This is a significant aspect of what makes Bitcoin secure.

Broader application

Blockchain is exciting because the underlying framework of a peer-to-peer public ledger without third-party verification is something that has potentially far-reaching application.

It allows two parties with no trust in one another to engage in transactions with confidence.

Significantly, blockchain is being heralded as a foundation for 'smart contracts'. Such contracts are programs that produce certain outcomes according to the satisfaction of predetermined conditions. Thus, payment made under a smart contract for a certain asset is only transferred to a supplier's account when its delivery is verified.

Micro-payments can also be made because the cost of the service is marginal. In fact, anything of value can be effectively traded and recorded in a public registry on a blockchain-based network. For this reason, blockchain is being suggested as a way of modernising voting, property titles, intellectual property and business agreements. Banks are already coordinating to create their own blockchain-based virtual currencies on private networks.

Security concerns

However, the primary source of security inherent in the Bitcoin system is something that, in the rush to create new applications, may be lost. The strength of Bitcoin lies in the thousands of distributed computers all exhorting huge amounts of bandwidth and power to add to the chain. Coordination of this vast network for malicious gain is rendered impractical by the size and distribution of the participants.

Without such a sizeable public network, new blockchain applications may be much more vulnerable to attack, as chains can be more easily modified over small or private networks. Moreover, most if not all of the new permutations of blockchain require a form of intermediary at some point, which defeats the whole purpose of a decentralised system of transactions. There is also the practical difficulty inherent in transferring value to a virtual currency equivalent in each application. Blockchain is therefore a potentially remarkable means of reshaping a broad spectrum of activities – although some caution may be warranted.

Angus Fraser is a student executive member of The Legal Forecast and enrolled in his fifth year of a Bachelor of Laws/Arts at the University of Queensland. Special thanks to Adrian Agius and Tristan Lockwood of The Legal Forecast for technical advice and editing. The Legal Forecast (thelegalforecast.com) aims to advance legal practice through technology and innovation. It is a not-for-profit run by early-career professionals who are passionate about disruptive thinking and access to justice.

Online exhibition highlights women lawyers' contributions

Prominent Queensland legal figures past and present are featured in an online exhibition, Australian Women Lawyers as Active Citizens.

The exhibition documents how women with law degrees have used their degrees, skills and experiences in practice and life to make an impact in Australian civic life.

It was prepared as part of the Australian Women's Archive Project and evolved from the Australian Research Council-funded oral history project on Trailblazing Women and the Law.

Over six years, hundreds of women were nominated as possible interviewees for oral histories. However, with funding for only 45 histories, another avenue to showcase how all the women nominated had made a significant contribution to Australia was sought. This online exhibition is the result.

Nominated women were invited to provide material and the exhibition also includes lawyers who were already on the Australian Women's Archive Project Australian Women's Register.

Queenslanders featured in the exhibition's oral histories include Patricia Conroy, Tracy Fantin, Diane Fingleton, Linda Lavarch, Zoe Rathus and Nerida Wilson. Other Queenslanders featured through essays and biographical material include Margaret McMurdo AC, Dame Quentin Bryce AD CVO, Leneen Forde AC, Debra Mullins, Annastacia Palaszczuk, Debbie Kilroy, Agnes McWhinney and Noela L'Estrange.

See the exhibition at womenustralia.info/lawyers.

DibbsBarker expands to Melbourne

DibbsBarker is expanding its footprint with a new office in Melbourne, expected to open next month.

The firm already has more than 200 partners and staff in its offices in Brisbane and Sydney. Bill Burroughs, a senior partner in the firm's property and projects team, will relocate permanently from Sydney to lead the Melbourne office.

BUILD YOUR CAREER WITH THE COLLEGE OF LAW LLM (APPLIED LAW)

Next semester commences **6 March 2017**

I would highly recommend The College of Law masters. Not only is it very practical, but it's taught well and it's immediately applicable to one's day to day practice.

- **NATHANAEL KITINGAN** SENIOR ASSOCIATE, MACPHERSON KELLEY, LLM (APPLIED LAW) GRADUATE



Call **1300 506 402**

Email alp@collaw.edu.au or visit www.collaw.edu.au/alp



**THE COLLEGE
OF LAW**
Queensland

Queensland Law Society Inc.

179 Ann Street Brisbane 4000
GPO Box 1785 Brisbane 4001
Phone 1300 FOR QLS (1300 367 757)
Fax 07 3221 2279
qls.com.au

President: Bill Potts

Deputy president: Christine Smyth

Vice president: Kara Cook

Immediate past president: Michael Fitzgerald

Councillors: Michael Brennan, Christopher Coyne,
Jennifer Hetherington, Chloe Kopilovic, Elizabeth Shearer,
Kenneth Taylor, Kara Thomson, Paul Tully,
Karen Simpson (Attorney-General's nominee).

Chief executive officer: Amelia Hodge

Editor: John Teerds j.teerds@qls.com.au | 07 3842 5814

Design: Alisa Wortley

Art direction: Clint Slogrove

Advertising: advertising@qls.com.au

Display Ads / Classifieds:

advertising@qls.com.au / classified@qls.com.au

Subscriptions: Hayden De Waal 07 3842 5812

Proctor committee: Adrian Braithwaite, Dr Jennifer Corrin,
Kylie Downes QC, Steven Grant, Vanessa Leishman,
Greer Davies, Bruce Patane, Hayley Schindler,
Christine Smyth, Anne Wallace.

Printing: Print Works. Proctor is published monthly
(except January) by Queensland Law Society.

Editorial submissions: All submissions must be received
at least six weeks prior to the month of intended
publication. Submissions with legal content are subject
to approval by the Proctor editorial committee, and
guidelines for contributors are available at qls.com.au

Advertising deadline: 1st of the month prior.

Subscriptions: \$110 (inc. GST) a year (\$210 overseas)

Circulation: CAB, 31 March 2016 – 10,096



No person should rely on the contents of this publication. Rather, they should obtain advice from a qualified professional person. This publication is distributed on the basis that Queensland Law Society as its publisher, authors, consultants and editors are not responsible for the results of any actions taken in reliance on the information in this publication, or for any error in or omission from this publication, including those caused by negligence. The publisher and the authors, consultants and editors expressly disclaim all and any liability howsoever caused, including by negligence, and responsibility to any person, whether a purchaser or reader of this publication or not, in respect of anything, and of the consequences of anything, done or omitted to be done by any such person in reliance, whether wholly or partially, upon the whole or any part of the contents of this publication. Without limiting the generality of the above, no author, consultant or editor shall have any responsibility for any act or omission of any other author, consultant or editor. Requests for reproduction of Proctor articles are to be directed to the editor. Unless specifically stated, products and services advertised or otherwise appearing in Proctor are not endorsed by Queensland Law Society.

Contributors to Proctor grant to the Society a royalty free, perpetual, non-exclusive, irrevocable paid up licence to:

- use, reproduce, communicate and adapt their contributions; and
- perform any other act with respect to the Intellectual Property in their contributions and to exploit or commercialise all those Intellectual Property rights.

QLS will acknowledge a contributor's moral rights by attributing authorship to that contributor.

Small sums of money from the Copyright Agency Limited (CAL) are periodically payable to authors when works are copied by CAL licensees (including government departments, tertiary institutions, etc.). As it is not financially viable for the Society to collect and distribute these royalties to individual authors, contributors undertake to become a member of CAL and receive any due payments directly (see copyright.com.au) or they waive all claims to moneys payable by CAL for works published in Society publications. It is a condition of submission of an article that contributors agree to either of these options. Contributors should read the Guidelines for Contributors on the Society's website: qls.com.au



If you do not intend to archive this magazine, please place in an appropriate recycling bin.



Charity bake-off stirs firm rivalry

Staff at Brisbane law firm Carter Newell put their culinary skills to the test for the firm's 11th annual staff bake-off raising funds for Cancer Council Queensland.

Rivalry at the September kitchen showdown was fierce, with Taylor Mobbs nabbing best savoury dish for her sausage rolls, Rebecca Stevens's lemon slice winning best sweet dish, and Amy Gill taking out the overall gong for her Nutella-filled donut muffins. The new team division prize went to the property and injury liability team for their sweet and savoury selections.

The event raised more than \$2500.

Bond caps law enrolments

Bond University's Faculty of Law has announced that from first semester in 2017 it will formally limit annual commencement numbers in its Bachelor of Laws program to 180 students a year.

As students can commence the LLB in any of Bond's three trimesters each year, the annual total of 180 students will fall into three small cohorts. The annual enrolment limit will include both single degree and combined degree students.

The faculty's executive dean, Professor Nick James, said that Bond had again been ranked as the best university in

Australia in terms of student experience and quality of teaching, and it intended to hold that position.

"By keeping the number of law students in each cohort small, we can offer tutorials with a maximum enrolment of only 12 students, and ensure that each student receives a personalised learning experience with direct access to the subject coordinator," he said.

Lawyers best national pro bono target

Signatories to the National Pro Bono Aspirational Target exceeded the target in the 2016 financial year, providing an average of 36 hours of pro bono legal work per lawyer over the year.

In its Ninth Annual Performance Report on the target, the Australian Pro Bono Centre reported that 11,185 Australian lawyers provided 402,216 hours of pro bono legal services. This was an increase of 8.3% on pro bono hours in 2015, and exceeded the 35 hours per lawyer per year target. It was the first time since 2011 that the signatories as a group had achieved the target. Individually, almost half of the signatories met or exceeded the target.

The CEO of the Australian Pro Bono Centre, John Corker, said 26 of the 37 large firms (those with more than 50 full-time equivalent lawyers) which reported

in both 2015 and 2016 had increased their pro bono hours per lawyer, and 17 reported growth of more than 20%.

"In a tightening legal services market, it is a tribute to the dedication of these firms that they have maintained and grown their pro bono programs despite today's competitive challenges," he said.

Of the 31 small law firms (fewer than 50 lawyers) which reported in 2016, only 30% met the target.

"Thirty-one small firms is only a small sample, but the results this year may reflect the increasing pressure that small firms face to survive commercially," Mr Corker said.

The report can be found at probonocentre.org.au.

New UQ law scholarship to increase diversity

The University of Queensland (UQ) has introduced a new scholarship to assist students from educationally disadvantaged and culturally diverse backgrounds to study law.

The TC Beirne School of Law Leadership, Excellence and Diversity (LEAD) Scholarship, worth \$7000 a year for up to five years, will be awarded each year to 15 Year 12 students from disadvantaged backgrounds to support them in their undergraduate studies. Scholarship recipients will receive priority access to work experience and internship opportunities, and access to academic and tutorial assistance offered through the UQ residential colleges.

Students can also apply for the UQ Special Admissions Scheme for Undergraduate Law Programs which considers the level of hardship a student may have experienced as well as their OP/rank.

Applications for the scholarship and special admissions scheme are open until 4 November. More information is available at law.uq.edu.au/lead.

Federal Court issues new national practice notes

The Federal Court of Australia has consolidated its 60 practice documents into 25 new national practice notes, which were issued on 25 October.

The review is a part of its National Court Framework (NCF) reforms. See fedcourt.gov.au > Law & Practice.

LEGAL OFFICES FOR LEASE

420 GEORGE ST BRISBANE

- Offices from 50 – 2,000 sqm
- Barristers Chambers for 1-4 persons
- High quality end-of-trip facilities
- Opposite State and Magistrates Courts
- Short & long term leases
- Fitted & non fitted options
- Lease incentives

Nick Davies
M: 0404 834 247

Stuart Moody
M: 0421 323 051



[K2]
PRIVATE
PROPERTY

Judicial oversight a concern for the courts

Queensland Law Society has expressed concern that proposals in the Serious and Organised Crime Legislation Amendment Bill 2016 will increase the volume of work for the Magistrates Court, which is already dealing with heavy caseloads and limited resources.

We expressed our concern to the Attorney-General's Department that it would be a consequence of the imperative for strong judicial oversight of police consorting powers.

The Bill incorporates key findings from the report of the Byrne Commission (which we also contributed to) and we have been working with our Criminal Law Committee to make further submissions following the release of the Bill.

If the legislation is implemented, there will be an independent five-year review undertaken by a retired District or Supreme Court judge.

Julia Connelly is a QLS policy solicitor.

Practical suggestions on domestic violence Bill

Queensland Law Society, with the assistance of its Domestic Violence Working Group, made extensive submissions on the Domestic and Family Violence Protection and Other Legislation Amendment Bill 2016.

We wrote to and appeared before the parliamentary Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee, providing comments on the Bill, the objectives of which are to:

- facilitate early, tailored protection
- prioritise safety
- provide for mutual recognition of domestic violence orders (DVOs)
- hold perpetrators more accountable
- encourage perpetrators to change their behaviour.

We:

- endorsed the aim of supporting national recognition of DVOs
- advocated on changes to police officer directions to a person to remain or move to a place to clarify whether the person detained is subject to the law and advise that it is an offence not to comply with a direction issued under the relevant proposed section 134A

- expressed support for the Bill's consideration of parties' particular circumstances.

The Society was quoted extensively in the committee's report, which was released last month and is available from the committee's web page at parliament.qld.gov.au.

Julia Connelly is a QLS policy solicitor.

Society backs elder abuse reforms

Queensland Law Society, with input from its Elder Law and Alternative Dispute Resolution Committees, made a written submission to the Australian Law Reform Commission (ALRC) on the ALRC's Elder Abuse Issues Paper.

We expressed support for a consistent national approach to an adult protection regime so that all states and territories can put in place nationally coordinated strategies to address elder abuse.

Our submission included commentary on:

- the definition of elder abuse
- legal responses to elder abuse including the development of national elder abuse best practice guidelines and establishment of an Adult Ombudsman
- the need for a multi-jurisdictional case review of elder financial abuse under substituted decision-making schemes
- potential 'whistleblower protection' for legal practitioners who become aware of older people being coerced in relation to their superannuation funds
- the creation of a national register of powers of attorney and other decision-making instruments
- uniformity of documents and reciprocal recognition across state jurisdictions
- support for health law partnerships, which embed a legal practitioner and a social worker in a health facility
- the establishment of a conciliation service as an alternative dispute resolution mechanism.

The ALRC will release a discussion paper later this year (with further opportunity to comment) and a report is due to the Attorney-General by May 2017.

Wendy Devine is a QLS policy solicitor.

Inconsistencies in opt-out agreements

Queensland Law Society made comments to the Department of Natural Resources and Mines regarding opt-out agreements and related information sheets.

Information sheets

We highlighted the importance of the department's opt-out agreements information sheet, which effectively prescribes the process and informs parties of their legal rights and responsibilities.

We recommended that greater emphasis be placed on clauses in the information sheet stipulating:

- the need to obtain legal advice before signing
- interactions between an opt-out agreement and a conduct and compensation agreement (CCA)
- that the material merely states the procedures, but does not endorse the process for every situation.

We also underscored the document's inconsistent references to the opt-out agreement as a legally binding agreement, and statements providing for a landholder to release the resource authority holder from obligations to negotiate a CCA or deferral agreement. We said this was incorrect and inconsistent with ss43(1)(c) or 45 of the *Mineral and Energy Resources (Common Provisions) Act 2014* (the Act).

Opt-out agreements

Our suggestions in relation to opt-out agreements included:

- amendment of s45(2) of the Act to clarify that an opt-out agreement is entered into by an owner/occupier and a resource authority holder, and records the owner's/occupier's election to opt-out
- mentioning of the 10-day cooling off-period
- annexing the documents to the prescribed form, acknowledging the landholder's receipt pursuant to Item 6.

Julia Connelly is a QLS policy solicitor.

Julia Connelly and Wendy Devine are grateful for the assistance of QLS advocacy work experience students Kathryn Loman and Ashleigh-Rae Bretherton in the preparation of these articles.

What does the future of law mean to you?

Join us at QLS Symposium 2017

Focus on the challenges facing our profession and
explore the opportunities for you and your firm.

Save the date | 17-18 March

For more information | qls.com.au/symposium



Lawlink at LAQ

Indigenous law students gained insights into the role of Legal Aid Queensland (LAQ) last month with a visit organised through Lawlink, the Indigenous student liaison program established by the Queensland Law Society Equalising Opportunities in the Law (EOL) Committee in 2003. Lawlink helps the students gain a better understanding of the practice of law, meet and network with members of the judiciary and the legal profession, and other law students.

Back row (L-R): Allen Dean, Isaiah Banu, Michelle Rabbidge, Zac Frazer, Terry Hutchinson, Ann-Maree David, Nicky Davies, Clare Giarola

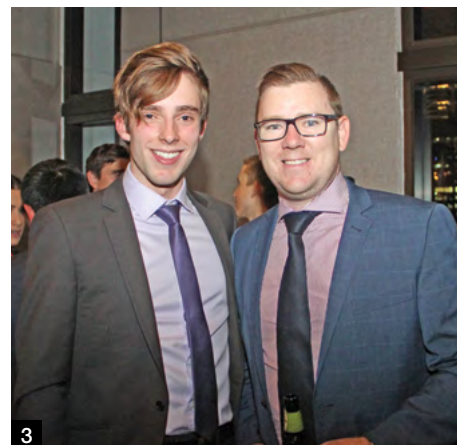
Front row (L-R): Murray Porter, Paul Davey, Linda Ryle, Robyn Wilkinson



Young professionals network on high

Early career accountants, financial planners and lawyers came together on 21 September for a networking evening at Sazerac, a rooftop bar 30 storeys above the Brisbane CBD. The event, sponsored by Westpac, included young professionals from Chartered Accountants Australia and New Zealand, the Financial Planning Association and Queensland Law Society.

1. Anne Timm, Gabby Honey, Erin Lord, Shanna Wood
2. Rena Watson, Nick Khatri, Theshan Goonewardene
3. Josh Rohl, Scott Marsh





COMPLIMENTARY COLLECTION AND DELIVERY IN CBD

www.lawinorder.com.au/solution | 1300 096 216

Heavy weapons in the war on drugs

Serious drug offence certificates and confiscation orders



From 6 September 2013, important changes were made to the state's ability to compulsorily acquire property from convicted serious drug offenders.

The commencement of the *Criminal Proceeds Confiscation (Unexplained Wealth and Serious Drug Offenders Confiscation Order) Act 2013* introduced new provisions into the *Penalties and Sentences Act 1992* and the *Criminal Proceeds Confiscation Act 2002*.¹

Although the changes were to be applied retrospectively,² their impact is only now becoming fully evident. Criminal lawyers need to be aware of this legislative scheme so they can advise clients about the effects of being convicted of a serious drug offence, and properly respond to any forfeiture proceedings which may arise.

In broad terms the changes are:

- Courts must issue a serious drug offence certificate for each unrelated serious drug offence.
- The legislation sets up a scheme of 'pre-qualifying' and 'qualifying' offences. Being convicted of a pre-qualifying offence may impact on any future drug offence conviction(s) being categorised as qualifying offence(s). Once an offender is convicted of a qualifying offence, the state can make an application to the court for a serious drug offender confiscation order.
- If such an order is granted, the court can direct that the property of the offender, including property which was gifted in the six years prior to conviction, is to be forfeited unless the offender can convince the court it is not in the public interest to do so.

- The state also has the power to apply for a restraining order for the purpose of preserving property for possible future forfeiture under a serious drug offender confiscation order.

These are each discussed separately below.

Serious drug offence certificates

Issuing of certificates

Schedule 1B of the *Penalties and Sentences Act 1992* (PSA) classifies serious drug offences into three categories. Trafficking is a Category A offence. Category B and C offences are other specified offences under the *Drugs Misuse Act 1986*. These include, for example, supply, possession and producing. Such offences will be Category B or C offences if they satisfy other criteria such as being over a prescribed quantity or if the offence was for a commercial purpose etc.

Serious drug offence certificates and potential subsequent confiscation orders are heavy weapons in the anti-drug offensive. **Alexandra Cooper** suggests that criminal lawyers keep their clients fully informed of the risks involved.



Under Part 9C of the *Penalties and Sentences Act 1992*, if an offence falls within any of the categories, the court must issue a certificate for each of the serious drug offences for which the offender is convicted.³ However, if an offender is convicted of more than one serious drug offence, and the court is satisfied on the balance of probabilities that all offences arose from a single course of conduct, the court can issue only one certificate for all related offences.

A certificate must be in the prescribed form⁴ and include the following:⁵

- the name of the offender
- the offence for which the certificate is issued
- the category of the offence
- the date the certificate was issued
- in the order of seriousness, a list of any related offences for which the court did not issue a certificate.

If the offending relates to a category C offence and the court has made a finding of fact that it was for a commercial purpose, this must also be noted on the certificate.

Practitioners should bear in mind that a court can amend a previously issued certificate if an offender is convicted of further related offence(s), if the court is satisfied, on the balance of probabilities, that the further offence(s) would have been considered related had the offender been sentenced for all offences together.⁶

It is therefore important that practitioners are fully aware of the circumstances surrounding any previously issued certificates, as multiple certificates can have serious ramifications on an offender.

Consequences of certificates

Chapter 2A of the *Criminal Proceeds Confiscation Act 2002* provides that a category A offence is a qualifying offence.

Category B and C offences can be considered qualifying offences if the offence is committed within seven years after committing and being issued certificates for two previous Category B or C offences. Otherwise, it will be determined as a 'pre-qualifying' offence.

Once a certificate is issued for a qualifying offence, the state can apply to the Supreme Court for a serious drug offender confiscation order.

Restraining orders for qualifying offence

The state can apply for a restraining order against a person who has been, or will likely be, convicted of a qualifying offence.⁷ This is to preserve property for possible future forfeiture under a serious drug confiscation order.

An application for a restraining order can be made to the Supreme Court up to 48 hours prior to the person even being charged for the alleged offence⁸ and, in certain circumstances, can be made without the knowledge of the person the application relates to.⁹

For the court to make the order, it must be satisfied that there are reasonable grounds for suspicion on which the application is based.¹⁰ However, the court can refuse the order if it considers it is not in the public interest to make it.

Serious drug offender confiscation order

Within six months of an offender being convicted of a qualifying offence, and a certificate being issued,¹¹ the state can apply for a confiscation order against the person.

If the order is granted, then all property of the offender, including any property that has been gifted within the last six years prior to conviction, is to be forfeited to the state. The property must be identified and listed in the order.

The offender may only retain property if it is considered "protected property" and the property would not be divisible amongst a person's creditors in the event of bankruptcy under the *Bankruptcy Act 1986*.

To refuse the order, the onus is on the defendant to persuade the court that it is not in the public interest to make the order in full, or in relation to certain property.¹² In the recent case of *The State of Queensland v Deadman*,¹³ Justice Dalton considered the meaning of the term 'public interest'. Her Honour found the term extended to a consideration of the personal circumstances of the offender. In refusing the order, her Honour ruled that to strip the offender in question of all his assets, leaving him financially and socially vulnerable, would not be in the public interest as it would "likely increase the chances that he might once

again turn to crime...".¹⁴ It might be thought that her Honour's ruling was a sympathetic interpretation of the term 'public interest', taken with a view to ameliorating the otherwise harsh operation of the provisions.

It is worth practitioners noting that, within three months of an order being made, a dependant person may apply to the Supreme Court for a hardship order and seek to recover the property forfeited on the grounds that the forfeiture of the property would cause the dependant hardship.¹⁵

Summary

In summary, these changes provide avenues for the state to acquire property from an offender when they have been convicted with a qualifying drug offence, and issued with a certificate.

Criminal law practitioners in particular need to be fully aware of the regime because of the serious ramifications for offenders, and their families, if a serious drug offence confiscation order is pursued. It is therefore worth ensuring that the regime is part of every practitioner's advice checklist for serious drug matters.

Alexandra Cooper is a solicitor at Gilshenan & Luton Legal Practice.

Notes

¹ And the previous *Crime and Misconduct Act 2001*.

² s226 *Penalties and Sentences Act 1992* – the changes apply "if the offender is charged with the [serious drug] offence on or after the commencement, regardless of whether the offence was committed before or after the commencement".

³ s161G *Penalties and Sentences Act 1992*.

⁴ Form 78.

⁵ s161H *Penalties and Sentences Act 1992*.

⁶ s161I *Penalties and Sentences Act 1992*.

⁷ s93M *Criminal Proceeds Confiscation Act 2002*.

⁸ s93M(4) *Criminal Proceeds Confiscation Act 2002*.

⁹ s93L(2) *Criminal Proceeds Confiscation Act 2002*.

¹⁰ s83M(1) *Criminal Proceeds Confiscation Act 2002*.

¹¹ s93ZZ *Criminal Proceeds Confiscation Act 2002*.

¹² s93ZZF(2) *Criminal Proceeds Confiscation Act 2002*.

¹³ *The State of Queensland v Deadman* [2015] QSC 241.

¹⁴ At [22].

¹⁵ s93ZZQ *Criminal Proceeds Confiscation Act 2002*.

Queensland set for class actions

Practical issues and implications



Queensland may soon open the way to local class actions on a similar basis to those in the Federal Court and other Australian states. **Annie Leeks** and **Dr Kai Luck** look at the proposed legislation.



There are currently only three choices if a large number of persons with similar claims against a prospective defendant wish to commence legal proceedings in Queensland courts.

They must each bring their own separate claims, or become individual parties in a single proceeding, or pursue their claims via a representative proceeding under rule 75 of the *Uniform Civil Procedure Rules 1999* (Qld) (UCPR).

On the face of it, a UCPR representative proceeding may be thought to help parties save costs and conduct their cases in the most timely and efficient manner possible. However, a proceeding can only be commenced under rule 75 if all prospective claimants have the *same* interest in the subject matter of the proceeding.

Because of even basic factual differences, claimants may be deemed not to have the same interest, such that a representative proceeding cannot be pursued under the UCPR. That presents significant cost concerns and the prospect of lengthy delays for claimants which, combined with the factors militating against commencing individual proceedings, presents an impediment to the proper administration of justice. Indeed, the 'economic irrationality' of separate proceedings by individuals with the 'same community of interest' was denounced by McHugh J in *Carnie v Esanda Finance Corporation Limited*.¹

Despite strong lobbying efforts by members of the legal profession in the last five years, until recently the Queensland Government had decided against introducing a class action procedure similar to that which exists in the Federal Court, New South Wales, South Australia and Victoria.

As a result, in many cases claimants have sought to 'forum shop' by commencing proceedings in the Federal Court or interstate to the extent an appropriate jurisdictional connection can be maintained. For example, a proceeding against the operators of the Wivenhoe and Somerset dams in relation to the 2011 flooding of the Brisbane and Bremer Rivers was commenced as a class

action on behalf of more than 6000 claimants in the Supreme Court of New South Wales on 8 July 2014 (Australia's second-largest class action after the Victorian 'Black Saturday' bushfires proceeding).

However, on 16 August 2016, the Queensland Government introduced the Limitation of Actions (Institutional Child Sexual Abuse) and Other Legislation Amendment Bill 2016 (Qld) (the Bill). The Bill proposes to insert a new Part 13A in the *Civil Proceedings Act 2011* (Qld) (the Act) to provide for an expanded form of representative proceeding in the Supreme Court free of the restrictions of UCPR representative proceedings. The proposed Part 13A of the Act is essentially identical to the class action procedure which exists in the Federal Court.

The Bill was referred to the Legal Affairs and Community Safety Committee for inquiry on 18 August 2016 and the committee was due to report on the Bill to Parliament by 1 November 2016.

Outline of the new representative proceedings

A brief synopsis of the key features of Part 13A is provided below.

Standing to commence a proceeding

Under Part 13A, a representative party can commence a proceeding on behalf of that party and one or more other persons if seven or more persons (including the representative party) have claims against the same defendant, the claims of all the persons are in respect of, or arise out of, the same, similar or related circumstances, and the claims of all persons give rise to a substantial common issue of law or fact.²

The proceeding initiated by a representative party can also include other defendants, even if not all of the group members have a claim against each additional defendant.³ This accords with the landmark recent decision of the Full Federal Court in *Cash Converters International v Gray*.⁴

Significantly, a representative proceeding can be commenced regardless of the kind of relief sought and even if the proceeding includes claims for damages requiring individual assessment or otherwise is concerned with

separate contracts or transactions between the defendant and individual group members, or involves separate acts or omissions of the defendant in relation to group members.⁵

A representative party is entitled to continue a proceeding and appeal against a decision in the proceeding even if that party ceases to have a claim against any or all defendants.⁶

The originating process for a representative proceeding must describe or identify group members, state the nature of the claims made and the relief sought on behalf of group members, along with the questions of law or fact common to the claims of group members.⁷ After the originating process has been filed, the court may at any time give leave to the representative party to amend the originating process to change the description of group members.⁸

The expanded standing provisions under Part 13A are highly beneficial to prospective claimants, who would not be able to commence a representative proceeding under the UCPR in the same circumstances.

Consent and opting out

The consent of a person to be a group member in a representative proceeding is not required, except in the case of the Commonwealth, a state, a Minister or officer of the Commonwealth or a state (acting in that capacity) or a body corporate established for a public purpose under a Commonwealth or state law.⁹

However, after an originating process has been filed for a representative proceeding, the court must fix a date before which a group member may opt out of the proceeding, which can be extended on the application of a group member, the representative party or the defendant.¹⁰ The representative party must provide notice to group members informing them of their right to opt out and the implications of doing so.¹¹ A representative proceeding cannot start before the opt-out date fixed by the court, unless the court grants leave.¹²

Discontinuance by the court

If at any stage of the proceeding the court thinks it is likely there are fewer than seven group members, it may order the discontinuance of the representative proceeding under Part 13A or it may in its discretion allow the proceeding to continue regardless.¹³

The court is also entitled to order the discontinuance of a representative proceeding if it considers that to be in the interests of justice because of the existence of prescribed grounds, including when the proceeding is not an efficient and effective way of dealing with the claims of group members or when a representative party is not able to adequately represent the interests of group members.¹⁴ However, in the latter case, the court can alternatively make an order substituting another group member as the representative party in the proceeding.¹⁵

Individual issues and sub-groups

If it appears to the court that the resolution of the representative proceeding will still leave outstanding issues unique to individual group members, it may give directions establishing a sub-group with a separate representative party¹⁶ or otherwise allow an individual group member to appear in the primary proceeding¹⁷ or commence a separate proceeding¹⁸ to enable the issues specific to that member to be determined.

Voluntary settlement and discontinuance

Any voluntary settlement or discontinuance of the proceeding by the representative party requires the leave of the court.¹⁹ Unless the court considers it just, an application for the approval of a settlement cannot be decided unless notice has been given to group members of the settlement offer.²⁰

Based on case law decided in other jurisdictions, in determining whether to grant leave for a voluntary settlement or discontinuance, the court will have regard to the settlement amount offered to each group member, the prospects of success in the proceeding, the likelihood of the group members obtaining judgment for an amount significantly in excess of the settlement offer, the terms of any legal or other expert advice on issues in the proceeding, the likely duration and cost of the proceeding if continued to judgment, and the attitude of group members to the settlement.²¹

Apart from settlement or discontinuance of the whole representative proceeding, the representative party can also settle their own individual claim and withdraw as the representative party at any stage of the proceeding with the leave of the court.²² In the case of withdrawal, sufficient notice must have been provided to other group members to enable one or more group members to apply to be substituted as the representative party.²³

Judgment

The court can decide issues of law or fact, make any orders and grant any relief it considers just in a representative proceeding.²⁴ The amount of damages payable to individual group members, if any, should be specified by the court unless a reasonably accurate estimate can independently be made of the entitlement of individual group members.²⁵ Significantly, a judgment binds all group members that have not opted out of the representative proceeding.²⁶

Appeals

Appeals can also be dealt with as representative proceedings, depending on the existence of issues common to the claims of group members.²⁷ Appeals relating to issues specific to individual group members can be commenced by a sub-group representative or a group member personally.²⁸

Costs

While a representative party or sub-representative party can be ordered to pay costs, a costs order can only be made against an individual group member if the member has personally appeared in the proceeding or has commenced separate proceedings at any time.²⁹

Further, if the court makes an award of damages in a representative proceeding, a representative party or sub-representative party that incurs costs in excess of those recoverable from the defendant can apply to the court for an order that the whole or part of the excess must be paid out of the damages awarded.³⁰

Committee submissions

The committee received 22 submissions in relation to its inquiry into the Bill. However, only two of those submissions, from the Queensland Law Society and the Australian Lawyers Alliance, addressed the representative proceeding reforms. The other submissions concentrated on the proposed child sexual abuse reforms, which are outside the scope of this article.

EMPLOYEE OPTIONS AND SHARE BASED PAYMENTS VALUATIONS *Tax consolidation valuation and depreciable base reset* STAMP DUTY VALUATION AND PURCHASE PRICE ALLOCATION Shareholder agreement exit valuation term setting **SHAREHOLDER AGREEMENT VALUATION DISPUTES** *Shareholder exit and dispute valuations* THIN CAPITALISATION INTANGIBLE VALUATION Independent expert valuation reports Financing/re-financing valuations **DISPUTE AND LITIGATION VALUATIONS** *Intellectual Property valuations* VALUATION IMPROVEMENT ADVICE Capital gains tax valuations IMPAIRMENT VALUATIONS *Family Law valuations* VALUATION TESTIMONY SME VALUATIONS **TARP VALUATION**

BUSINESS VALUATION SPECIALISATION

Engage a specialist today



CHARTERED ACCOUNTANTS
AUSTRALIA + NEW ZEALAND

charteredaccountantsanz.com/bvspecialists

In its submission, the Society welcomed the representative proceeding reforms as “a positive step towards providing Queenslanders with the same legal rights as those in NSW and Victoria”, noting that the reforms would serve as “a tool for efficient access to judicial processes, particularly for poorly resourced victims of disasters and other tragedies”.³¹

The Alliance also supported the representative proceeding reforms “as an important access to justice measure for Queenslanders”.³² The Alliance noted that: “Not only does the broad consistency between the draft proposed Part 13A in Queensland and [the Federal Court regime] mean that there may be less scope for a new series of interlocutory challenges, it also provides litigants with a greater degree of certainty and clarity regarding the operation of the provisions in the draft Bill.”³³

However, the Alliance recommended a minor amendment to the Bill, noting that consent to be a group member should also be required in the case of a territory, Minister or officer of a territory or body corporate established for a public purpose under a territory law (currently excluded from the Bill, apparently by oversight).

Implementation process

Given the support from the Society and the Alliance in their formal submissions, as well as the broad industry support for class actions in Queensland canvassed in previous Government lobbying efforts, it is likely the committee will issue a favourable report in relation to the representative proceeding reforms in the Bill. However, because the representative proceeding reforms are contained in the same implementing legislation as child sexual abuse reforms which have sparked various, differing views in the community, if the committee proposes amendments to the Bill in relation to the child sexual abuse reforms, the passage of the Bill may be deferred until the Parliament sits in early 2017.

Concluding remarks

If passed, the Bill will significantly affect the conduct of civil proceedings in Queensland, enabling for the first time a class action procedure which is coextensive with the procedure that currently exists in the Federal Court.

Notably, plaintiffs who suffer similar harm and seek to commence claims against the same defendant will no longer need to establish a jurisdictional connection in the Federal Court or interstate in New South Wales, South Australia or Victoria to be able to take advantage of the efficiency and cost savings resulting from the class action procedures in those jurisdictions.

This article appears courtesy of the Queensland Law Society Alternative Dispute Resolution Committee. Annie Leeks and Dr Kai Luck are associates at Jones Day. The views and opinions set forth herein are the personal views or opinions of the authors and do not necessarily reflect views or opinions of the law firm with which they are associated.

Notes

- ¹ (1995) 182 CLR 398, [10].
- ² Proposed section 103B(1) of the Act.
- ³ Proposed section 103C(2).
- ⁴ [2014] FCAFC 111.
- ⁵ Proposed sections 103B(2) and 103B(3) of the Act.
- ⁶ Proposed section 103C(3).
- ⁷ Proposed section 103F.
- ⁸ Proposed section 103H.
- ⁹ Proposed section 103D.
- ¹⁰ Proposed sections 103G(1) and 103G(3).
- ¹¹ Proposed sections 103T and 103U.
- ¹² Proposed section 103G(4).
- ¹³ Proposed section 103I.
- ¹⁴ Proposed section 103K.
- ¹⁵ Proposed section 103P.
- ¹⁶ Proposed section 103M.
- ¹⁷ Proposed section 103N.
- ¹⁸ Proposed section 103O.
- ¹⁹ Proposed section 103R.
- ²⁰ Proposed section 103T(4).
- ²¹ *Williams v FAI Home Security Pty Ltd (No 4)* [2000] FCA 1925, [19].
- ²² Proposed sections 103S(1) and 103S(2) of the Act.
- ²³ Proposed sections 103S(3), 103S(4), 103T and 103U.
- ²⁴ Proposed section 103V.
- ²⁵ Proposed section 103V(3).
- ²⁶ Proposed section 103X.
- ²⁷ Proposed sections 103Y(1) and 103Y(2).
- ²⁸ Proposed section 103Y(2).
- ²⁹ Proposed section 103ZB.
- ³⁰ Proposed section 103ZC.
- ³¹ Queensland Law Society, ‘Limitations of Actions Bills – Other Matters’, submission to the parliamentary Legal Affairs and Community Safety Committee, 16 September 2016, 1.
- ³² Australian Lawyers Alliance, ‘Limitation of Actions (Institutional Child Sexual Abuse) and Other Legislation Amendment Bill 2016 and the Limitation of Actions and Other Legislation (Child Abuse Civil Proceedings) Amendment Bill 2016’, submission to the parliamentary Legal Affairs and Community Safety Committee, 16 September 2016, 11.
- ³³ *Ibid*, 15.



Get the state-of-the-art dictation solution bundle!

PDT Digital

PHILIPS

Certified partner 2016
Professional dictation solutions



The new Philips SpeechAir now comes with the latest Philips SpeechLive dictation solution including 100 free speech recognition minutes.

Highlights:

- Send dictation files via Wi-Fi at anytime, anywhere
- Convert your dictations to text using SpeechLive speech recognition
- Enjoy the professional slide switch

To secure this special limited offer please call 1300 368 070 or email peter@pdt.digital.com.au.

PDT Digital – your trusted Philips Dictation distributor in Queensland.

Promotional bundle price: \$1.098,- incl. GST*

*Promotion valid until 30 November 2016 and only for the first 40 orders!

PHILIPS

The disgruntled beneficiary...

and the executor seeking commission or discharge from beneficiaries

In Queensland, assessment of accounts of a personal representative or of a trustee, in the form of scrutiny by an independent third party, was the function of the registry until late 2011.

About that time, a modernised set of rules (gazetted 9 December 2011) was introduced in the form of Part 10 of Chapter 15 of the *Uniform Civil Procedure Rules 1999*. This article refers to the accounts of a deceased estate, but the rules also apply to the accounts of a trustee.

These rules make private practitioners responsible for account assessment. A practitioner who is an Australian legal practitioner, is currently accredited by Queensland Law Society in succession law and can demonstrate fitness and propriety to assess estate accounts, can become an approved account assessor.

The rules offer three distinct pathways to address the concerns of the parties identified in the title of this article.

Pathway 1

A disgruntled beneficiary wishes to find out more information than he has been given concerning the administration of an estate in which he has an interest, and judges that seeing the transactions of the estate will assist him.

1. The starting point for this party is rule 646(1) in nearly all cases.¹
2. Rule 646 sets forth, in essence, the need for initial private communication by way of notice to the executor to produce an account.
3. If the executor complies, the beneficiary may or may not be satisfied – in the case of dissatisfaction, the beneficiary must manifest that dissatisfaction in the form of objections, and sub-rules (3)-(6) deal with the detail of the beneficiary's objections.
4. Should the beneficiary judge it appropriate to do so, he must then turn to rule 645 and bring his application.
5. Before bringing a rule 645 application, the beneficiary should, if he can, judge, among other things, whether:
 - a. He requires the account overall to be assessed by an account assessor [in which case he must communicate with an account assessor to obtain the information contemplated by sub-rule (3)].
 - b. He expects to be challenging the quantum of a lawyer's fees charged to the estate [in which case he needs to consider the requirements of rule 650 and take action accordingly].
3. If the executor has not complied in any way with the notice provided pursuant to rule 646, then the beneficiary may have to defer his final decision on whether he requires the account to be assessed by an account assessor, and the lawyer's fees to be tested by a costs assessor, until the executor does present an account pursuant to an order made under rule 645.

Pathway 2

An executor seeks commission.

1. The executor will have first sought to agree upon commission with the residuary beneficiaries and other parties affected. However, as a result of legal incapacity, indifference, or opposition, he may not be able to secure such an agreement.
2. He must proceed under and in accordance with rule 657C.
3. He need not initially compile an account or cause it to be filed, assessed or passed – see rule 657D which preserves the power of the court to approve of an amount without an account, as was done in *Re Lack*.²
4. The court may nevertheless order that an account be filed, assessed and passed, in which case an account assessor must be appointed – rule 657D(2) – whereupon the matter proceeds as it would under rule 645.

Pathway 3

An executor seeks a discharge.

1. The executor will have first sought the discharge, probably by way of an acknowledgement that his accounts are settled, from the residuary beneficiaries and other parties affected, but has not been successful.
2. He must proceed under rule 647.
3. An estate account must be compiled and filed, but not necessarily assessed and passed – as well, this application may be brought ex parte.
4. If the applicant executor does require his account to be assessed and passed, rule 647(4) mimics the provisions of rule 645(3).

Gary Lanham explores the three scenarios that lead to assessment of the accounts of a deceased estate.



The rules are silent as to whether any of these remedies can be brought in the absence of a grant of representation, but the general policy in this area of law is that such a grant is necessary, unless some provision points to a case of informal administration.

Section 54(1) of the *Succession Act 1981* is such a section. The possibility of it being read in conjunction with section 52(1)(d), or the possibility that section 54(1) furnishes a spirit or purpose which

can influence the interpretation of 52(1)(d), would provide the basis for arguing that Part 10 of Chapter 15 might be applicable to estates for which there has been no grant of representation.

The involvement of an account assessor is most likely in Pathway 1, because of its inherent contentious nature. The involvement of an account assessor in Pathways 2 and 3 may be advantageous, to the extent that such involvement

produces an independent and transparent scrutiny (particularly when an application is contemplated ex parte).

References to commission in this article include trustee remuneration pursuant to section 101(1) of the *Trusts Act 1973*, by virtue of the definition of 'commission' in rule 644.

Gary Lanham is a special counsel with Minter Ellison. He is a Queensland Law Society accredited specialist (succession law). At the time of writing he is the chair of the Queensland Law Society Succession Law Committee, a past chair of the Queensland Law Society Succession Law Specialist Accreditation Committee and the first Queensland solicitor to become an approved account assessor. Gary has 40 years' full-time experience in all succession matters, great and small.

Notes

¹ Rule 645(2)(b) permits dispensation with the requirements of rule 646, but a proper basis would have to be made out.

² [1983] 2 Qd R 613.




FOR THE BEST ADVICE & SUPPORT IN

 Early Case Assessment
 E-Discovery
 Data Analytics
 E-Trial

SYDNEY | MELBOURNE | BRISBANE | PERTH

1300 30 30 80 • info@elaw.com.au • elaw.com.au

Framing the future

Summary of Queensland Law Society Annual Report 2015.16

The Queensland Law Society Annual Report 2015-16 was tabled in the Queensland Parliament on 30 September. Here is a summary of key points and achievements. To see the full report, visit qls.com.au/annual-reports.



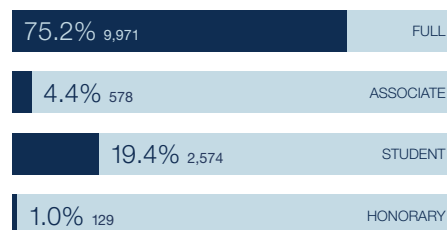
Membership snapshot

Queensland Law Society saw a strong growth in membership in 2015-16. Total membership grew by 5.14% to 13,252 and the number of full members increased by 4.64% to 9971, exceeding the Society's target of growth of at least 1.5%.

The year-on-year growth in the number of women full members continued the trend of the past few years, with numbers increasing by 7.1% from the previous year.

The Society encourages early engagement of university students on the pathway to a career in law and we were pleased to welcome 360 new student members in the year.

TOTAL MEMBERSHIP BY CATEGORY



FULL MEMBERS BY SEGMENT

Post-admission experience	Number	%
0-5 years	2,891	29.0%
6-12 years	2,734	27.4%
13-20 years	1,936	19.4%
21+ years	2,410	24.2%

Advocating for good law

The Society is fortunate to have 25 standing policy committees with dedicated expert members who work tirelessly to further our advocacy for government to draft and amend legislation that is positive both for the legal profession and the wider community. During the year, our advocacy was also supported by five working groups, which provided advice on key legal and practice issues.

Our members held 178 committee and working group meetings in 2015-16, and the Society received 82 Hansard mentions as a result of their work. We also made 146 submissions to government in the year, a 30% increase on the previous year.

Another notable achievement was development of the QLS *Domestic and Family Violence Best Practice Guidelines* for practitioners to utilise when dealing with matters involving domestic and family violence.

The Society increased media activity in the year to provide a strong voice in the community on the significant issues relevant to both our profession and the general public. An External Affairs division was created in February 2016 to facilitate provision of expert comment, policy views and education on law from the Society and its members.

This increase in activity saw 1354 mentions of the Society in media reports. The Society also produced 72 media releases, an increase of 41% on the previous year.



146
ADVOCACY
SUBMISSIONS
MADE WITH A
60% SUCCESS
RATE

Supporting good lawyers

The Society is actively engaged in promoting ethical behaviour through providing practical ethical guidance and support. The year saw changes to the QLS Ethics Centre to allow a more dynamic, agile response to the needs of the profession. The centre became a division of the Society in its own right, and the Society's practice support services were incorporated into its portfolio.

The centre maintained constant engagement with the profession through inquiries, the provision of bespoke ethics sessions and participation in the Society's learning and professional development (L&PD) conferences and sessions. Ethics solicitors presented sessions throughout Queensland including in

Toowoomba, Hervey Bay, Gladstone, Emerald and Mount Isa. Fifty bespoke ethics sessions were presented in the year, with the presenters' satisfaction rating averaging 4.6 out of 5.

The centre continued to experience a growth in calls on ethics matters, handling 3680 calls compared with 3090 in the previous year, a 19% increase.

2015-16 also saw the centre develop new tools and services including the Practice Support Consultancy Service, Non-Binding Ethics Ruling, an ethics course and the Modern Advocate Lecture Series.

Professional development for our members

The Society held 70 professional development events across a range of practice areas and locations in the year. A number of these were sold out, including the Criminal Law, Government Lawyers and Conveyancing conferences and the Introduction to Conveyancing courses.

We surpassed our target numbers, with 3651 paying delegates attending events, a 3% increase on last year's paying delegates. We provided more than 30,000 hours of continuing professional development (CPD) in total, on par with the previous year. Our average satisfaction rating across all events remained steady at 4.4 out of 5.

There were 625 sessions presented at Society events, achieving an average presenter rating of 4.3 from delegates, whose feedback response averaged at 56%.

We would like to thank all of our L&PD event presenters for their expertise, time and commitment to excellence. Presenters have the option to donate a sum to a charity of their choice in lieu of a presentation fee. As a result, in the year QLS donated \$13,520 to a range of non-profit and charitable organisations.

Supporting the regions

In 2015-16, we continued our strong focus to connect with regional practitioners and to better understand the issues that affect them.

We ensure that our professional development offerings extend to the regions, and held seven one-day events in our regional intensive series which incorporated content developed with input from the local district law associations (DLAs).

We welcomed 14 DLA delegates to our 2015 DLS Presidents' Workshop at Law Society House. This annual workshop enhances the important two-way connection between the Society and the DLAs. The overall satisfaction rating was 4.6.

In the year we provided more than \$20,000 sponsorship to DLAs for their events, as well as contributed to events in other forms, including providing products, guest speakers and assisting with logistics.

Our financial performance

Queensland Law Society Incorporated (parent entity) achieved its overall financial targets for 2015-16 and remained consistent in delivery of final net operating results.

QLS made an operating surplus of \$538k with a 10% increase in membership and practitioner fees due to strong growth in membership numbers and in practising certificate holders.

\$12m
IN MEMBERSHIP AND
PRACTITIONER FEES
↑ 10%

As a result of a robust budget process, the Society's Council was able to announce to members that their combined membership and practising certificate renewal fees would be lower in the 2016-17 renewals process by virtue of the Legal Practitioners' Fidelity Guarantee Fund fee being reduced. Employee practitioner members had their overall fees reduced by 6.3%, and principal practitioner members had their overall fees reduced by 3.8%.

The Society also announced to members that the Lexon base professional indemnity insurance levy rates for 2016-17 included a 20% reduction on base levy rates in bands 2-9, on the back of a 10% reduction in the previous year. The main driver of this reduction in rates is the lower level of claims.

Negligence as a disciplinary issue

Legal Services Commissioner v Laylee and Another [2016] QCAT 237

The *Legal Profession Act 2004* commenced on 1 July 2004 and was superseded by the *Legal Profession Act 2007* on 1 July 2007. Both Acts define unsatisfactory professional conduct as follows:

“Unsatisfactory professional conduct includes conduct of an Australian legal practitioner happening in connection with the practice of law that falls short of the standard of competence and diligence that a member of the public is entitled to expect of a reasonably competent Australian legal practitioner.” (s418 Act of 2007; s244 Act of 2004)

That conception of unsatisfactory professional conduct, on face value, may be constituted by a single act of negligence, regardless of its substance.

This is unlike the definition of unprofessional conduct or practice, the equivalent concept under the former disciplinary regime – s3B(1) *Queensland Law Society Act 1952*. That provision was:

3B Meaning of unprofessional conduct or practice

(1) A practitioner commits unprofessional conduct or practice if the practitioner, in relation to the practitioner's practice, is guilty of—

- (a) serious neglect or undue delay; or
- (b) the charging of excessive fees or costs; or
- (c) failure to maintain reasonable standards of competence or diligence; or
- (d) conduct described, under another Act, as unprofessional conduct or practice.

That definition drew a distinction between negligent acts or error and a failure to maintain standards of competence and diligence by importing the concept of serious neglect. A single act of negligence might be unprofessional conduct but it would have to be serious neglect.

It has now become clear that, under the Legal Profession Acts, while a single act of negligence is capable of being unsatisfactory professional conduct, that will not be the case very often and only if it is a substantial neglect. The law has remained the same today as it was on 30 June 2004.

This is the conclusion to be drawn from *Legal Services Commissioner v Laylee and Another* [2016] QCAT 237. The decision is the culmination of a series of decisions concerning the breadth of s418 of the *Legal Profession Act 2007* and its predecessor, commencing with *Legal Services Commissioner v McClellan* [2006] LPT 13 and progressing through the decisions in *Legal Services Commissioner v Bone* [2013] QCAT 550 and *Legal Services Commissioner v Mould* [2015] QCAT 440. That development is addressed by the tribunal at paragraphs [25] to [44] and paragraphs [71] to [72].

The Queensland Civil and Administrative Tribunal observed that, if every negligent act or error made by a practitioner were to be characterised as unsatisfactory professional conduct, disciplinary prosecutions would follow every claim against a legal practitioner for professional negligence (paragraph 40).

There must be a sufficient substantiality in the relevant falling short required by s418. This does not embrace all cases of error. An isolated instance, not involving unethical conduct and more in the nature of conduct which might give rise to an assertion of negligence, is less likely to amount to unsatisfactory professional conduct.

Serious or repeated instances of negligence are more likely to amount to unsatisfactory professional conduct (paragraph 43). The tribunal referred approvingly (paragraph 39) to the judgment of Kirby P in *Pillai v Messiter (No.2)* (1989) 16 NSWLR 197 in which his Honour said in a case involving the conduct of a medical practitioner that, in light of the potential consequences for the practitioner, a finding should only be made when it was necessary to protect the public from “delinquents and wrongdoers... (or) seriously incompetent professional people who are ignorant of basic rules or indifferent as to rudimentary professional requirements”.

These are the parameters of unsatisfactory professional conduct.

Instances of unethical conduct will always be capable of constituting unsatisfactory professional conduct whether they are singular or numerous. However, when the conduct is in the nature of an assertion of negligence, there must be serious or repeated instances of that negligence to give rise to the conclusion of serious incompetence and ignorance of basic rules or indifference as to rudimentary requirements. The falling short required by s418 must be substantial and very obvious (see paragraph 44).

Get on the road to streamlining your practice

Conveyancing Conference 2016

Friday 25 November
Law Society House, Brisbane

Registration closes 22 November
qls.com.au/conveyancingconf



Gold sponsor

actionstep

Pre-employment check failure blocks dismissal

Firefighter recruit retains job despite tribunal censure

Pre-employment checks are an increasingly important part of recruiting new employees.

Recently, in the decision of *Metropolitan Fire and Emergency Services Board v Garth Duggan and the United Firefighters Union of Australia* [2016] FWC 5028, a failure to make sufficient pre-employment enquiries meant the employer could not rely on adverse findings in the New South Wales Civil and Administrative Tribunal (NCAT) to terminate a probationary employee's employment.

Background

The Metropolitan Fire and Emergency Services Board (the MFB) made an application under s739 of the *Fair Work Act 2009* (Cth) (the FW Act) to the Fair Work Commission to determine whether its enterprise agreement prevented it from terminating the employment of a probationary recruit firefighter, Garth Duggan.

Mr Duggan began his application for employment with the MFB in 2013 and was offered employment by letter dated 23 December 2015. The letter outlined that Mr Duggan was to begin employment on 9 February 2016 and that a probationary period would apply for the first three months of his employment.

The letter also specified that the Metropolitan Fire and Emergency Services Board & United Firefighters Union Operational Staff Agreement 2010 (the agreement), the *Metropolitan Fire Brigades Act 1958* (Vic.) and the MFB policies and procedures would apply to Mr Duggan's employment.

The recruitment process

During the recruitment process, Mr Duggan was asked whether he had ever been arrested or charged for committing a crime. He responded in the affirmative to both questions.

He was also required to provide a National Police Certificate during the recruitment process, which stated that he had no disclosable court outcomes recorded at the date of issue.

However, despite the discrepancy between Mr Duggan's affirmative responses and his

unblemished police record, the MFB failed to follow up on his responses before making him an offer of employment.

The NCAT findings

Shortly after Mr Duggan began employment, NCAT handed down adverse findings against him following complaints from the New South Wales Health Care Complaints Commission (the HCCC) for unprofessional conduct and professional misconduct during his previous employment as an osteopath.

The complaint was lodged by the HCCC on 9 June 2015 during the recruitment process, but before the MFB's offer of employment. The matter was then the subject of two directions hearings on 15 and 29 January 2016, which was the period of time between receipt of the offer of employment and Mr Duggan's commencement with the MFB. The hearing took place on 18 and 19 February 2016, only days after Mr Duggan commenced employment with the MFB, however, Mr Duggan did not attend the hearing.

NCAT published its decision on 17 March 2016, finding that Mr Duggan be reprimanded in the strongest terms, have his registration cancelled for six years and that he be indefinitely prohibited from providing any health services until a reinstatement order was made.

Mr Duggan did not disclose the decision to his new employer, however the MFB eventually became aware of the NCAT findings around 29 April 2016.

The dispute

On 5 May 2016, the MFB's deputy chief officer wrote to Mr Duggan advising him that the MFB did not consider it appropriate for his employment to continue past the expiration of his probationary period on 9 May 2016 and that he would be stood down until further notice. In particular, the letter alleged that as a result of the NCAT findings, Mr Duggan did not meet the standard of personal integrity inherently required by a firefighter, could not hold the degree of trust expected of a firefighter, was unable to safely perform the inherent requirement of providing emergency medical assistance, and that his continued employment posed a risk to both MFB employees and members of the public.

Mr Duggan was invited to respond before the MFB made a final decision.

The United Firefighters Union of Australia (the union) subsequently notified a dispute under the agreement on behalf of Mr Duggan. The basis for the dispute was said to be the MFB's failure to undertake the proper process in the agreement for consultation, change and termination. The union asserted that the status quo was to remain and that Mr Duggan's employment could not be terminated while the dispute remained unresolved.

By 24 May 2016, after an exchange of correspondence between the MFB and the union, the MFB determined that Mr Duggan's employment should be terminated and sent him a letter to that effect. However, because the agreement prevented an employee's employment from being terminated while a dispute remained unresolved, the MFB filed an application with the commission to deal with the dispute on the same date.

The commission proceedings

The MFB submitted that the dispute had been resolved and that it followed the process mandated under the agreement for Mr Duggan's employment. Having done so, the MFB submitted that the decision to terminate Mr Duggan's employment could now be implemented.

The union argued that the MFB had failed to follow the mandated processes under its Recruitment Police Criminal History Check Policy (the police-check policy) by introducing a new criterion that adverse findings by an occupational tribunal may render a person unsuitable for employment as a firefighter.

The police-check policy

The police-check policy required an applicant to provide a National Police Certificate, which would be used to assess compliance with the MFB's prior offences criteria. Candidates were informed through the police-check policy that, if a National Police Certificate showed a record of guilt, they could be deemed noncompliant.

The NCAT findings did not fall within the prior offences criteria because Mr Duggan had not been found guilty or had a charge proven

The necessity of performing adequate pre-employment checks has been highlighted by a case heard by the Fair Work Commission. Report by **Sara McRostie**.



against him. However, the police-check policy allowed the MFB to consider "all other offence histories" for a candidate, which meant the MFB had not breached its police-check policy by considering the NCAT findings.

Did the MFB have good reason for dismissal?

Having found that the NCAT findings were covered by the MFB's police-check policy, the commission then considered whether the MFB had good reason to dismiss Mr Duggan because of the information it had learned about him after he was employed.

The commission said it would have been entirely consistent with the police-check policy for the MFB to decide to exclude Mr Duggan from further consideration of employment at the time of recruitment, but it did not do so. Despite asking Mr Duggan to supply information consistent with the police-check policy, which he did, the MFB made no election to exercise its discretion not to employ Mr Duggan. The commissioner highlighted that the MFB did not make sufficient enquiries before employment in this case.

The commission said that when conduct before employment was hidden or lied about,

that would amount to serious misconduct and would justify summary dismissal. However, that is not what occurred here. Mr Duggan gave truthful answers during the recruitment process.

The MFB did not rely on Mr Duggan's conduct during the probationary period to justify the termination of his employment, although the commission noted that Mr Duggan's failure to notify the MFB of the NCAT decision was likely misconduct, rather than serious misconduct.

Ultimately, the commission held that Mr Duggan's conduct under probation did not warrant dismissal, but it did order that Mr Duggan could and should be sanctioned with a first and final warning for failing to have brought the NCAT decision to the MFB's attention.

Inherent requirements

The MFB also argued that emergency medical response (EMR) is a core function of the role of an MFB firefighter and the effect of the NCAT decision meant that Mr Duggan could not comply with that core function.

The commission rejected this argument because the agreement allowed Mr Duggan to exercise the option not to do EMR. It held that not being available for EMR

work would not be a ground for termination of employment during the probationary period, although it went to the future work that Mr Duggan could perform and had the potential to impact on his working relationships with other employees of the MFB.

Accordingly, the commission ordered that Mr Duggan's suspension be lifted and he be permitted to return to work as a probationary employee.

Conclusion

For employers, this decision emphasises the importance of undertaking thorough pre-employment checks.

It further demonstrates that inadequate pre-employment checks may prevent an employer from being able to rely on pre-employment conduct to dismiss an employee during the probationary period.

Sara McRostie is a partner at Sparke Helmore Lawyers. The assistance of Matthew Giles and Andrew Ross in preparing this article is gratefully acknowledged.

Do your clients need Immigration advice or assistance?

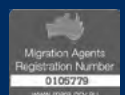


- Appeals to the AAT, Federal Circuit Court and Federal Court
- Visa Cancellations, Refusals and Ministerial Interventions
- Citizenship
- Family, Partner and Spouse Visas
- Business, Investor and Significant Investor Visas
- Work, Skilled and Employer-Sponsored Visas
- Health and Character Issues
- Employer and Business Audits
- Expert opinion on Migration Law and Issues



Glenn Ferguson AM - Accredited Specialist in Immigration Law

w: fclawyers.com.au • e: migration@fclawyers.com.au • p: 1800 640 509



Leave to appeal to the Court of Appeal

In Queensland, the Court of Appeal is a division of the Supreme Court and is constituted by Part 3 of the *Supreme Court of Queensland Act 1991*.

An appeal is a right conferred by statute which does not derive from the common law.¹ However, the Court of Appeal has been vested by the Queensland Parliament with a multifaceted appellate jurisdiction. Appeals can be brought to the Court of Appeal against decisions of a number of courts and tribunals, including the Supreme Court, District Court and Queensland Civil and Administrative Tribunal (QCAT).

Appeals are brought either as of right, or alternatively in some circumstances they require the leave either of the court from which the appeal is brought or from the Court of Appeal itself. The nature of review conducted by the Court of Appeal will differ depending on the nature of the decision appealed, and the jurisdiction from which the appeal is brought.

This article focuses on the Court of Appeal's civil appellate jurisdiction, in particular the circumstances in which leave to appeal is required and matters relevant to the granting of such leave.

Appeals from the Trial Division of the Supreme Court

An appeal may be brought as of right against any judgment or order of the Supreme Court's Trial Division, except a consent order or an appeal only in relation to costs.² When either of these two exceptions apply, leave to appeal to the Court of Appeal is required from the judge who made the order, or if that judge is not available, another judge of the Trial Division.

Appeals from the District Court

A party to proceedings in the District Court's original civil jurisdiction is entitled as of right to appeal to the Court of Appeal any final or interlocutory judgment, provided that the judgment:³

- a. is given for an amount equal to or more than the Magistrates Court's jurisdictional limit, or
- b. relates to a claim for, or relating to, property that has a value equal to or more than the Magistrates Court's jurisdictional limit.

However, leave of the Court of Appeal is required to appeal any other judgment in the District Court's original civil jurisdiction, or any judgment in its appellate civil jurisdiction.⁴

Finally, as with the Supreme Court, an appeal from a consent order or an appeal only in relation to costs requires the leave of the judge who made the order, or if that judge is not available, another District Court judge.⁵

Where leave is required, the Court of Appeal has a general discretion to grant or refuse leave to appeal, according to the nature of the case before it.⁶ However, in exercising that discretion, the following factors are relevant:

- a. Two criteria typically considered by the Court of Appeal in considering whether to grant leave were identified by Keane JA in *Pickering v McArthur* [2005] QCA 294 at [3]: "[l]eave will usually be granted only where an appeal is necessary to correct a substantial injustice to the applicant, and there is a reasonable argument that there is an error to be corrected".⁷

- b. The existence of an important point of law, although the mere fact that there has been an error or that error can be detected, is insufficient.⁸
- c. Whether the question is one of general or public importance.⁹
- d. Where the error has been in the assessment of damages which, if not made, would have allowed an appeal as of right, such a case will usually be an appropriate one for a grant of leave.¹⁰

The requirement of leave, in the case of disputes originally heard in the Magistrates Court, has been said to serve "the purpose of ensuring that [the Court of Appeal's] time is not taken up with appeals where no identifiable error or injustice can be articulated by those litigants whose arguments have already been fully considered at two judicial hearings".¹¹

Appeals from QCAT

An appeal will lie to the Court of Appeal against the following decisions in QCAT's original or appeal jurisdiction, but in each case only with the leave of the Court of Appeal:

1. a decision of a judicial member of the tribunal, on either a question of fact or a question of mixed law and fact¹²
2. a decision of the tribunal about the amount of costs fixed or assessed by the tribunal (a 'cost-amount decision'), on a question of law¹³
3. a decision of the appeal tribunal which is a final decision or a cost-amount decision, on a question of law¹⁴
4. a decision of the appeal tribunal to refuse an application for leave to appeal to the appeal tribunal, on a question of law.¹⁵

Kylie Downes QC and David Ananian-Cooper look at the requirements to be considered before leave to appeal can be sought from the Queensland Court of Appeal.



While, again, the Court of Appeal has an unrestrained discretion to grant or refuse leave, the following factors have been identified as being relevant:

- a. whether the question of law has more general significance beyond the case and has not, to date, been considered by the Court of Appeal¹⁶
- b. whether the question of law has “reasonable prospects of success”, being a matter to which the Court of Appeal will “have high regard”¹⁷
- c. whether an appeal is necessary to correct a substantial injustice to the applicant, and there is a reasonable argument that there is an error to be corrected.¹⁸

The Victorian Court of Appeal in *Secretary to the Department of Premier and Cabinet v Huls* [1999] 3 VR 331; [1999] VSCA 117 gave the following useful guidance as to when leave to appeal might be granted from decisions of the equivalent Victorian tribunal:¹⁹

“When leave is sought to appeal under s148, it will be necessary for the applicant to identify a question of law which is relevant to the granting of the relief sought on appeal. The importance of the question, either generally or to the would-be appellant in the particular case, will probably be relevant. The applicant must show that there is a real or significant argument to be put on that question of law at least to this extent: that there is sufficient doubt about it to justify the grant of leave. Moreover, it may have to be shown that to allow the error to go uncorrected would impose substantial injustice, although, where the order below is final, that injustice will often be more readily discernible.”

Provision is also made in the *Queensland Civil and Administrative Tribunal Act 2009* for the referral of any questions of law before the tribunal or the appeal tribunal, to the Court of Appeal, by the president of QCAT or, in the latter case, the appeal tribunal itself with the consent of the president.²⁰ Leave of the Court of Appeal is not required for such a referral.

Other courts

For completeness, there are a number of other specialist courts the decisions of which are subject to appeal in the Court of Appeal, namely:

- the Planning and Environment Court, the decisions of which are appealable to the Court of Appeal for error or mistake of law, or for lack of or exceeding jurisdiction, with the leave of the Court of Appeal or a judge of appeal²¹
- the Land Appeal Court, the decisions of which are appealable to the Court of Appeal for error or mistake of law, or for lack of or exceeding jurisdiction, with the leave of the Court of Appeal or a judge of appeal²²
- the Mental Health Court – in respect of a decision of the Mental Health Court on a reference, either the person to whose mental condition the decision relates, or the Attorney-General, may appeal to the Court of Appeal, without leave²³
- the Childrens’ Court – certain decisions are appealable to the Court of Appeal.²⁴

Concluding comments

As the above outline demonstrates, the jurisdiction of the Court of Appeal is multifaceted. Thus, it is important in bringing an appeal to the Court of Appeal always to be aware of both the basis for its jurisdiction, and the scope of the review which it is permitted to undertake.

Notes

¹ *CDJ v VAJ (No.2)* (1998) 197 CLR 172; [1998] HCA 67; [1998] HCA 76 at [95].

² Sections 62 to 64 of the *Supreme Court of Queensland Act 1991*. If, after an appeal to the Court of Appeal is properly started, the appeal becomes an appeal only in relation to the costs of the original proceeding, the appeal may be heard and determined only by leave of the Court of Appeal: section 64 of the *Supreme Court of Queensland Act 1991*. If an appeal is brought also against orders other than in relation to costs, which fail, then without leave the Court of Appeal has no jurisdiction to consider the remaining question on appeal in relation to costs: *Re Golden Casket Art Union Office* [1995] 2 Qd R 346 at 349; [1994] QCA 480 (Fitzgerald P, Davies and McPherson JJA).

³ Section 118(2) of the *District Court of Queensland Act 1967*.

⁴ Section 118(3) of the *District Court of Queensland Act 1967*.

⁵ Sections 118A and 118B of the *District Court of Queensland Act 1967*.

⁶ *Arnold Electrical & Data Installations Pty Ltd v Logan Area Group Apprenticeship/Traineeship Scheme Ltd* [2008] QCA 100 at [5] (Fraser JA, McMurdo P and Lyons J agreeing).

⁷ *Pickering v McArthur* [2005] QCA 294 at [3] (Keane JA, McMurdo P and Dutney J agreeing). Footnote citations have been omitted from the quoted passage.

⁸ *ACI Operations Pty Ltd v Bawden* [2002] QCA 286 (McPherson JA, Williams JA and Holmes J agreeing).

⁹ *Ibid*.

¹⁰ *Keeley v Horton* [2016] QCA 68 at [75] (Burns J, Holmes CJ and P Lyons J agreeing).

¹¹ *Pearson v Thuringowa City Council* [2006] 1 Qd R 416; [2005] QCA 310 at [14] (Keane JA, McPherson JA and Dutney J agreeing).

¹² Sections 149(2) and 149(3)(b) of the *Queensland Civil and Administrative Tribunal Act 2009* (QCAT Act).

¹³ Sections 149(1) and 149(3)(a) of the QCAT Act.

¹⁴ Section 150(2) and 150(3) of the QCAT Act.

¹⁵ Section 150(1) and 150(3) of the QCAT Act.

¹⁶ *Donovan Hill Pty Ltd v McNab Constructions Australia Pty Ltd* [2015] QCA 114 at [53] (Gotterson JA, Philippides JA agreeing).

¹⁷ *Niall v Mangrove Housing Association Inc* [2014] QCA 58 at [7] (Gotterson JA, McMurdo P and Morrison JA agreeing).

¹⁸ *Underwood v Department of Communities* [2013] 1 Qd R 252; [2012] QCA 150 at [68] (P Lyons J).

¹⁹ See at 337 [15] (Phillips JA, Tadgell and Batt JJA agreeing).

²⁰ Section 118 of the QCAT Act.

²¹ Section 498 of the *Sustainable Planning Act 2009*.

²² Section 74 of the *Land Court Act 2000*.

²³ Section 334 of the *Mental Health Act 2000*.

²⁴ See s117 of the *Child Protection Act 1999* and the definition of “appellate” court in Schedule 3.

Kylie Downes QC is a Brisbane barrister and member of the Proctor editorial committee. David Ananian-Cooper is a Brisbane barrister.

Days of the dead

‘Double, double toil and trouble; fire burn and cauldron bubble.’¹



To many, Halloween is a commercialised American tradition; to others a superstitious event involving ghosts, ghouls and goblins.

Its history hovers somewhere in between. ‘Halloween’,² held on 31 October, derives from All Hallows Eve, the eve of the Catholic All Hallows Day (1 November), also known as All Saints Day. However, 31 October was also the last day of the Celtic calendar, and originally a pagan holiday honouring the dead. Hence, we have a name with Christian origins for an event with pagan background.

Nowadays, the challenges for those who celebrate Halloween involve costumes and candy, but for succession lawyers it can present legal challenges.

Halloween decorations are particularly fraught. For example, in *Purtell v Mason*³ Halloween tombstone decorations inscribed with insults resulted in a finding of defamation. Such findings are not restricted to decorative tombstones; they can extend to actual tombstone inscriptions.⁴

For estate planning and administration lawyers, beware of the haunted house. The New York appellate court decision of *Stamovsky v Ackly*⁵ famously involved a purchaser using equitable remedies to exorcise the contracted property.

The purchaser sought to rescind the contract on the basis that the house was haunted. In a spirited decision, the appeal court raised the spectre of estoppel and found that as the seller had previously publicly declared it was haunted, he was “estopped to deny their existence and, as a matter of law, the house is haunted”.⁶ I’m not sure what spooked the buyer.

Puns and peculiarities aside, while these examples identify extremes, upholding the rights of the dead is a key function of what we do as succession lawyers. Lawyers have duties to their clients that continue beyond death, both at common law and pursuant to the *Australian Solicitors Conduct Rules 2012*.

For example, pursuant to rule 9 the lawyer has a duty to keep client information confidential. It is a permanent duty and one that continues beyond the death of the client, attaching to the deceased’s legal personal representative.⁷ It should be noted that legal professional privilege is a “subset of client confidential communications”,⁸ though in certain circumstances that confidentiality may be overridden.⁹

One such circumstance is that explored in the decision of *Nolan v Nolan & Ors* [2013] QSC 140. There, a separated wife sought a declaration as to her interest in matrimonial property, in support of her application which sought for her husband’s estate planning

lawyers to disclose their will file and his will. In that decision the court determined privilege attached but it had been waived through the conduct of the solicitors.¹⁰

When in doubt about your ethical obligations, I recommend you liaise with the QLS Ethics Centre whose unique and valuable work assists practitioners in navigating their duties. Seeking ethical advice not only assists the practitioner but the court, as was demonstrated in the recent decision of *Re Toulitch (Deceased)* [2016] QSC 219.

Toulitch involved an uncontested application arising from issues of testamentary capacity. It also addressed the distinction between a common form grant and a solemn form grant, and the circumstances of when a solemn form grant will be issued.¹¹ The applicant’s solicitor was challenged with placing before the court material that was “hearsay” and “double hearsay”,¹² and as is usually the case, the deceased testator was no longer available to give evidence. In providing her affidavit to the court, the applicant’s solicitor took ethical advice in determining to include that voluminous material. The court commended her actions, in taking that ethical advice.¹³

In the spirit¹⁴ of levity, Halloween turns our mind to death, but it is not something with which we as a society are comfortable. Every 3 minutes and 20 seconds a person dies in Australia.¹⁵



with Christine Smyth

Earlier this year, the Australian Academy of Science conducted a series, 'The Science of Life & Death',¹⁶ which was designed to open up dialogue about death and dying. It seems that, unlike ancient cultures, modern western society struggles to discuss death and its impact.

Succession lawyers are all too well aware of death and its effect on our clients, and we hold a special place in opening up that dialogue this Halloween and beyond.

Christine Smyth gratefully acknowledges the ideas, inspiration and input on this topic from QLS governance executive Louise Pennisi and ethics solicitor Shane Budden. Christine is deputy president of Queensland Law Society, a QLS accredited specialist (succession law) and partner at Robbins Watson Solicitors. She is a member of the QLS Council Executive, QLS Council, QLS Specialist Accreditation Board, the *Proctor* editorial committee, STEP, and an associate member of the Tax Institute. Christine recently retired her position as a member of the QLS Succession Law Committee however remains as a guest.

Notes

¹ *Macbeth*, Act 4 Scene 1, William Shakespeare.

² All Hallows Eve (Halloween) is the evening before All Saints Day, 1 November, created by Christians with the aim of converting pagans. See halloween-website.com/history.htm, catholicculture.org/culture/liturgicalyear/overviews/months/10_2.cfm.

³ New York State Bar Association Journal, October 2011, cited at 59, 'Case Law from the Crypt, The Law of Halloween' by Daniel B. Moar, accessed at goldbergsegalla.com/sites/default/files/DBM%20NYSBA%20Journal%20Oct%202011.pdf.

⁴ *Retreat from Injustice: Human Rights Law in Australia* by Nick O'Neill, Simon Rice, Roger Douglas, citing at page 440, *Gately on Libel and Slander*, London, Sweet and Maxwell, 10th ed., 2004.

⁵ As above at 2.

⁶ *Ibid*.

⁷ *Gartside v Sheffield, Young and Ellis* [1983] NZLR 37; see also 'Confidences – a question of succession' and 'Keeping secrets – or not' at qls.com.au/Knowledge_centre/Ethics/Resources/Confidentiality/Confidentiality.

⁸ See also 'Confidences – a question of succession' at qls.com.au/Knowledge_centre/Ethics/Resources/Confidentiality/Confidentiality.

⁹ *The Australian Solicitors Conduct Rules 2012 in Practice, A Commentary for Australian Legal Practitioners*, published by Queensland Law Society.

¹⁰ For more detail see the writer's article, 'Does professional privilege apply to wills and estate planning files?', *Proctor*, November 2013, pp40-41.

¹¹ [32] citing with approval *Estate Kouvakas; Lucas v Conakas* [2014] NSWSC 786 where "in a survey rich with reference to earlier writings and cases" the NSW court "considered the development of probate law".

¹² At [3].

¹³ At [3].

¹⁴ @ I couldn't help myself with the puns...

¹⁵ abs.gov.au > Population clock.

¹⁶ science.org.au/news-and-events/events/public-speaker-series/science-life-death.

DGT Costs Lawyers

Shedding light on legal costs for almost 30 years



 www.dgt.com.au  costing@dgt.com.au

Sydney: (02) 9977 9200 | Brisbane: (07) 3834 3359 | Canberra: (02) 6248 8077



DGT Costs
Lawyers

Register with SCLQ to access great benefits

with Supreme Court
Librarian David Bratchford



Supreme Court Library Queensland (SCLQ) is the central law library for Queensland and is the Queensland Law Society member library.

Have you joined the library? Register with SCLQ today to access great benefits – visit sclqld.org.au/register to apply.

As a valued QLS library member you are entitled to:

- up to 30 minutes of free research assistance a day
- up to 10 free documents supplied a day
- onsite access to our comprehensive range of online subscription services
- use of library facilities and after-hours library access (on application)
 - free wi-fi and public computers with internet access
 - free printing, photocopying and scanning
 - conference and meeting facilities and private study rooms
- subscribe to our weekly newsletter, *Queensland Legal Updater*, for information on important decisions, legislation and practice directions, media releases, legal conferences and events.

Additional benefits

Virtual Legal Library: Free 24/7 online access to more than 135 key legal publications from leading publishers to help you with legal advice and case preparation (available to sole practitioners and firms with five or less practising certificates) – vll.sclqld.org.au

Queensland Sentencing Information Service (QSIS): A free online resource to search, locate and compare Queensland sentencing outcomes to help achieve consistency in sentencing (available to criminal law practitioners on application) – sclqld.org.au/qsis

For more information contact us on 07 3247 4373 or informationservices@sclqld.org.au.



SCLQ publications Christmas sale

Order now for Christmas – tell us you're a QLS member when you order and receive a 20% discount.

Choose from popular titles:

In Freedom's Cause

\$36 (normally \$45)

An illustrated commemorative publication that pays tribute to Queensland's lawyers and lawyers-in-training who served in World War I.

Supreme Court of Queensland: A Concise History

\$55 (normally \$69)

A Concise History records every pivotal moment in the court's history, including its phases of turmoil, regeneration and modernisation, and also the judges and barristers who contributed to its development.

The Idea of Legal History: A Tribute in Honour of Dr Michael White QC

\$28 (normally \$34.95)

Throughout his career Dr Michael White QC continually promoted the study and importance of Queensland's legal history. *The Idea of Legal History* was assembled in Dr White's honour and features a collection of specially commissioned articles from legal professionals that delve into Queensland's legal past.

Selden Society lecture

Selden Society Australian Chapter cordially invites you to the sixth and final lecture for 2016.

Legal History of Queensland – Supreme Court Fire of 1968

presented by
the Hon. Richard Chesterman AO RFD QC

Thursday 24 November
5.15 for 5.30pm

**Banco Court,
Queen Elizabeth II Courts of Law
Level 3, 415 George Street, Brisbane**

RSVP by 17 November
to events@sclqld.org.au

CPD points: 1



Nothing compares to quality health cover

Quality cover starts here, with;

Your corporate plan

Signing up under a corporate plan gives you more – including wellness programs, loyalty rewards and a range of special offers.

Privacy when it counts

Meaning you'll be covered for a private room in most private hospitals across Australia for services included on your policy.*

National Home Doctor Service

Get complimentary access to After Hours Plus, meaning during your bulk-billed home visit, common medications can be prescribed on the spot, at no cost to you.

Visit Bupa.com.au/nothingcomparescorporate



Get Bupa and choose one of three gifts.^

To receive this offer mention "Get Bupa" or your company name when joining with hospital and extras cover.

1300 617 206
and quote ID
2112595

corporateaccount
manager@
bupa.com.au

[bupa.com.au/
callmeback](http://bupa.com.au/callmeback)

find your local
Bupa centre



Advocate's immunity curtailed?

The implications of *Attwells v Jackson Lalic Lawyers* for ADR

Advocate's immunity has been recently considered by the High Court in *Attwells v Jackson Lalic Lawyers* (2016) 90 ALJR 572; HCA 16.

The decision has consequences for any lawyer who practises in dispute resolution and particularly for those whose practice involves alternative dispute resolution. This article discusses the nature and scope of the immunity, the decision of *Attwells* and the ramifications of that decision for ADR practitioners.

Advocate's immunity

The seminal cases regarding the immunity in Australia are *Giannarelli v Wraith* (1988) 165 CLR 543 and *D'Orta Ekenaike v Victorian Legal Aid* (2005) 223 CLR 1.

Giannarelli v Wraith

Giannarelli involved three brothers who were convicted of perjury as a result of evidence they gave to the Federated Ship Painters' and Dockers' Union Royal Commission. Two of the brothers appealed to the Court of Criminal Appeal, which dismissed the appeals. Appeals by the two to the High Court were allowed on the basis that the evidence given by the Giannarellis to the royal commission was inadmissible on the perjury charges. Their convictions were quashed.¹

The Giannarellis then instituted proceedings in the Supreme Court of Victoria for damages for negligence against various lawyers who represented them throughout the process. The alleged negligence was the defendants' apparent failure to advise that the evidence given in the royal commission was inadmissible on the perjury charges, and to object on that ground to the tender of the evidence. The question of liability was argued as a preliminary point of law and the trial judge found in favour of the plaintiffs. The Full Court allowed an appeal by the defendants. The plaintiffs then appealed, by special leave, to the High Court.

A majority of the High Court held, by reference to various policy considerations, that at common law a barrister (or solicitor acting as an advocate) cannot be sued by her client for negligence in the conduct of a case in court, or in work out of court, that leads to a decision affecting the conduct of a case in court.

D'Orta Ekenaike v Victorian Legal Aid

Ryan D'Orta-Ekenaike pleaded guilty to a charge of rape at a committal hearing, but on arraignment changed his plea to not guilty and stood trial in the County Court of Victoria. His guilty plea was led in evidence at the trial and he was found guilty and sentenced to three years' imprisonment.

On his appeal, the Court of Appeal held that the trial judge's instructions to the jury regarding the guilty plea were inadequate, granted leave to appeal, allowed the appeal, quashed the conviction and directed that there be a new trial.² At the second trial, the trial judge ruled that the guilty plea was inadmissible and Mr D'Orta-Ekenaike was subsequently acquitted.

Following the acquittal at his second trial, Mr D'Orta-Ekenaike sued Victorian Legal Aid, which acted for him in the original proceedings, and the barrister who acted for him at the committal hearing, alleging, inter alia, that they had been negligent in representing him and advising him to plead guilty at committal. The County Court ordered that the proceeding be permanently stayed on the basis that the defendants were immune from liability with respect to the matters alleged against them. The Court of Appeal refused leave to appeal. Mr D'Orta-Ekenaike then applied to the High Court for special leave.

In granting leave to appeal, but dismissing the appeal, the majority of the High Court held that at common law an advocate is immune from suit, whether for negligence or otherwise, in the conduct of a case in court or for work done out of court which leads to a decision affecting the conduct of the case in court.

The majority also held that a solicitor not acting as an advocate enjoys the same immunity as an advocate regarding advice that leads to a decision affecting the conduct of a case in court. In so doing, the court emphasised the primary basis for the immunity, which is the public policy need to provide finality to disputes – the reason being that a collateral attack on an original decision in another court compromises the integrity of the original trial process, which undermines community confidence in the justice system.

As a result of the decision in *Giannarelli* and the explanation of that decision in *D'Orta-Ekenaike*, advocate immunity from suit has been applied in a broad spectrum of circumstances,³ such as, in the context of

ADR practice, the provision of advice that leads to a compromise;⁴ and the provision of advice regarding settlement offers and quantum.⁵

Attwells v Jackson Lalic Lawyers

In *Attwells*, the first appellant was one of three company directors who had guaranteed their company's indebtedness to a bank. Following a default by the company, the bank commenced proceedings against the guarantors to recover about \$3.4 million owed to it.

Jackson Lalic Lawyers acted for the guarantors in their defence of the bank's recovery proceedings. At the opening of the trial, the bank acknowledged the guaranteed amount of the debt (including costs and recovery fees) was limited to about \$1.86 million, inclusive of interest and recovery costs. The same day, the barrister for the guarantors negotiated a compromise of the proceedings on the basis that the guarantors paid the bank \$1.75 million, including costs, by a specific date. A solicitor employed by the respondent advised the guarantors to sign consent orders for the full amount of the company's indebtedness, because if the agreed sum was not paid within time, it would make no difference what amount was entered in judgment.

Consent orders were made on the second day of trial that gave a verdict and judgment for the bank in the full amount of the debt and noted an agreement between the parties that the judgment and ancillary orders would not be enforced if the guarantors paid \$1.75 million to the bank by the agreed date.

The \$1.75 million was not paid as agreed and an application to set the agreement aside was dismissed. As a result, the guarantors became liable for the entire amount of the company's indebtedness to the bank, and the appellants sued Jackson Lalic Lawyers for negligence. The primary judge declined to answer a preliminary question regarding whether the advocate's immunity from suit defeated the claim, following which, the Court of Appeal held that immunity was a complete answer to the appellants' claims.

In that context, the court was invited by the appellants to consider:

1. whether the immunity extended to advice concerning settlement of proceedings and the signing of consent orders, and
2. abolishing the immunity by overturning the decisions of *Giannarelli* and *D'Orta Ekenaike*.

A High Court decision suggests that alternative dispute resolution (ADR) practitioners may not enjoy immunity from suit for advice regarding settlements that arise from ADR processes such as mediation and arbitration. Report by Hamish Clift.



The High Court, by majority, allowed an appeal against a decision of the Court of Appeal of the Supreme Court of New South Wales. The court unanimously declined to reconsider its previous decisions, however a majority (French CJ, Kiefel, Bell, Gageler and Keane JJ) held that the advocate's immunity from suit does not extend to negligent advice given by a lawyer concerning the settlement of proceedings and signing consent orders.

Accordingly, it was held that the respondent was not immune from suit, because the advice to settle the proceedings was not intimately connected with the conduct of the case in court – the reason being that the advice did not contribute to a judicial determination of issues in the case, notwithstanding that the parties' settlement agreement was embodied in consent orders.

The majority said that *D'Orta Ekenaike* "states a rule which is consistent with, and limited by, a rationale which reflects the strong value attached to the certainty and finality of the resolution of disputes by the judicial organ of the State".⁶ The majority went on to explain that the rationale for the immunity "does not extend to advice which does not move the case in court toward a judicial determination"⁷ and concluded that:

"Once it is appreciated that the basis of the immunity is the protection of the finality and certainty of judicial determinations, it can be

more clearly understood that the 'intimate connection' between the advocate's work and 'the conduct of the case in court' must be such that the work affects the way the case is to be conducted so as to affect its outcome by judicial decision. The notion of an 'intimate connection' between the work the subject of the claim by the disappointed client and the conduct of the case does not encompass any plausible historical connection between the advocate's work and the client's loss; rather, it is concerned only with work by the advocate that bears upon the judge's determination of the case."⁸

ADR

The impact of *Attwells* on ADR is plain – practitioners who practise in this area will most likely not enjoy immunity from suit for advice regarding settlements that arise from ADR processes such as mediation and arbitration, even when such settlements result in consent orders being signed by the parties. As the majority in *Attwells* explained, protection can only be invoked where the advocate's work has contributed to the judicial determination of litigation and the immunity does not extend to advice that leads to a settled agreement between parties to litigation.

Having said that, it is not clear from the majority judgment (although the point was dealt with by both Gordon and Nettle JJ)

whether the curtailment of the immunity will only apply to settlement and consent orders that do not enjoy judicial input or discretion.

In matters requiring an exercise of judicial discretion or a determination that orders are, for example, just and equitable, the advocate's immunity from suit may well continue to shield practitioners from proceedings instituted by disappointed clients.

This article appears courtesy of the Queensland Law Society Alternative Dispute Resolution Committee. Hamish Clift is a Queensland barrister. He is a member of the committee and an associate of the Chartered Institute of Arbitrators.

Notes

¹ *Giannarelli v R* (1983) 154 CLR 212.

² *R v D'Orta-Ekenaike* [1998] 2 VR 140.

³ See, for example, *Ligon Sixty-Three Pty Ltd v ClarkeKann & Ors* [2015] QSC 153; *Donnellan v Woodland* [2012] NSWCA 433; *Goddard Elliott v Fritsch* [2012] VSC 87.

⁴ *Sillman v Rushbourne* [2014] NSWSC 730; *Goddard Elliott v Fritsch* [2012] VSC 87.

⁵ *Kendirjian v Lepore* [2015] NSWCA 132; *Donnellan v Woodland* [2012] NSWCA 433.

⁶ At [30].

⁷ At [39].

⁸ At [46].

Get your career on track

Meet future employers, chat to industry representatives, and find a graduate placement or vocational clerkship.

Wednesday 1 March 2017

Brisbane Convention and Exhibition Centre

Register now

qls.com.au/legalcareerexpo

**QLS LEGAL
CAREERS
EXPO 17**

Court directs costs assessor to file certificate

Ralph Lauren 57 Pty Ltd v Conley [2016] QSC 149

Costs assessments – whether costs assessor’s fees are disbursements – whether costs assessor may withhold certificate of assessment until fee paid – whether court should give directions before certificates of assessment filed

***Civil Proceedings Act 2011* s59 – interest after money order – no interest on costs paid within 21 days after assessment – meaning of ‘assessment’**

In *Ralph Lauren 57 Pty Ltd v Conley* [2016] QSC 149 the court gave a direction requiring the costs assessor to file his certificate of assessment. The judgment considered a number of rules in Part 3 of Chapter 17A of the *Uniform Civil Procedure Rules 1999* (Qld) (UCPR) relating to the assessment of costs other than under the *Legal Profession Act 2007* (Qld).

In the course of her judgment, Ann Lyons J also referred to several of the rules in the UCPR relating to the completion of a costs assessment. There was no issue relating to the payment of interest on costs in this proceeding, but the question as to when an assessment is completed is crucial to determining whether interest is payable on costs pursuant to s59 of the *Civil Proceedings Act 2011* (Qld).

Background

Ralph Lauren 57 Pty Ltd (Lauren) had been successful in 14 separate Supreme Court proceedings in having statutory demands by Michael Conley (as trustee) (Conley) set aside. Conley was ordered to pay Lauren’s costs on an indemnity basis.

Conley issued notices of objection to the costs statements served by Lauren, and then filed applications under r713 of the UCPR for costs assessments in each of the proceedings. A costs assessor was ultimately appointed to assess each of the costs statements.

In correspondence to the parties after the assessment, the costs assessor advised his costs of assessment, and provided a tax invoice for his fee for each assessment. The amount of that fee was stated to be recoverable as an outlay under r723 of the UCPR. The costs assessor also provided draft certificates of assessment under r737 of the UCPR, in which he included his fee as a disbursement. He made it clear that his fee must be paid by the party who filed the costs statement (Lauren) and stated that he would sign the certificates and file them in court once he had received payment of his assessment fees.

In his correspondence, the costs assessor referred to Lauren and Conley as they appeared in the Supreme Court proceedings, with Lauren accordingly referred to as the applicant and Conley as the respondent.

The solicitors for Lauren then wrote to the solicitors for Conley and the costs assessor noting that Lauren was not the applicant for the costs assessment and under r740(4) of the UCPR was not primarily responsible for the payment of the costs assessor’s fees. The letter also disputed that the costs of the assessment were disbursements under r723 of the UCPR. Rule 444 letters were sent to both Conley and the costs assessor.

In response, Conley’s solicitors advised that they had no obligation to pay the costs assessor’s fee because no costs assessor’s certificate had been filed, and also that they were unable to pay those fees because the invoices were addressed to Lauren.

Lauren filed an application for directions. The orders sought included an order that the costs assessor file the form 62 certificate of assessment under r737 of the UCPR.

Jurisdiction

The court accepted that the process provided by r742 of the UCPR for review of a decision of a costs assessor did not apply because a costs assessor’s certificate of assessment had not been filed.

Reference was made to several decisions in which the court has intervened in a costs assessment before a costs certificate has been filed, including *Maggbury Pty Ltd v Hafele Australia Pty Ltd* [2001] QSC 78, and *National Australia Bank Ltd v Clanford Pty Ltd* [2002] QSC 361. A number of bases were identified as possible sources of jurisdiction to make an order or direction before the review mechanisms under Chapter 17A of the UCPR were engaged, including rr366, 447 and 448(i) of the UCPR, and the inherent jurisdiction of the court. Lyons J concluded (at [35]):

“Whilst r742 does provide a mechanism to review a decision by a costs assessor I do not consider that such a provision constrains the Court’s power to give directions in relation to such an assessment whether it be before, during or after such an assessment.”

Assessment process

In order to determine whether it should intervene to make the directions sought, the court considered whether there had been errors in the assessment process that had occurred. Its findings included the following:

1. Conley was the applicant for the costs assessment for the purposes of rr713 (Costs assessor if no agreement) and 713A (Service of order appointing costs assessor) of the UCPR, despite being the respondent in the 14 substantive court proceedings. A party does not become an ‘applicant’ for the purposes of the UCPR by responding to correspondence from the registrar in relation to an application or by submitting the names of alternative costs assessors. The costs assessor was in error in referring to the parties as they appeared in the Supreme Court proceedings.

In addressing the invoices for his fees to Lauren, the costs assessor was also in breach of r740(4) of the UCPR, which provides that “[u]nless the registrar orders otherwise” the costs assessor’s fees are payable in the first instance by the party who applied for the assessment.



A costs assessor has no power to delay the filing of a certificate of assessment until the assessor's fee is paid. Report by **Sheryl Jackson**.

2. The costs assessor's fee for the costs assessment was not a disbursement under r723 of the UCPR. Rules 723(1) and (2) of the UCPR provide:

(1) If a party's costs statement includes an account that has not been paid, the party may claim the amount as a disbursement.

(2) A costs assessor may allow the amount as a disbursement only if is paid before the costs assessor signs the certificate of assessment.

The court found that it was clear that the costs assessor's account did not exist when Lauren filed the costs statement and Lauren had not included it as a disbursement. The costs assessor was in error in including it as a disbursement under r723.

3. The costs assessor, in withholding the filing of his certificate of assessment, was in breach of r737 of the UCPR, which requires that a costs assessor must file a certificate of assessment in court within 14 days after the end of the costs assessment. There is no power in the UCPR for a costs assessor to delay the filing of a certificate of assessment until the assessor's fee is paid. The court found that r740 of the UCPR (Judgment for amount certified) created the costs assessor's right to payment, but this was after the certificate of assessment was filed.

Order

The court directed the costs assessor to file his certificate of assessment within seven days of the date of the making of the order. It noted this would engage the review procedures under r742 of the UCPR.

The court considered it to be premature to make any further directions as the certificates were in draft form only, and the court did not have the benefit of the costs assessor's reasons for his assessment.

Comment – interest on costs under *Civil Proceedings Act 2011*, s59

In the course of considering the issues relating to costs assessors and their certificates, Ann Lyons J made a number of observations relating to the time when a costs assessment is completed. These included (at [51]-[53]):

"Furthermore, r737 of the UCPR provides that *at the end of the costs assessment* the assessor must certify the amounts payable by whom and to whom in relation to the application, having regard to the amount of costs that were assessed and the costs of the assessment. It also provides that that certificate must be filed within 14 days after the assessment...

I note that the Costs Assessor indicates he completed the assessment on 6 May 2016. Since 6 May 2016 the Costs Assessor has not certified the certificate, neither has he filed it." [*emphasis added*]

The question of when a costs assessment is completed will determine whether interest is payable on those costs under s59 of the *Civil Proceedings Act 2011* (Qld) (the Act). That section provides, in relevant respects:

"59 Interest after money order

...

(2) Interest is payable from the date of a money order on the money order debt unless the court otherwise orders.

(3) The interest is payable at the rate prescribed under a practice direction made under the *Supreme Court of Queensland Act 1991* unless the court otherwise orders.

(4) However,

...

(b) if the money order includes an amount for costs and the costs are paid within 21 days after assessment, interest on the costs is not payable unless the court orders otherwise."

'Money order' is defined in Schedule 1 of the Act as meaning "an order of the court, or part of an order of the court, for the payment of money, including an amount for damages, whether or not the amount is or includes an amount for interest or costs".

'Money order debt' is defined in the same schedule as meaning "the amount of money payable under a money order".

These provisions make it clear that, subject to a court order, the exclusion relating to liability to pay interest on costs applies only if the costs are paid within 21 days "after assessment".

The observations of Ann Lyons J in the course of her judgment adopt the approach that "after assessment" refers to an event before the filing of the certificate of assessment, rather than to the filing of a certificate of assessment under r737 of the UCPR, or to the registrar's order on the certificate under r740 of the UCPR.

Further, in order to give meaning to rr737(2) and 738(1) of the UCPR, it is necessary that the end of the assessment and the provision of the certificate of assessment are different events.

Under current practice, most practitioners seek interest on unpaid costs from the time the assessment certificate is made into a judgment by the registrar, consistent with the practice under the repealed *Common Law Practice Act 1867* (Qld), s73, under which the relevant trigger was the ascertainment of the costs "by taxation or otherwise".

It is arguable, however, that the substantive law on this point has changed. Under the current provisions, it appears that if the party liable to pay the costs does not pay within 21 days after the costs assessor has assessed the costs, and presumably advised of the amount at which they have been assessed, interest may well become payable from the date of the original costs order.

Practitioners should be aware of the potentially very significant impact of this construction, pending any amendment to s59 of the Act to clarify its operation.

This column is prepared by Sheryl Jackson of the Queensland Law Society Litigation Rules Committee. The committee welcomes contributions from members. Email details or a copy of decisions of general importance to s.jackson@qut.edu.au. The committee is interested in decisions from all jurisdictions, especially the District Court and Supreme Court.

High Court and Federal Court casenotes

High Court

Occupational health and safety – tort and statutory duties – statutory construction

In *Deal v Father Pius Kodakkathanath* [2016] HCA 31 (24 August 2016) the High Court considered the requirements of the *Occupational Health and Safety Regulations 2007* (Vic.). The appellant, a teacher, injured her knee while climbing backwards down a stepladder after having removed several posters from a pinboard. A question at trial was whether it was reasonably practicable for the respondent to identify that task as one involving “hazardous manual handling” and to control the risks of musculoskeletal disorders “associated” with that task. The trial judge found that the evidence could not support a finding that the appellant was engaged in a “hazardous manual handling task” and took the issue from the jury. It was not in dispute that the task constituted “manual handling” in the workplace, and that the injury was a “musculoskeletal disorder”. The High Court held that it was therefore also a “hazardous manual handling task” because the load was unbalanced or unstable; the “force” involved could be only minimal. “Associated”, in this context, meant that the injury needed to arise from, and be caused by, something intrinsic to the hazardous manual handling task. The court held that it would have been open to a jury to find that it was reasonably practicable for the respondent to identify the risk of an injury associated with the task as one involving hazardous manual handling, and for the respondent to take steps to eliminate or substantially reduce that risk. French CJ, Kiefel, Bell, and Nettle JJ jointly; Gageler J concurring separately. Appeal from the Court of Appeal (Vic) allowed.

Criminal law – inconsistent verdicts – jury directions – hearsay evidence – circumstances of reliable representations

In *Sio v The Queen* [2016] HCA 32 (24 August 2016) Mr Sio acted as a driver assisting with a robbery. During the robbery, the principal offender, Mr Filihia, stabbed to death an employee. Mr Sio was charged on the basis of joint criminal enterprise. He was acquitted of murder but convicted of armed robbery with wounding. At trial, Mr Filihia refused to answer questions and the Crown tendered two earlier statements, which included statements about who had the knife and who had encouraged the robbery. Although hearsay, the Crown argued that the statements were admissible: their maker was unavailable, and the representations were against the interests of the maker and made in circumstances making it likely that they were reliable. The trial judge allowed the evidence. The trial judge also gave jury directions to the effect that the elements for the offences were the same, except that the

armed robbery charge did not require foresight of wounding but murder did. In the High Court, the Crown accepted that the jury directions were inadequate, meaning that the conviction had to be quashed. As to the hearsay evidence, the court held that for each relevant fact sought to be proved, the representation must be identified and the circumstances of the representation considered to determine the issue of reliability. The focus was the objective circumstances, as opposed to the apparent truthfulness of the person. In this case, there was nothing in the objective circumstances that shifted the balance in favour of a finding of reliability. The evidence should have been excluded. It was not certain that the jury would have convicted for armed robbery and so it was not open to the High Court to substitute a conviction for that offence. A new trial for armed robbery was ordered. French CJ, Bell, Gageler, Keane and Gordon JJ jointly. Appeal from the Court of Criminal Appeal (NSW) allowed.

Criminal law – extended joint criminal enterprise liability – review of sufficiency of evidence

In *Miller v The Queen*; *Smith v The Queen*; *Presley v Director of Public Prosecutions* (SA) [2016] HCA 30 (24 August 2016) the High Court considered the doctrine of common law “extended common purpose” or “extended joint criminal enterprise”, as set down in *McAuliffe v The Queen* (1995) 183 CLR 108. A joint criminal enterprise arises where two or more people agree to commit a crime. Agreement need not be express. All parties to the agreement will be guilty of the crime that is the object of the joint enterprise, and will also be guilty of other crimes (“incidental crimes”) committed by a member of the group that is within the scope of the agreement. A crime is within scope if the parties contemplate its commission as a possible incident of the agreement. Further, if a party foresees the commission of an incidental crime and, even if they did not agree to its commission, continues to participate in the agreement with that awareness, the party will be liable for the incidental crime. Referring to the recent UK Supreme Court decision in *R v Jogee* [2016] 2 WLR 681, the High Court held that it was not appropriate to alter the common law to require proof of intention, nor to substitute a requirement of foresight of probability of commission of the incidental crime. *McAuliffe* was reaffirmed. However, the Court of Criminal Appeal had not sufficiently reviewed the evidence in considering whether the verdicts could be sustained and the matter had to be remitted for it to do so. French CJ, Kiefel, Bell, Nettle and Gordon JJ jointly; Keane J concurring separately; Gageler J dissenting. Appeal from the Court of Criminal Appeal (SA) allowed.

Criminal law – criminal liability – circumstantial case – unreasonable verdicts

In *The Queen v Baden-Clay* [2016] HCA 35 (31 August 2016) the High Court held that it was not open to the court below to reduce a conviction from murder to manslaughter on the evidence before it. The respondent was convicted of the murder of his wife, who had disappeared from their home and was found in the bush 10 days later. There was circumstantial evidence to support the respondent’s guilt. At trial, his case was that he had not been involved in her death in any way. His counsel rejected an offer from the trial judge to give a direction for manslaughter; that is, that the respondent had been involved but had not intended to kill his wife. The jury convicted for murder. On appeal, it was accepted that the jury was entitled to reject the applicant’s explanations and to find that he was involved. The Court of Appeal held, however, that the guilty verdict was unreasonable because there was another hypothesis open that was inconsistent with murder: that there had been an altercation and the victim had been killed by the respondent, without him intending to do so. The High Court confirmed that when a case is based on circumstantial evidence, it must be shown that guilt is the only rational inference that can be drawn. In this case, the respondent had given evidence that was inconsistent with the Court of Appeal hypothesis. While it was open to the jury to reject his explanation, his evidence could not be disregarded. The Court of Appeal’s conclusion was speculation or conjecture, not an acknowledgement of a hypothesis available on the evidence. Further, the scenario posited had never been put to the jury; in fact, it was specifically disavowed. Once the Court of Appeal’s scenario was set aside, there was no other hypothesis consistent with manslaughter but not murder. French CJ, Kiefel, Bell, Keane and Gordon JJ jointly. Appeal from the Court of Criminal Appeal (Qld) allowed.

Migration law – validity of delegated legislation

In *Maritime Union of Australia v Minister for Immigration and Border Protection* [2016] HCA 34 (31 August 2016), the High Court held that Determination IMMI15/140 (the determination) was invalid because it exceeded the limits of the power conferred on the Minister. Following amendments made in 2013, the *Migration Act 1958* (Cth) required that any non-citizen participating in or supporting the offshore resources industry hold a permanent or prescribed visa. The amendments also provided for a power in the Minister to except operations and activities from the new visa regime. By the determination, the Minister effectively purported to except from the visa requirement, all operations and activities to the extent that

with Andrew Yuile and Dan Star



they used any vessel or structure that was not an Australian resources installation. The High Court held the determination to be invalid because the power did not extend to excepting all activities or operations, it would negate the operation of the general rule, and it was opposed to the purpose of the Act. French CJ, Bell, Gageler, Keane and Nettle JJ jointly. Answers to special case given.

Criminal law – appeals – inherent powers of courts in criminal matters – correctness of jury verdict

In *NJ; Jakaj; Zefi; Stakaj v Director of Public Prosecutions* [2016] HCA 33 (31 August 2016) the High Court considered the inherent powers of a court to set aside convictions because of potentially incorrect verdicts. The appellants were accused of murder. When delivering the verdicts, the jury foreman gave answers to the effect that: (i) there was not a unanimous verdict of murder; (ii) a majority had found the accused not guilty of murder; and (iii) the jury had found the accused guilty of manslaughter. Answer (ii) was a requirement of s57 of the *Juries Act 1927* (SA) before the alternative finding of manslaughter was open. Upon reflection, the foreman thought that answer (ii) was wrong, because the jury had not specifically considered whether the accused was not guilty. The Court of Appeal found that the verdicts should be set aside in the use of its inherent powers, on the basis that the foreman's incorrect answers constituted an abuse of process. The High Court noted that the verdicts were delivered in open court, in the sight and hearing of the jury, without any action or dissent from them. They were presumed correctly communicated. The jury had dispersed. The court had made perfected orders. Absent statutory appeals, the matter was complete. The power to alter perfected orders is very narrow and the concept of abuse of process used by the Court of Appeal could not extend to cover this case. The appeals had to be allowed and the original orders reinstated. In addition, appeals against the manslaughter verdict, based on lack of evidence and unsoundness, were remitted for consideration. French CJ, Kiefel and Bell JJ jointly; Nettle and Gordon JJ jointly concurring. Appeal from the Court of Appeal (SA) allowed.

Constitutional law – legislative power – election rolls

In *Murphy v Electoral Commissioner* [2016] HCA 36 (5 September 2016), the High Court upheld provisions in the *Commonwealth Electoral Act 1918* (Cth) that provide for the close of the electoral roll and the preclusion of additions or changes to the roll after seven days following the issue of writs for a federal election. It was accepted that a law that has the practical effect of disqualifying people from the general franchise will

only be valid if the disqualification is for "substantial reasons". A law will be for a "substantial reason" if it is reasonably appropriate and adapted to an end which is consistent or compatible with the constitutionally mandated system of representative government. Undertaking that review, the court drew on the staged proportionality test used in *McCloy v New South Wales* (2015) 89 ALJR 857. The focus of the court was whether the impugned law had a rational connection with the purpose of the provision and whether it was necessary, in the sense that there was not an obvious and compelling alternative, reasonably practicable means of achieving the same purpose with a less restrictive effect. The court held that the impugned provisions had the necessary rational connection and, although there might be alternatives available, the Commonwealth scheme was not such as to constitute a burden on the realisation of the constitutional mandate. French CJ and Bell J jointly, Kiefel J, Gageler J, Keane J, Nettle J and Gordon J each separately concurring. Answers to special case given.

Andrew Yuile is a Victorian barrister, phone 03 9225 7222, email ayuile@vicbar.com.au. The full version of these judgments can be found at austlii.edu.au.

Federal Court

Evidence – whether evidence of forensic accountant admissible – opinion rule exception in s79(1) of the Evidence Act 1995

In *Hart v Commissioner of Taxation (No.2)* [2016] FCA 897 (5 August 2016) the court (Bromwich J) dismissed an application by the applicant (Mr Hart) to exclude evidence from his trial before it commenced. The trial concerned an appeal by Mr Hart from the dismissal of objections by the Commissioner of Taxation (the commissioner) in relation to an amended income tax assessment for the 1997 financial year. The commissioner sought to rely on the evidence of Mr David Van Homrigh, a forensic accountant. The evidence, in the form of a report and subsequent letter, was relied upon to demonstrate the flow of money to, or to the benefit of, Mr Hart.

It was common ground that Mr Van Homrigh had the necessary specialised knowledge based on his training, study or experience to give expert evidence as a forensic accountant, satisfying the first limb of the exception to the opinion rule contained in s79(1) of the *Evidence Act*. The dispute concerned the second limb of that exception, namely whether the views expressed by Mr Van Homrigh in his reports constituted evidence of an opinion by him that was wholly or substantially based on that accepted specialised knowledge (at [10]).

The court discussed at [17] the two seminal cases of the High Court on expert evidence: *HG v R* [1999] HCA 2; (1999) 197 CLR 414 and *Dasreef Pty Ltd v Hawchar* [2011] HCA 21; (2011) 243 CLR 588:

"*HG* and *Dasreef* (along with many intermediate appeal court decisions) reveal that when there is present:

- (a) a *real* question as to whether a claimed or required specialised knowledge is possessed by a witness sought to be relied upon to express an opinion by way of exemption to the opinion rule; or
- (b) a *real* question as to whether such an accepted expertise has been applied to produce such an opinion sought to be relied upon,

strict adherence to the formal requirements of s79(1) may be required so as to enable an opposing party and the Court to examine and test whether such a fatal defect exists."

The court held at [18] that no such real issue existed in this case. Bromwich J at [23] distinguished *HG v R*, where the expert psychological evidence provided a complex narrative, "a complete and alternative explanation to the version of events ... rather than a mere opinion as to whether or not a particular event had occurred". In this case, Mr Van Homrigh's accounting evidence was less subjective and less susceptible to inference and speculation. Further, the opinions in *HG* were never in admissible form, in contrast to Mr Van Homrigh's evidence. For all these reasons, "strict adherence to the formal requirements of s79 is of lesser importance in this particular case" (at [25]).

Dasreef Pty Ltd v Hawchar was also distinguished because tracing and explaining flows of money is part and parcel of the expertise of a forensic accountant, meaning Mr Van Homrigh clearly did not step outside his field of expertise (at [32]). At [35], the issue of whether evidence falls within s79(1) depends on whether his task is carried out by the genuine application of accepted specialised knowledge that adds the required level of value to the evidentiary and judicial process was considered. The court held that Mr Van Homrigh's evidence met this threshold to be admitted into evidence at the trial (at [42]). The weight, value, reliability of the evidence would need to be determined at trial.

Migration – multiple protection visa applications – limited role of the delegate (and AAT on review) when determining the second application

In *Minister for Immigration and Border Protection v SZVCH* [2016] FCAFC 127 (14 September 2016) a five member Full Court

(Dowsett, Kenny, Siopis, Besanko and Mortimer JJ) was convened in an appeal raising issues of statutory construction under the *Migration Act 1958* (Cth) (the Act) in relation to multiple protection visa applications by a person.

In 2010, SZVCH made his first application for a protection visa. At that time his application was assessed against s36(2)(a) of the Act, being the criterion dealing with claims made under the Refugees Convention. The Minister's delegate rejected the application, which was affirmed by the Administrative Appeal Tribunal (AAT). SZVCH was unsuccessful in judicial review proceedings to the Federal Court at first instance and on appeal.

In 2014, SZVCH made a second application for a protection visa expressly in reliance only of s36(2)(aa) of the Act, being the criterion dealing with complementary protection. Section 36(2)(aa) had not been enacted at the time of his first application and therefore could not be applied to that earlier protection visa application. The Minister's delegate refused the second application under both s36(2)(a) (Art 1A of the Refugees Convention) and s36(2)(aa) (complementary protection) of the Act. The AAT, on review, assessed SZVCH's application against only the complementary protection criterion on the basis that it only had jurisdiction to do this. However, the Federal Circuit Court held that the AAT was required to consider his claims for protection based on the criteria in both s36(1)(a) and s36(2)(aa).

The Minister's successfully appealed to the Federal Court.

The various grounds and argument in the appeal raised matters concerning the proper understanding of the decision of the Full Court in *SZGIZ v Minister for Immigration and Citizenship* (2013) 212 FCR 235 (Allsop CJ, Buchanan and Griffiths JJ). However, the correctness of this earlier Full Court decision was ultimately not challenged (at [2], [15] and [95]) or necessary to be decided by the five member Full Court in *SZVCH* (at [46] and [106]).

The primary question in the appeal was whether it was permissible (or necessary) for the Minister's delegate to consider the SZVCH's claims not only by reference to s36(2)(aa), which was the basis for his second valid application, but also by reference to s36(2)(a), which could not have supported a valid application (at [33]).

In a joint judgment, Kenny, Siopis and Besanko JJ held that the answer to this question must be 'no' (at [33]). In summary, they held:

A second protection visa application based on s36(1)(a) would have been invalid and the Minister would not have been able to consider it having regard to s47(3) of the Act. Accordingly the delegate in the second application ought not have addressed s36(2)(a) at all (at [37]).

It is not the case that the AAT is required to review the merits of that part of the primary decision that the primary decision-maker had no power to decide. The AAT is obliged to decide the correct statutory question, which in this case was whether SZVCH met the complementary protection criterion (at [39]).

The Federal Circuit Court erred in holding it was open to the Minister's delegate to consider SZVCH's second application for a protection visa by reference to s36(1)(a) as well as s36(2)(aa) (at [44]).

Mortimer J concurred with the joint judgment in holding that, when an applicant lodges a second protection visa application in the circumstances contemplated by the Full Court in *SZGIZ*, the scope of the task to be performed first by the delegate (under s65 of the Act) and second by the AAT (on review under s414 of the Act) is limited to consideration of the criterion in s36(2)(aa) (at [95]-[96]). A further protection visa application which relies on the same criterion as that relied on in an earlier application is not a valid application (at [108]). Various provisions, as construed by the Full Court in *SZGIZ*, prevent the statutory task under s65 being performed in relation to the protection criterion in s36(2)(a), which has already been considered and determined (at [109]). Thus, for the delegate to consider the SZVCH's second application for a protection visa against s36(2)(a) exceeded his jurisdiction and went beyond his statutory task (at [113]). The AAT was correct in limiting its jurisdiction to a consideration of s36(2)(aa), because its task was circumscribed by the limited validity of the second visa application. Dowsett J agreed with the other members of the Full Court but added some comments regarding the Full Court decision in *SZGIZ*.

Dan Star is a barrister at the Victorian Bar and invites comments or enquiries on 03 9225 8757 or email danstar@vicbar.com.au. The full version of these judgments can be found at austlii.edu.au.

Be streets ahead with
your house
hunting!

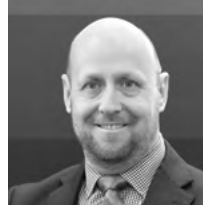
Talk to AMP Bank on 1300 360 525
or visit amp.com.au/qlshomeloan

The credit provider and product issuer of AMP Bank products is AMP Bank Limited Australian Credit Licence 234517.



Personal pressures may lead to professional consequences

by Stafford Shepherd



On occasions, we are faced with personal pressures which may intrude into our professional lives.

Three decisions from the Queensland Civil and Administrative Tribunal identify the way in which personal problems can impact on us.

In *Legal Services Commissioner v Lim*,¹ a young solicitor knowingly swore a false affidavit in a civil action. The solicitor was working long hours and was under considerable pressure. The untruthfulness of the statements sworn was apparent from the contents of the affidavit itself.

The tribunal was satisfied that the conduct fell short of the proper professional standards required of a solicitor whereby the solicitor had failed in the duty of candour and integrity owed to the court and to the administration of justice. The tribunal fined the solicitor \$7000.

It should be noted that breaches of the duty of candour will normally be characterised as professional misconduct (the more serious of the categories of misconduct) and could lead to a solicitor's name being removed from the roll.

In *Legal Services Commissioner v Busch*,² the solicitor (upon leaving her employment) was furnished with a reference. The reference referred to certain matters concerning the practitioner's work performance which she had considered to have been resolved with her former employer. The solicitor created a document identical to the original reference but omitted certain passages. She submitted the altered reference to prospective employers. This conduct involved actual dishonesty and was held to be professional misconduct. The solicitor acknowledged her actions were dishonest. The solicitor was publicly reprimanded.

In *Legal Services Commissioner v Lindley*,³ the solicitor faced two charges. Both involved actions in which the solicitor personally profited from work done in the course of his employment by taking a fee which should have been rendered and paid to his employer. The solicitor had created a false tax invoice and arranged for the monies to be deposited into his own account.

Both charges were characterised as professional misconduct. The offences involved dishonesty for personal gain. The solicitor was fined \$7000, publicly reprimanded and ordered to compensate his former employer.

Each of these decisions involved relatively young solicitors. Two of them involved acts of dishonesty, one concerned knowingly misleading a court. All three practitioners were faced with personal pressures such as:

- working long hours with limited direction or supervision
- finding new employment in a very tight job market
- financial stress.

Personal pressure is hard to deal with. LawCare is a Queensland Law Society member assistance program which provides free, confidential counselling services to you, your staff and your immediate family.

If you identify with any of the problems seen in the above cases, it is important that you seek help before the problem becomes a professional wrong. LawCare counsellors can provide practical advice to assist you. For more information about LawCare, call 1800 177 743.

The QLS Ethics Centre has recently established a practice support service for newly established small and micro legal practices. The Practice Support Consultancy Service (PSCS) offers one-on-one visits by our experienced solicitors. Also, our Professional Leadership team can arrange a visit by Deborah Mok, who will provide assistance on the management of a legal practice's trust account. Both these services are designed to help newly established small/micro firms to create practical and ethical infrastructure to respond to the challenges in the delivery of legal services.

Stafford Shepherd is the director of the QLS Ethics Centre.

Notes

¹ [2011] QCAT 291.

² [2011] QCAT 165.

³ [2012] QCAT 673.



OT MedicoLegal



Highly experienced Occupational Therapists assessing the impact of illness or injury on a person's life.

Offices located in Brisbane, on the Gold Coast and in Townsville

We provide expert advice on quantum issues related to functional status, employability, loss of lifestyle, gratuitous care, adaptive equipment and retraining.

Office or Home Appointments

P 07 3871 2709

W www.otmedicolegal.com.au



 Sample Reports Available

Parenthood from de facto's egg donation

with Robert Glade-Wright



Children – artificial conception – egg donor held to be a parent

In *Clarence & Crisp* [2016] FamCAFC 157 (18 August 2016) the Full Court (Thackray, Ainslie-Wallace & Aldridge JJ) dismissed with costs the birth mother's appeal against a parenting order made in respect of her daughter who was conceived with an egg supplied by the respondent by a medical procedure performed on 11 July 2011, the court saying (at [3]):

"If the parties were in a de facto relationship on that day [of conception] then they were both the child's 'parents' for the purposes of [s60H of] the *Family Law Act 1975*..."

At first instance, Berman J found that while the parties were living separately at the date of conception they were in a de facto relationship, so the respondent was a parent. It was common ground that the parties had commenced a de facto relationship in 2004 but the appellant argued that they separated on 21 March 2011 when the respondent left the home, whereas the respondent argued that she continued to spend four or five nights a week at the birth mother's home until August 2011.

The Full Court said ([12]-[13]):

"His Honour found that although the respondent had not stayed overnight as often as alleged, she was nevertheless a 'frequent visitor' to the parties' former home. (...)"

The Full Court continued (at [18]-[19]):

"His Honour found that in the period from 6 May 2011 to 26 July 2011 there had been 850 text messages between the parties on topics which ranged 'from the mundane to the highly personal' ..."

The Full Court concluded (at [27]-[28]):

"Although we conclude there is no basis for complaint by the appellant, we nevertheless consider that his Honour misdirected himself ... when he posed the question of whether the parties had 'separated'. While that is a question which must be asked in the case of a married couple seeking a divorce, it is a potentially misleading question in cases such as the present, where the issue is whether a de facto relationship existed at a particular point in time. However, his Honour ultimately answered the real question he was required to consider when he found ... that 'the de

facto relationship endured and continued beyond the date of conception'.

Accordingly, we accept the submission of senior counsel for the respondent that nothing turns on the trial judge's discussion of whether the parties had 'separated' ..."

Children – contravention – father loses appeal for costs against mother found in 'serious contravention' of parenting order

In *Roffe & Huie* [2016] FamCAFC 166 (19 August 2016) Murphy J (sitting in the appellate jurisdiction of the Family Court of Australia) dismissed the father's appeal against an order that he and the mother pay their own costs of his successful contravention application. While initially contesting the application, the mother admitted her contravention of a parenting order by withholding the child from time to time without reasonable excuse. At first instance Judge Demack found the mother's conduct to have been "a serious contravention of children's orders" ([3]) and placed her on a bond for 12 months, conditional on her complying with court orders and attending a family consultant.

Murphy J held that the trial judge was not in error in ordering the parties to pay their own costs as the case came within the exception to the mandatory provision in s70NFB(1)(a) of the *Family Law Act* where "the court is satisfied that it would not be in the best interests of the child concerned to make [an order that the person who committed a contravention pay the applicant's costs]".

Murphy J concluded at [31] that there was "sufficient evidence for the trial judge to find that the mother was in poor financial circumstances and potentially could not satisfy a costs order without the sale of her home [in Australia]", the father having argued at [34] that the mother could realise the property she owned in south-east Asia.

Property – injunctions made restraining guardians of family trust from changing the terms of its deed of settlement

In *Josselyn and Ors* [2016] FamCA 557 (8 July 2016) Watts J granted Ms J injunctions in respect of her former de facto partner's control of a family trust. After separation Mr J changed the appointment power from his business partner to his brother then added

two children of his first relationship as directors of the corporate trustee (he having previously been its sole director). Mr J had also begun arguing that the trust's assets were no longer relationship property. Ms J's case was that Mr J's post-separation dealings evidenced risk of an intention to defeat her property claim.

After referring to the relevant statutory provisions, Watts J (at [13]) cited *Mullen & De Bry* [2006] FamCA 1380 in which the Full Court said that "[i]n some cases, the possibility (based on some evidence) of an intention or scheme may, with other factors, be sufficient to establish the probability of an objective risk of disposal with the intent to defeat an order (Original emphasis)". Watts J continued (at [46]-[47]):

"Even if a benign view was taken of all the changes the husband has made since separation to the roles he has in various entities, the expressed view by the husband's lawyers in the letter of 5 May 2016 is some evidence of the possibility of an intention to put assets outside the reach of the de facto wife by the restructuring he has undertaken.

That apparent risk may ultimately turn out to be without any foundation. However, there is no downside in making the orders sought by the wife pending further order to guard against that risk."

Watts J concluded at [51]:

"Senior counsel for the husband said that in respect of the order seeking restraint of distribution of income that the operation of those orders ... would create the difficulty of retained profits in the trust and the taxation consequences flowing from it. ... I make no order preventing the trustees from distributing income. It is unlikely that income earned on the investments of the trust in one year, if dissipated, is something that could not be properly adjusted at the final hearing in circumstances where the wife seeks one half of the overall assets held by the parties. However, the injunctive order, as it applies to the corpus of the trust, is a different matter."

Robert Glade-Wright is the founder and senior editor of *The Family Law Book*, a one-volume looseleaf and online family law service (thefamilylawbook.com.au). He is assisted by Queensland lawyer Craig Nicol, who is a QLS accredited specialist (family law).

SOLD OUT

– Major sponsors –



Queensland
Courts

gadens

AUSCRIPT®
FAST PRECISE SECURE EST 1921



KONICA MINOLTA



LORD MAYOR'S
CHARITABLE TRUST
CARING FOR BRISBANE'S COMMUNITY

– Table sponsors –

Allens > Linklaters



CLAYTON UTZ

CORRS
CHAMBERS
WESTGARTH
lawyers



HERBERT
SMITH
FREEHILLS



HopgoodGanim
LAWYERS

KING & WOOD
MALLESONS



Lawyers
McCullough
Robertson



MinterEllison

NORTON ROSE FULBRIGHT



SHINE LAWYERS
RIGHT WRONG.

THOMSON GEER
LAWYERS



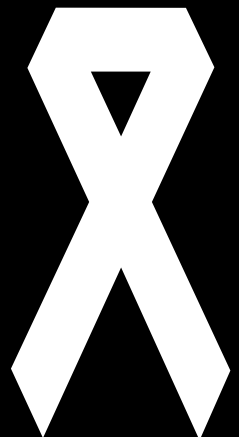
Women's Legal Service

Thank you

The 2016 Legal Profession White Ribbon Breakfast is sold out.

This year's event would not be possible without the support of our major sponsors and table sponsors. Their partnership has contributed significantly to the successful planning and delivery of the annual Legal Profession White Ribbon Breakfast.

All proceeds will go to supporting the work of Women's Legal Service. If you wish to donate to this great cause please contact Natalie Davidson at ndavidson@wlsq.org.au or alternatively you can donate at <https://www.wlsq.org.au/support-us/donate/>



Court of Appeal judgments

1-30 September 2016

with Bruce Godfrey



Civil appeals

State of Queensland v Deadman; Thompson v State of Queensland [2016] QCA 218, 1 September 2016

General Civil Appeal – where the State of Queensland applied for a serious drug offender confiscation order under Ch.2A of the *Criminal Proceeds Confiscation Act 2002* (Qld) (CPCA) – where, in the *Deadman* appeal, the primary judge had regard to the personal circumstances of the respondent as part of the public interest for the purpose of determining whether to exercise the discretion in s93ZZB(2) CPCA to decline to make a serious drug offender confiscation order – whether the primary judge erred in considering the personal circumstances of the respondent as part of the public interest under s93ZZB(2) CPCA – whether the primary judge had proceeded on an erroneous interpretation of the objects of the Act – where the Act does not define the term ‘public interest’, nor does the Act positively identify or expressly limit the range of matters relevant to the ‘public interest’ when exercising the discretion to refuse to make a confiscation order or exclude property from the ambit of the order – where given that the Act provides no positive indication of the considerations by reference to which the s93ZZB(2) CPCA discretion to refuse to make an order is to be made, the public interest determination is to be construed as importing a discretionary value judgment to be made by reference to *undefined* factual matters – where her Honour was entitled to take into account matters personal to the respondent as well as the objects, scope and purpose of the Act, in determining that making the order was not in the public interest – where the primary judge did not err in considering the personal circumstances of the respondent in exercising her discretion as part of the public interest under s93ZZB(2) CPCA – where, in the *Thompson* appeal, the appellant contended that if the *Deadman* appeal was allowed, and further evidence was admitted, it was not in the public interest to make a serious drug offender confiscation order against the appellant – whether personal circumstances could be considered as part of the public interest for the purpose of whether to exercise the discretion in s93ZZB(2) CPCA to decline to make a serious drug offender confiscation order – where the judge having failed to have regard to the appellant’s personal circumstances, the exercise of the discretion miscarried.

In Appeal No.9368 of 2015 (*Deadman*): Appeal dismissed with costs. In Appeal No.5534 of 2015: Leave to adduce further evidence is granted. Paragraph 4 of the order of the primary

judge made 8 May 2015 is set aside. Pursuant to s93ZZB(2) CPCA, all property of the appellant is excluded from paragraph 3 of the order made by the primary judge on 8 May 2015, except \$5000 money standing to the credit of the appellant in the account as identified in the draft order provided. Costs. Paragraph 5 of the order made by the primary judge on 8 May 2015 be set aside.

Nugent v Stewart (Commissioner of Police) & Anor [2016] QCA 223, 6 September 2016

General Civil Appeal – where the appellant, who was a police officer, was suspected of committing an offence of misconduct in public office under s92A of the *Criminal Code* – where the appellant attended two interviews conducted by the Queensland Police Service – where the first interview was an inquiry into the suspected commission of the offence of misconduct in office – where the appellant refused to answer claiming the privilege against self-incrimination – where the second interview commenced immediately thereafter and was a disciplinary interview – where the appellant continued to refuse to answer, claiming the privilege against self-incrimination – where the appellant was referred to a direction by the Commissioner of Police requiring officers to answer questions put to them in a disciplinary interview and was told that non-compliance with the direction could result in disciplinary action – where the appellant maintained his claim to privilege against self-incrimination – where the appellant sought a declaration in the Supreme Court that the privilege was available to be claimed by him in a disciplinary interview – where that application was dismissed and the primary judge found that a police officer’s right to the privilege against self-incrimination had been impliedly abrogated by the *Police Service Administration Act 1990* (Qld), the *Police Service (Discipline) Regulations 1990* and the *Police Service Administration Regulation 1990* – whether the provisions of the *Police Service Administration Act 1990*, the *Police Service (Discipline) Regulations 1990* and the *Police Service Administration Regulation 1990* impliedly abrogate the privilege against self-incrimination in a QPS disciplinary inquiry – where none of the legislative provisions referred to above state expressly that the privilege against self-incrimination is abrogated – where the legislation makes it plain that the powers reposed in the Commissioner of Police, and exercisable over officers, are there not only to make the service a disciplined and efficient body, but also to make it better able to uphold the law publicly, to preserve and enhance the public confidence in the service, and preserve and enhance the protection of the community’s lives and property

– where an important aspect of that is the fact that when a person becomes an officer in the service, that person gives up various rights that are enjoyed by the ordinary citizen – where as the service performs most of its duties in public, and in ways that often impact on the liberty of citizens, it is essential that the service be, and be seen to be, a fully disciplined body, able to perform with efficiency and probity – where equally essential to that is the need for the service, through the Commissioner, to be able to probe officers as to their conduct affecting questions of discipline, and for answers to be compellable – where that is the evident purpose of the legislative provisions referred to above – where the necessary consequence of that is that, in a disciplinary interview, a police officer’s right to maintain a claim to self-incrimination has been impliedly abrogated – where in *Police Service Board v Morris* (1985) 156 CLR 397, Gibbs CJ referred to the regulation in that case, which had similar effect to that here, in this way: “the character of the regulation, which is primarily designed to secure the obedience to orders rather than to compel the answering of questions, indicates both that the application of the privilege would be inappropriate and that the obligation to obey lawful orders is not intended to be subject to any unexpressed qualification” – where the majority in *Morris* expressed the question for decision as including whether a party is bound to answer any question which might tend to expose him to the risk of a criminal conviction, quite apart from the imposition of a penalty.

Appeal dismissed. Costs.

Watts v Legal Services Commissioner [2016] QCA 224, 6 September 2016

General Civil Appeal – where the appellant admitted to six charges of disbursing trust money without authority – where the appellant admitted the conduct amounted to professional misconduct – where the Queensland Civil and Administrative Tribunal (the tribunal) concluded the appellant was not a fit and proper person to remain in legal practice, removing his name from the roll of practitioners – where the appellant appeals the order made on the basis that: (1) the tribunal did not consider the treating clinical psychologist’s opinion as to his risk of re-offending; and (2) the tribunal did not properly apply the test to determine whether the appellant’s name should be struck from the roll of practitioners – where the treating clinical psychologist’s opinion was that the risk of re-offending was very low – where an order removing a practitioner’s name from the roll of practitioners should only be made when the probability is that the practitioner is permanently unfit to practice – whether the tribunal did not

have regard to a material consideration – where in deciding the contested issue of whether an order removing the appellant’s name from the roll ought to be made, it was incumbent upon the tribunal to have regard to all material considerations – where consistently with the decision in *House v The King* (1936) 55 CLR 499, a failure to take into account a material consideration would bespeak error in exercise of the discretion – where the opinion expressed by the clinical psychologist in his second report and the reasons there stated for it, were a material consideration for the tribunal – where that it had requested the report puts its materiality and the materiality of the reasons for it beyond question – where it is clear that the tribunal did not make express reference to the opinion in its reasons – where only one conclusion can be drawn, that is that the tribunal did not have regard for this material consideration when it determined that the appellant’s name should be removed from the roll of practitioners – where the appellant’s submission that the exercise of the discretion by the tribunal in ordering his name to be removed from the roll was flawed on that account is accepted – whether, if so, in the re-exercise of the discretion under s456 of the *Legal Profession Act 2007* (Qld), a different order should be imposed against the appellant in substitution of the removal order – where with the benefit of the psychologist’s unchallenged opinion that a risk of re-offending is very low and having regard to the factors listed by him as justifying it, including the appellant’s developed

resiliency, his capacity to cope under pressure, and evidence of his functioning effectively and making good decisions, it cannot be concluded that the appellant is now permanently unfit to practice – where this approach is fortified by his subsequent conduct in admitting his guilt, repaying moneys when it was appropriate to do so, and withdrawing from legal practice since 2010 – where given that the appellant is not now engaged in any way in legal practice and has not expressed an intention to be so, there is no utility in an order suspending him from practice – where, however, aspects of his misconduct justify disapprobation by way of public reprimand.

Appeal allowed. Order 1 made by the tribunal on 8 January 2016 be set aside. Order in substitution therefor: the respondent is publicly reprimanded, in the event the respondent applies for a practising certificate, his application be accompanied by a contemporaneous report of a psychiatrist or a psychologist which expresses an opinion as to the risk of the respondent’s engaging in conduct of the kind for which he is publicly reprimanded and if the application is granted, any practising certificate be issued subject to a condition that the respondent practise under the supervision of another certified legal practitioner and that he not have responsibility for operating a trust account. Otherwise confirm the orders of the tribunal made on that date. Respondent to pay the appellant’s costs on the standard basis.

Flori v Queensland Police Service [2016] QCA 239, 20 September 2016

Application for Leave *Queensland Civil and Administrative Tribunal Act* – where a complaint was made to police that undue force had been used in an arrest – where the event was captured on CCTV footage and was published by the media – where the police commenced an investigation into who was responsible for the release of the footage and the applicant was a suspect – where a search warrant was obtained and executed at the applicant’s house – where the police found information personal to the applicant and this information was recorded in an executive briefing note – where an article was published by the media containing this personal information – where the applicant complained that there had been a breach of the *Information Privacy Act 2009* (Qld) (the Act) by the journalist and the Queensland Police Service – where the applicant claimed compensation from the Queensland Civil and Administrative Tribunal (QCAT) – where it was found the respondent breached the Act but that none of the privacy principles in the Act applied to information obtained by the police service in an investigation of this kind due to the exemption cl.3 of sch1 of the Act – where the appeal tribunal of QCAT dismissed an appeal by the applicant, agreeing that the privacy principles did not apply because of the exemption – where the applicant appeals to this court pursuant to s149(2) of *Queensland Civil and Administrative Tribunal Act 2009* (Qld) – whether, on the correct construction



Merry Christmas

Early Career Lawyers Christmas Party

Thursday 8 December 2016 | 6-8pm
Aquila Caffe Bar | Ground Floor, 82 Eagle Street, Brisbane
Member \$35 | Non-member \$45

Purchase your tickets now
qls.com.au/events



PMC Encore

Enhance your
personal brand

Join us for this year's
event exclusively for
QLS PMC Alumni.

Our keynote speaker will
share top tips on how to
accelerate business growth,
with drinks and canapés
after the presentation.

Thursday 1 December
5.15-7pm



To register email
events@qls.com.au
or call 07 3842 5869

of cl.3 sch1 of the Act, the privacy principles apply to the executive briefing note – where the factual findings, firstly, the complaint (one of misconduct) was referred to the Crime and Misconduct Commission (the Commission) pursuant to ss37 and 38 of the *Crime and Misconduct Act 2001* (Qld) (CM Act); secondly, the Commission assessed the complaint and sent it back to the Commissioner of Police; thirdly, the referral to the Commissioner of Police was to deal with the complaint by way of investigation and review, in the meantime sending interim reports to the Commission; fourthly, the Commissioner of Police was to deal with the complaint subject to the Commission's monitoring role, make it plain that the complaint was sent to the Commission and referred back to the Commissioner of Police, to be dealt with by the Commissioner of Police – where by doing so the Commission exercised the powers under s35(1)(b)-(d), or s46(2)(b) of the CM Act – where upon that referral the Commissioner of Police had responsibility to deal with the complaint under s42(5), but under the monitoring role of the Commission: s46(2)(b) and s48(1)(c) – where as *O'Keefe & Ors v Commissioner of the Queensland Police Service* [2016] QCA 205 held, that means the complaint was being investigated by the Commissioner of Police under the CM Act, because the CM Act expressly requires the Commissioner of Police to deal with the complaint by investigating it – where simply expressed, the relevant part of the primary object in s3 of the *Information Privacy Act 2009* (Qld) (Privacy Act) is to provide a right of access to personal information unless that is contrary to the public interest – where an investigation into police officers under part 7 of the *Police Service Administration Act 1990* occurs in the context of the position of police officers within the QPS, and involves considerations such as those referred to in the High Court decision in *Police Service Board v Morris* (1985) 156 CLR 397 – where a service such as the QPS involves a sacrifice of certain rights on the part of individual officers, who thereby become part of a disciplined armed force, able to commit acts that would otherwise be categorised as offences, and committed to the enforcement of the criminal law for the benefit of the community – where those special factors, acknowledged in *Morris*, provide a reason why the Legislature decided that the access that others might enjoy to personal information arising in the course of an investigation into misconduct, is curtailed when it involves officers of the QPS.

Leave to appeal granted. Appeal dismissed. Costs.

Coast and Country Association of Queensland Inc v Smith & Ors [2016] QCA 242, 27 September 2016

General Civil Appeal – where the appellant appeals the decision of the primary judge dismissing two applications for statutory orders of review – where the first application related to a decision of the Land Court concerning applications for a mining lease and

environmental authority – where the second application concerned a subsequent decision of the third respondent to grant an environmental authority for the proposed mine – where the primary judge concluded that a finding of the Land Court that the proposed mine would not produce an impact that would constitute or cause environmental harm was open on the evidence and did not reveal legal error in the member's approach – where the appellant submitted that the primary judge erred by allowing the Land Court when construing certain sections of the *Mineral Resources Act 1989* (Qld) (MR Act) to give zero weight to the environmental harm caused by emissions from the transport and burning of coal after it was removed from the proposed mine – where the second respondent submitted that the appellant wrongly assumed that emissions in connection with the mine would cause environmental harm or an adverse environmental impact – whether under the MR Act the Land Court needed to consider the impact of activities which would not be carried on under the authority of the proposed mining lease – whether under the *Environmental Protection Act 1994* (Qld) the Land Court was obliged to give weight to the environmental harm caused by emissions from the mine – where title to minerals is regulated by different provisions of the same Act – where by force of s8(2) of the same Act, the Crown has the property in coal found in Queensland (except in certain narrowly defined circumstances which need not be considered here) – where in that context, s310 provides that "minerals lawfully mined under the authority of a mining lease cease to be the property of the Crown or person who had property therein and become the property of the holder of the mining lease subject however to the rights to royalty payments under this Act of the Crown or any other person" – where that title to lawfully mined minerals (including coal) is not made subject to any qualification other than the rights of those entitled to royalty payments – where the startling proposition that the MR Act regulates private sales or other dispositions of a mineral owner's otherwise unqualified title to lawfully mined minerals finds no foothold in any statutory provision to which the appellant referred – where in the context of s269(4)(i), s269(4)(j) allows consideration only of impacts caused by "operations to be carried on under the authority of the proposed mining lease" – where the relevant operations in this case are confined to mining coal within the boundaries of the proposed mining lease – where it is outside the Land Court's jurisdiction under s269(4)(j) to consider the impact of activities which would not be carried on under the authority of the proposed mining lease – where any impact of scope 3 emissions is not a relevant consideration under that paragraph – where the member took scope 3 emissions into account in a way which is not amenable to statutory review on either view of the legislation – where the member took into account his finding that the power stations would burn the same amount of coal and produce at least the same amount of scope 3 emissions whether or not the mine

proceeded; if the mine proceeded, it would not increase the amount of global greenhouse gases or any environmental impact resulting from those gases – where as the second respondent submitted, the finding in the Land Court was not that there was “replacement harm”, but there would be the “same or greater harm” if the mine did not proceed than if it did proceed, whether that is a correct analysis is not to the point – where the appellant’s applications for statutory review did not involve a merits review but depended upon the existence of one of the legal errors contended for in the applications for statutory review – where because neither of the MR Act and the *Environmental Protection Act* precluded the member from taking into account the accepted evidence that scope 3 emissions and any consequential effect upon the climate would not be increased by the mine proceeding, there was no legal error such as would justify statutory review – where accepting that the concept of “environmental harm” is of great significance in other aspects of the operation of the *Environmental Planning Act*, the relevant function of the Land Court is not qualified by any requirement about the manner in which it must consider the identified matters or about the weight to be given to any of the relevant considerations – where even upon the premise that the Land Court was obliged to seek to further that object when considering the recommendations to be made to the EPA Minister, the member was not obliged to ignore evidence to the effect that global greenhouse gases would not be increased by the mine proceeding – whether there was legal error in the Land Court’s decision.

Appeal dismissed. Costs.

Criminal appeals

***R v Maher* [2016] QCA 219, Orders delivered ex tempore 25 July 2016; Reasons delivered 2 September 2016**

Sentence Application – where the applicant attended a motocross track to ride his motorcycle and rode it in an area where pedestrians were standing – where the applicant performed a wheel-stand and travelled at high speed over 85 metres – where the applicant collided with the complainant, a nine-year-old boy – where the complainant sustained serious injuries amounting to grievous bodily harm – where the applicant pleaded guilty to the offence of dangerous operation of a vehicle causing grievous bodily harm – where the applicant was sentenced to imprisonment for 15 months, suspended after three months, with an operational period of three years – where the applicant’s driver’s licence was disqualified for a mandated period of six months – where the applicant applies for leave to appeal against sentence on the period of actual imprisonment – where properly characterised, the conduct here, whilst undoubtedly foolish and dangerous, did not warrant the description of “dangerous driving ... of an extreme kind” – where it was that characterisation that led the sentencing judge to impose a period of actual imprisonment – where that error has the result that this court must re-sentence Mr Maher – where he was 19½ when the offence occurred, and had an inconsequential criminal history; good prospects of rehabilitation; good references as to his character and work history; pleaded guilty and thereby cooperated with the administration of justice; and expressed appropriate remorse – where to the extent that his failure to admit fault from the earliest time was criticised, it has to be noted that when the police asked to interview him, he acted on the instructions of his lawyers.

Application granted. Appeal allowed. Set aside the order that suspended the term of

imprisonment after serving three months’ imprisonment. In lieu thereof, order that the term of imprisonment be suspended forthwith. Otherwise confirm the sentence imposed on 15 March 2016.

***R v Rae* [2016] QCA 228, Orders delivered ex tempore 25 May 2016; Reasons delivered 13 September 2016**

Sentence Application – where the applicant pleaded guilty to one count of trafficking methylamphetamine, two counts of supplying cannabis and one count of extortion – where the offending activated a suspended sentence of 12 months’ imprisonment – where the applicant was sentenced to six years’ imprisonment for the trafficking and lesser concurrent terms of imprisonment for the other drug charges and the extortion – where the primary judge ordered the remainder of the suspended sentence also be served concurrently – where a related offender on the drug charges was sentenced to 5½ years’ imprisonment – where the applicant was trading at a lower level than the related offender – where the applicant provided significant cooperation to police and gave evidence against a co-offender and the principal offender on the extortion charge – where the principal offender subsequently pleaded guilty – where the principal offender was sentenced, after the applicant was sentenced, to two years’ imprisonment, wholly suspended – whether the primary judge gave sufficient weight to the applicant’s special cooperation when sentencing – whether there should be parity between the sentences of the applicant, the related offender on the drug charges and the principal offender on the extortion charges – where the applicant pleaded guilty to grossly anti-social conduct which warranted a firm deterrent penalty – where additional relevant factors were that the applicant both pleaded guilty to all the offending at an early stage and assisted the authorities in a most significant way – where he not only gave a full and frank statement to police implicating

EXPERT INDEPENDENT MEDICO-LEGAL ADVICE

- Independent Medical Examinations
- Permanent Impairment Assessments
- Fitness for Work
- Treating Physician’s Report
- Medico-Legal IME Reports
- CTP Claims Reports
- Forensic File Reviews
- TPD Assessments



BRISBANE | SOUTHPORT | MACKAY | TOWNSVILLE

OCCPHYZ.COM.AU

VALUATIONS FOR: LAW PRACTICES & GENERAL BUSINESSES

Valuations & Appraisals for:

Law Firms:

- * Partnership Buy Out or Buy In
- * Mergers or Acquisitions
- * Sale or succession planning
- * Incorporation and Stamp Duty

General Businesses:

- * Divorce Settlements
- * Partnership Disputes
- * Sale or succession planning
- * Partnership Buy Out or Buy In
- * Mergers or Acquisitions
- * Incorporation and Stamp Duty

We are the leading agency in the sale and valuation of Law Practices throughout Qld. We have also sold, valued and appraised hundreds of general businesses over the past 16 years. Call now for a free and confidential consultation.

Call **Peter Davison** now on:
07 3398 8140 or 0405 018 480
www.lawbrokers.com.au
peter@lawbrokers.com.au

Save time recording CPD activities in 2017

Did you know that 600 Queensland practitioners are audited for CPD compliance each year?

Queensland Law Society's online CPD tool simplifies the process of recording your CPD points.

Logon on at qls.com.au to begin.

Logon > Your QLS > Your forms > CPD History > Self Nominated – CPD Points



his co-offender, Ryan, in the extortion charge, he also gave evidence at Ryan's pre-trial hearing as a result of which Ryan ultimately pleaded guilty – where, as here, an offender has given this special cooperation in respect of one offence for which he is to be sentenced but not in respect of other offences, the court should nevertheless take into account that special cooperation in determining the appropriate sentence on all offences, whether imposed concurrently or cumulatively – where the applicant's special cooperation on the extortion charge, the material tendered in his favour at sentence and his pleas of guilty are strong indications that he has reformed and is no longer using illegal drugs – where it is considered prudent that on one count of supplying dangerous drugs he be placed on probation with special conditions that he abstain from the use of illegal drugs and participate in drug testing and substance abuse counselling as required by his probation officer.

Application for leave granted. Appeal allowed. Sentences imposed at first instance set aside and instead numerous concurrent sentences imposed with probation on the usual terms and conditions with additional conditions that he abstain from the use of illegal drugs and participate in drug testing and substance abuse counselling as required by an authorised Corrective Services officer.

R v GAZ [2016] QCA 229, Orders delivered ex tempore 9 September 2016; Reasons delivered 13 September 2016

Appeal against Conviction – where the appellant was convicted of indecent treatment of a child – where the complainant was very young and gave three different accounts of the offending – where the first preliminary complaint to a kindergarten teacher was unprompted and spontaneous – where the subsequent complaint to her mother was unrelated – where both complaints were consistent with the complainant's evidence in cross-examination – where the jury was entitled to reject the appellant's evidence – where the jury was entitled to accept the complainant's account as reliable beyond reasonable doubt – where after reviewing the evidence, despite the complainant's tender age, the delay and her earlier inconsistent statements, the jury was entitled to accept her account in cross-examination of the alleged offence as reliable beyond reasonable doubt – where the complainant gave two recorded statements to police – where the appellant contends the primary judge should have exercised the discretion to exclude the evidence as the complainant's account was unlikely to be reliable – where defence counsel was fettered in challenging the differing accounts in the statements in cross-examination as the complainant could not recall them – where defence counsel did not apply to exclude the evidence at trial and this was a reasonable forensic decision – where the prosecution case was particularised on the basis of the complainant's evidence in cross-examination, which made her statements to police on 4 and 6 August 2014 inconsistent with the prosecution case – where, had evidence of

them not been led, the prosecution case would have been stronger as the jury would have believed, wrongly, that the complainant had first made a complaint to her teacher, a consistent complaint to her mother and then given consistent evidence that the appellant had her touch his penis – where there were obvious sound forensic reasons for defence counsel not to apply to exclude these statements – where the failure to exclude them has not deprived the appellant of a chance of an acquittal or caused a miscarriage of justice – where the complainant's mother made repeated statements in cross-examination that the appellant pleaded with her not to go to police when first made aware of the complainant's allegations – where the mother stated in cross-examination that this was evidence of guilt – where the mother stated in cross-examination the appellant was so aggressive that she was in fear of her life – where the judge was not invited to, and did not, direct the jury to disregard this evidence – whether there was a miscarriage of justice – where it is unfortunate that neither counsel asked the judge to direct the jury on the evidence impugned in this contention – where the complainant's mother not only unexpectedly and gratuitously volunteered that the appellant importuned her not to go to the police, she gave her strong view as to the inference of guilt that she considered should be drawn from it – where the judge should also have directed the jury that people in the appellant's position, confronted by their young daughter with an allegation of sexual abuse, may react in different ways; some may seek to discuss the matter before the police were called in case there was an innocent misunderstanding; as such a reaction could be entirely consistent with innocence, no inference of guilt could be drawn from it – where in the absence of those jury directions, there is a real possibility the jury used this evidence to more comfortably accept the reliability of the very young complainant's evidence – where, in addition, the complainant's mother in her evidence in cross-examination stated that the appellant was very aggressive and that she was so in fear of her life that she relocated – where this unexpected and highly prejudicial response from the mother in cross-examination was regrettable, particularly as it followed on her uninvited and damning interpretation of the appellant's request to speak to her and the complainant before the police were contacted – where it is perhaps surprising that defence counsel did not immediately apply to discharge the jury, or at the very least, clear jury directions to disregard this outburst were required from the judge – where in the absence of such a direction, there is a real possibility that the jury may have used the mother's claim to more comfortably accept the complainant's evidence as reliable.

Appeal allowed. Verdict of guilty set aside. Retrial ordered.

R v JX [2016] QCA 240, Orders delivered ex tempore 21 September 2016; Reasons delivered 23 September 2016

Appeal against Conviction – where the appellant was convicted of two counts of rape of a child – where the complainant maintained her account of the alleged offending and gave a rational explanation for not making a contemporaneous complaint – where the judge directed the jury to carefully scrutinise the appellant's evidence – where the complainant's account was uncontradicted – where the jury were entitled to accept the complainant's account as reliable beyond reasonable doubt – where the complainant gave a rational explanation as to why she did not make a contemporaneous complaint: she was ashamed and did not want anyone to know – where after reviewing the whole of the evidence, it was open to the jury to conclude beyond reasonable doubt that the appellant was guilty of both offences – where a jury note requested "direction" from the judge on "one member of the jury informing of being raped as a younger woman" – where the judge's initial directions to the jury informed them of the importance of impartiality and all jurors indicated they could be impartial – where the note was consistent with the jury complying with the judge's directions – whether the note created an apprehension or suspicion that the jury was not impartial – where, significantly, the note did not state that the juror concerned was acting partially or seeking to improperly influence other jurors – where the note was consistent with the jury conscientiously following the judge's initial directions: to inform the court if any information that was not in evidence was brought into the jury room – where the judge did not give directions to the jury about the note before taking the verdict – where the note indicated uncertainty about the corporate state of mind of the jury – where it was necessary for the judge to remind all jurors of the obligation to be impartial – where this court should follow the line of authority accepted at appellate level in New South Wales (*Alameddine v R* [2012] NSWCCA 63) and South Australia (*R v Lapins* [2007] SASC 281) that, as a general rule, a trial judge should not take a verdict until any requests from the jury for direction have been answered as fully as possible – where the jury note in this case was a clear and courteous request for judicial direction following one jury member telling the others that she was raped as a younger woman – where the note was effectively a question over the applicable law – where as the trial judge correctly apprehended, despite the initial judicial directions as to impartiality, it was necessary to remind all jurors of their obligation to be impartial, to decide this case on the evidence and to enquire if each juror could do so – where a further general enquiry as to whether the jury or any juror had any concerns or questions would also have been prudent – where the jury did not have the benefit of the directions foreshadowed by her Honour before returning their guilty verdicts – whether there was a miscarriage of justice.

Appeal against conviction allowed. Verdicts of guilty are set aside. A retrial is ordered.

Davis v Commissioner of Police [2016] QCA 246, 30 September 2016

Application for Leave s118 DCA (Criminal) – where the applicant was convicted by a magistrate of one count of common assault – where the applicant appealed to the District Court – where the District Court set aside the conviction and remitted the matter to the Magistrates Court for retrial – where the applicant makes an application for leave to appeal pursuant to s118(3) of the *District Court of Queensland Act 1967* (Qld) – whether the District Court erred in the exercise of its discretion in remitting the matter to the Magistrates Court – where s225(1) provides that, "On the hearing of an appeal, the judge may confirm, set aside or vary the appealed order or make any other order in the matter the judge considers just" – where there was no argument that the District Court judge did not have the power to make the orders which he made – where the respondent did not oppose a grant of leave – where the respondent's submission was that this court should send the matter back to the District Court judge so that the District Court judge could make a determination on the substantive appeal – where by the time the prosecutor came to cross-examine Dr Davis it was clear that the main task which would confront the magistrate was making credit findings as between the complainant's mother on the one hand and Dr Davis on the other – where the prosecutor did not challenge Dr Davis' credit at any time during the cross-examination – where the prosecutor then made submissions to the magistrate that Dr Davis was dishonest in his evidence, and the magistrate made findings that Dr Davis' evidence was not "worthy of credit" and that his evidence had been reconstructed, "to suit his own purposes" – where the trial before the magistrate miscarried because he did not advert to this point and made credit findings against Dr Davis when they were not fairly open to him having regard to the conduct of the trial – where the question for this court then was whether the District Court judge ought to have remitted the case for retrial – where the evidence of the child complainant was, so far as the transcript reveals, grossly unreliable – where the mother's evidence was given in an interrupting and argumentative fashion and was self-contradictory on many significant points of fact – where the discretion of the District Court judge as to whether to remit the matter to the magistrate or not did miscarry – where on the evidence and the conduct of the case before the magistrate a verdict of an acquittal ought to have been entered.

Grant leave to appeal. Allow the appeal. Set aside the orders of the District Court. Quash the conviction in the Magistrates Court. Enter a verdict of acquittal on the charge of common assault.

Prepared by Bruce Godfrey, research officer, Queensland Court of Appeal. These notes provide a brief overview of each case and extended summaries can be found at scqlqld.org.au/caselaw/QCA. For detailed information, please consult the reasons for judgment.

Partnership Opportunities

Greg Williams LL.B
Managing Director



Boasting almost three decades in the legal industry, One Practice is a leading recruiter of Partners and practice groups in Brisbane.

We are currently seeking senior practitioners to move into immediate Partner roles with some of Australia's most successful firms.

Particular areas of interest include:

- ✓ Construction
- ✓ Property
- ✓ Litigation
- ✓ Employment
- ✓ Corporate
- ✓ Insurance

Please contact Greg Williams LL.B on (07) 3010 9703. After hours enquiries welcome on 0412 422 859.

Enquiries treated in the strictest of confidence.

ATHERTON LAWYERS

ESTABLISHED 1979
Wills and Estates

LOUISE ATHERTON TEP, ADFS(FP) –
Principal

CHRIS ATHERTON TEP –
Estates Litigation Consultant

ALEX HAMS –
Probate Consultant
former Queensland Probate Registrar

PAUL WILLIAMSON –
Titles Office Consultant
former Senior Titles Office Examiner

We specialise in:

- Wills, Estate Planning, Trusts, Tax and Super
- Estate Administration and Litigation
- Court Procedure, Complex Grants and Requisitions
- Complex Transmissions, Caveats, Easements and CTS

T 07 3720 9777 • M 0413 860 050
chris.atherton@athertonlawyers.com.au
PO Box 4172, St Lucia South, Brisbane Q 4067

www.athertonlawyers.com.au

This month ...

Webinar: Unfair Contract Terms Protection and Small Business

Online | 12.30-1.30pm

From 12 November 2016, the existing unfair contract laws will be extended to protect small businesses. Hear from an experienced legal practitioner about how these changes will affect small businesses as well as organisations contracting with small businesses. This session will provide valuable practical advice to bring you up to speed with the changes, ensuring you are able to better advise your clients.



1 CPD POINT

Succession and Elder Law Residential 2016

Surfers Paradise Marriott Resort & Spa
8.45am-5.05pm Friday, 8.50am-1.45pm Saturday

The two-day Succession and Elder Law Residential 2016 is a multi-streamed event suitable for solicitors who practise or have a special interest in succession or elder law. This year's program includes a keynote presentation by Justice Lindsay of the NSW Supreme Court Equity Division, and an update on legislative reform with respect to elder abuse by Professor Wendy Lacey of the University of South Australia law school.

The residential also includes three concurrent streams to allow you to select topics relevant to your practice. In the succession streams, choose to refresh the basics of will drafting and estate litigation, or attend the advanced stream to focus on more complex issues around tax, trusts, superannuation, probate and family provision applications. The elder law stream will include exploration of later-life relationships, end-of-life decisions and changes to aged care arrangements. At the end of day one, network and unwind with colleagues and peers at the residential gala dinner.



10 CPD POINTS

WED
2
NOV

Practice Management Course – Sole Practitioner and Small Practice Focus

Law Society House, Brisbane
8.30am-4.15pm Thursday, 8.30am-5pm Friday,
8.30am-2pm Saturday

Consisting of comprehensive study texts, three days of face-to-face tailored workshops, and five assessment tasks, the Society's Practice Management Course (PMC) equips aspiring principals with the skills and knowledge required to be successful practice principals.

The Society's PMC features:

- practical learning with experts
- tailored workshops
- interaction, discussion and implementation
- leadership profiling
- superior support.



10 CPD POINTS

THU-SAT
10
TO
12
NOV

FRI-SAT
4
TO
5
NOV

Regional: Toowoomba Intensive

Picnic Point Toowoomba | 8.30am-5pm

The Toowoomba Intensive is the local professional development and networking event not to be missed! Connect with local and intrastate experts and gain insight into the practice areas that matter to you most – property, succession, family, business and civil litigation. Grow your network, build your skills, and earn three core CPD points, all without having to travel far from home.

Full-day and half-day registrations available.



7 CPD POINTS

FRI
11
NOV

Tristan Jepson Memorial Foundation Lecture

Law Society House, Brisbane | 5.30-7.15pm

The Society is proud to present its annual Tristan Jepson Memorial Foundation lecture where we again shine a spotlight on mental health in the legal profession. Join former Attorney-General Linda Lavarch as she shares her personal insights on dealing with mental health challenges.

This is a complimentary event for the Society's members. Spaces are limited so register today to show your support and to network with colleagues.



1 CPD POINT

WED
16
NOV

Can't attend an event?

Purchase the DVD

Look for this icon. Earlybird prices apply.



Introduction to Civil Litigation

Law Society House, Brisbane | 8.30am-4.45pm

Aimed at legal support staff with less than three years' experience, this introductory course will provide you with practical guidance in running a civil litigation file. Topics covered include:

- the civil litigation process and the regulatory framework
- important issues to consider in the conduct of a civil litigation matter
- commencing proceedings
- relevant steps in both undefended and defended litigation
- pre-trial issues
- interlocutory proceedings
- day-of-trial considerations.

This course is based on the nationally accredited diploma-level unit, 'BSBLEG514 Assist with civil procedure, which is offered by the Queensland Law Society as self-paced study.



6.5 CPD POINTS

FRI
18
NOV

Essentials: Testamentary Trusts

Law Society House, Brisbane | 9am-12.30pm

With clients' assets and family circumstances becoming more complex over time, understanding and advising on testamentary trusts in wills is becoming more important. Designed for junior lawyers with up to five years' experience, this Essentials workshop is an ideal opportunity to gain practical knowledge on the fundamental issues relating to the attributes, creation and use of testamentary trusts.



3 CPD POINTS

WED
23
NOV

Conveyancing Conference 2016

Law Society House, Brisbane | 8.25am-5.20pm

Changes to property law and conveyancing practice have continued throughout 2016. The Conveyancing Conference is the ideal opportunity to catch up with the changes, enhance your legal and practical skills and earn 7.5 CPD points. Sessions at this year's conference include:

- foreign Investors: CGT withholding tax and stamp duty
- E-Conveyancing in practice – 12 months on
- risk management issues in conveyancing matters
- reviewing the Off the Plan Disclosure Statement
- complex land titles issues in conveyancing transactions that also deal with trusts or estates or caveats.



7.5 CPD POINTS

FRI
25
NOV

Core CPD Webinar: Costs Fundamentals – Clarity for Clients

Online | 12.30-1.30pm

Your retainer is more than just a way of calculating your bill – it is the document on which engagement with your client is built, and it will define the nature of your interaction. Getting your retainer right is the key to ensuring a positive and mutually beneficial relationship. This webinar will cover the fundamental requirements for disclosure, ongoing disclosure and costs agreements, and show you how to ensure your retainer is more than just a billing tool.



1 CPD POINT

TUE
29
NOV

Earlybird prices and registration available at qls.com.au/events

QLS LEGAL CAREERS EXPO → 17

Wednesday 1 March 2017,
Brisbane Convention and Exhibition Centre

Save the date

Specialist Accreditation Christmas Breakfast with the Chief Justice	2 December 2016
Practice Management Course – Sole and Small Practice Focus	16, 17 and 24 February 2017
Symposium 2017	17-18 March 2017
Practice Management Course – Medium and Large Practice Focus	23-25 March 2017

New QLS members

Queensland Law Society welcomes the following new members, who joined between 8 September and 7 October 2016.

Daniel Aleksic, Turnbull Mylne
Hyojin Bae, Park & Co Lawyers
James Bakker, Hodgson Lawyers
Stephanie Bayley, Gayler Legal
Michelle Beatty, MRB Law Pty Ltd
Katrina Beavon, Sunnybank Solicitors
Meredith Bennett, Ashurst Australia
Christopher Bowden, Wilson/Ryan/Grose
Paul Camilleri, Spranklin McCartney Lawyers
Laurent Corgnet, Albatross Lawyers Pty Ltd
Cameron Cowley, non-practising firm
Joseph Crawfoot, non-practising firm
Sean Curley, Knowmore Legal Service
Rohan Doyle, Herbert Smith Freehills
Amelia Feachnie, Hillhouse Burrough
McKeown Pty Ltd
Emma Fitzgerald, Carter Newell Lawyers
Lyn Gee, Murdoch Lawyers
Stephanie Gregory, Ted Legal Pty Ltd
Maree Griffiths, Bar Association of Queensland
Rebecca Grouios, Girgenti Lawyers

Sarah Hamilton, Piper Alderman
Mignote Hannaford, Quinn & Scattini Lawyers
Emily Hartnell, Clayton Utz
Sally-Ann Hayward, Maurice Blackburn Pty Ltd
Ann-Margaret Herriot, Herriott Law
Alicia Hill, non-practising firm
Elizabeth Houston, Queensland College of Teachers
Clinton Jackson, Cooper Grace Ward
Joseph Kelly, NB Lawyers
Ha Kim, Stephens & Tozer
Anne Kimpton, T. Kimpton
Julian Lane, McInnes Wilson Lawyers
Yi-Chia Lee, Bugden Legal
Penelope Leech, non-practising firm
David Leggett, non-practising firm
Stephanie Levesque, Carter Newell Lawyers
Clare McCormack, South Geldard Lawyers
Clodagh McCowen, Coles Group
Roisin McGuigan, non-practising firm
Sara McRostie, Sparke Helmore

Ashleigh-Janai Metcalfe-Smith,
Dillon Bowers Lawyers
Nga Wun Ng, King & Wood Mallesons
Peter Nugent, Holding Redlich
Kate Papailiou, DLA Piper Australia
Kirsten Pike, DibbsBarker
Jeremy Potgieter, Karsas Tai Lawyers
Matthew Quinlan, Wilson/Ryan/Grose
Drew Riley, Jones Mitchell Lawyers
Emma Sandri, Pacific Law
Joel Shaw, Thomson Geer
Clare Sherman, Queensland College of Teachers
Caroline Snow, Russells
Jizheng Song, Steindls
Kate Tento, B & G Law Pty Ltd
Christopher Volpi, Wilson/Ryan/Grose
Jordan Wunsch, Minter Ellison



UNTANGLE THE MEDICAL EVIDENCE

OBTAIN A STRAIGHTFORWARD MEDICAL OPINION



CALL MEDILAW FOR YOUR
INDEPENDENT MEDICAL ASSESSMENTS

WWW.MEDILAW.COM.AU | 1300 MEDILAW (633 452)





Michele Davis



Amanda Mansini



Nathan MacDonald



Teresa Kearney



Chris Graham



George Dingle



Kelevi Tuicolo



Michael Cole



Steven Morris

Career moves

ACS Legal Solutions

ACS Legal Solutions has welcomed **Michele Davis** as a solicitor in its Logan Village office. Michele, who has practised exclusively in succession and property for the past 10 years, proudly calls herself a succession law nerd and is a member of the Queensland Law Society Succession Law Committee. She is responsible for the Australian Succession and Elder Lawyers LinkedIn group and the newly established Logan & Scenic Rim Law Association.

Australian Mines and Metals Association

Australia's national resource industry employer group, the Australian Mines and Metals Association (AMMA), has appointed experienced workplace relations and employment law practitioner **Amanda Mansini** to the executive role of workplace relations director. The national role oversees strategy and management of AMMA's workplace relations consultants and lawyers servicing clients in all areas of the diverse resource industry. Amanda has previously worked with the Australian Industrial Relations Commission, Freehills and McCullough Robertson. She joined AMMA in 2012 and has performed in a range of practitioner and senior leadership positions, including managing AMMA's workplace relations, legal and migration services in New South Wales, Victoria and Queensland.

Carroll Fairon Solicitors

Carroll Fairon Solicitors has welcomed **Nathan MacDonald** as a senior associate in its family law and criminal law team. Nathan brings a wealth of knowledge from more than 11 years of practice in family and criminal law. He has appeared in all state and federal courts, as well as mediations and conferences.

Cooper Grace Ward

Cooper Grace Ward has welcomed new faces to its property, workplace relations and commercial teams.

Teresa Kearney has joined the firm as a special counsel focusing on property development, with particular expertise in community title, strata and body corporate law. With more than 28 years' experience, Teresa understands complex structuring issues from a commercial perspective and incorporates revenue and tax advice into her practice. She is a former chair of the Queensland Law Society International Law and Relations Committee.

Associate **Chris Graham** has joined the workplace relations and safety team, providing advice and representation to employer clients, including private companies, Queensland Government departments, local governments and government-owned corporations.

The firm also welcomed lawyer **George Dingle** to the commercial workgroup. George provides corporate and commercial transactional support and advice across a broad range of industries.

Grace Lawyers

Kelevi Tuicolo has joined Grace Lawyers as a senior associate in the dispute resolution and recoveries team. Kelevi has more than 10 years' experience in commercial litigation, with a background in strata and body corporate law.

O'Reilly Workplace Law

Michael Cole has joined O'Reilly Workplace Law as an associate. Michael has extensive workplace relations experience, advising and representing employers in all areas of employment, and work health and safety law, including employee entitlements, workplace investigations, redundancy, unfair dismissal, general protections, discrimination, confidential information, post-employment restraints, and work health and safety incidents, investigations, coronial inquests and prosecutions.

Smith Leonard Fahey Lawyers

Smith Leonard Fahey Lawyers has appointed **Steven Morris** as national commercial/property partner, based in the firm's Brisbane office. Steven has some 30 years of commercial and property law experience and aims to grow the firm's new commercial and property section throughout Australia.

Proctor career moves: For inclusion in this section, please email details and a photo to proctor@qls.com.au by the 1st of the month prior to the desired month of publication. This is a complimentary service for all firms, but inclusion is subject to available space.

Marrawah Law Cairns

Cairns firm Marrawah Law (which means 'One Law') began in 2013.

Its founding philosophy was to provide Indigenous people and their entities with culturally appropriate advice and representation on their property and businesses provided by people who knew their experiences first-hand.

What are your firm's goals?

Our aim is simple. We don't set out to give our clients just a voice. We let them speak through us in accordance with their laws and customs on country.

We now find that our unique approach is gaining the attention of the wider public who are not only attracted to our flexible approach to providing legal services but see the social benefits in engaging Queensland's only Supply Nation-certified Indigenous legal practice.

What areas of law does your firm cover?

We focus on native title, mining, commercial, property and family law.



Who leads the team?

Leah Cameron. Leah is a Palawa woman from Tasmania and the principal solicitor of Marrawah Law.

Leah is a regular contributor to the National 'Talk Black' radio program presenting on topical legal issues. She is also a director of Access Community Housing, a not-for-profit social housing provider, and a member of the Queensland Law Society Reconciliation Action Plan Working Group.

The passion Leah has for her work is unwavering and has assisted her in achieving six native title consent determinations to date. Leah's efforts were recognised in 2016 when she was nominated as a finalist in the Cairns Business Women's Club Awards and the Australian Institute of Management's Leadership Awards (North Queensland), and in 2008 when she was awarded the Tasmanian Young Achiever of the Year Award in the category of Trade and Career Achievement.

Her commitment has also led to her being awarded the Centenary Medal of Australia and the Robert Riley Law Scholarship while studying at the University of Tasmania. Her greatest honour was being asked to negotiate and repatriate her ancestors' remains from the British Museum in London on behalf of the Tasmanian Aboriginal community.

What distinguishes your practice from others?

Marrawah Law is an Indigenous legal practice certified by Supply Nation as majority Indigenous-owned, controlled and managed.

We were the second firm in Australia to reach this milestone and remain the only certified Indigenous legal practice in Queensland. We are also incredibly proud that we employ more than 75% Indigenous staff.

Marrawah Law offers advice 'on country' by Indigenous lawyers who know first-hand the issues faced and who can provide advice when the client sees fit.

We are a considered a 'grass roots' firm that is actively involved in our community. The Aboriginal and Torres Strait Islander community know us and our families on a personal level and know that as a firm we are approachable, trustworthy and culturally appropriate in all our dealings.



Above left: Marrawah Law principal solicitor Leah Cameron

Left: consultant Greg Brown, senior solicitor Thomas Cameron, and project manager Moana Biddle

Above: the Marrawah team meeting with clients

And what are the best rewards?

Seeing our clients actively manage their country and create a future they determine for themselves is not only a fundamental shift in their lives but in the lives of those around them. This is the most rewarding aspect of our work – seeing Aboriginal and Torres Strait people being allowed to practice self-determination and in turn, improve their lives and the futures of their children.

Has your practice received any particular recognition?

In the last three years the firm has been recognised in the following ways:

- AIM Leadership Awards North Queensland Region – finalist 2016
- Cairns Business Women's Club Awards – finalist and runner-up 2016
- Nominee Ethnic Business Awards and Tropical North Queensland Innovation Awards

- Supply Nation – Supplier Diversity Awards – Supplier to Supplier Award Finalist 2014
- Bumma Bipperra Media/National Indigenous Radio Service – Regular presenter of topical legal issues on National 'Talk Black', 2013-present
- First and only (at time of writing) Supply Nation-certified Indigenous legal practice based in Queensland 2013

Is there anything you would like to add?

As an Indigenous law firm we have opened and driven a conversation around procurement monies enabling social change by buying from Indigenous businesses.

We encourage business and government to look closely at who they or their organisation procure services from, and ask the questions, 'can they buy from an Indigenous business?' and 'can they improve their procurement systems to support Indigenous business?'

People are now openly having a conversation around the term 'value for money', including the objective of achieving social change. This is directly impacting upon Indigenous businesses, including our business as a leader in this area. The increased amount of work we are receiving means that we and others are looking to employ more Indigenous staff members and are directly leading to the improvement in the quality of lives and futures of Indigenous peoples.

Is there something that makes your practice unique? Or do you have a career story to tell? To be featured in Career spotlight or Practice spotlight, please inquire by email to proctor@qls.com.au.

Legal Costs Resolutions

A bespoke mediation service offering an effective and confidential solution for your costs disputes

 www.dgt.com.au  costing@dgt.com.au
 Sydney: (02) 9977 9200 | Brisbane: (07) 3834 3359 | Canberra: (02) 6248 8077

 DGT Costs
Lawyers

The new mobility – opportunity and threat

A practice idea that might make a big difference



For some 20 years, delegates in the QLS Practice Management Course (PMC) have been asked what is driving them to be owners or co-owners in law firms.

And for 20 years two themes have dominated without exception – money and control.

In large practices money typically is first, but control (or related concept) a close second. For sole practitioners, control absolutely dominates – but without underestimating the importance of money.

Until this year...

In the most recent *smaller practices* PMC, 18 out of a group of 38 said that their driving reason for wanting to own a practice was *flexibility*. That is, as owners, they could unilaterally determine how, where and when they practised – far beyond the kind of flexibility available as employees. So in the space of just one year, flexibility has gone from below the radar to the dominant driver.

Internationally, Australian practices are relatively small – that is, high numbers of firms relative to total practitioners – which seems to be driven by a fierce Australian drive for independence.

All of these 18 delegates were going down the microfirm path – where their *office* was substantially virtual, with no rentals, no support staff, and the assistance of a fair amount of desktop technology, which in the current scheme of things is now quite normal and unremarkable. There are really only two generic forms of business risk – *missing the boat* and *sinking the boat*, and microfirms have substantially eliminated *sinking the boat* risk.

This is not a random observation. At QLS Symposium in March this year, 20 people in a group of about 90 in the practice management session declared that they operated on some variant of a microfirm.

And just think back – a popular discourse in the mid-'90s was whether there was a future for sole practices at all!

Coincidentally, where in recent years the dominant themes in the ALPMA Practice Innovation Awards have been around fixed pricing and technology-enabled solutions, this year saw a wave of entrants focused on employee (and partner) flexibility – including the eventual winner and another finalist.

So the scene is set. And this is just the beginning. Firms wanting to retain their best talent can no longer assume all employees are the same – that is, they all want to be partners and will wait indefinitely for the opportunity.

A growing number are wanting a workable combination of flexibility with reasonable money. They can achieve this in one of three ways – get it from their current employer; get it from an alternative employer; or simply jump ship and be up and running in a very low-cost, independent business in no time at all.

This scenario will only become more pronounced. The choice for all traditional firms is whether they want to deal with it as an opportunity or a threat.

Dr Peter Lynch
p.lynnch@dcilynncon.com.au

 **LexiMed**
Medicolegal Specialists

experienced
expert
medicolegal
consultants

comprehensive
objective
reports

committed to
making a
difference

tel 07 3831 5681 | email contact@leximed.com.au | web www.leximed.com.au

Accountancy



**Fixed Fee Remote
Legal Trust & Office Bookkeeping
Trust Account Auditors
From \$95/wk ex GST
www.legal-bookkeeping.com.au
Ph: 1300 226657
Email: tim@booksonsite.com.au**



Agency work

**XAVIER KELLY & CO
INTELLECTUAL PROPERTY LAWYERS
Tel: 07 3229 5440
Email: ip@xavierklaw.com.au**

For referral of:

Specialist services and advice in **Intellectual Property and Information Technology Law**:

- patent, copyright, trade mark, design and
- confidential information;
- technology contracts: license, transfer, franchise, shareholder & joint venture;
- infringement procedure and practice;
- related rights under Competition and Consumer Act; Passing Off and Unfair Competition;
- IPAUSTRALIA searches, notices, applications & registrations.

**Level 3, 303 Adelaide Street
Brisbane, Qld 4000
GPO Box 2022 Brisbane 4001
www.xavierklaw.com.au**

ATHERTON TABLELANDS LAW

of 13A Herberton Rd, Atherton,
Tel 07 4091 5388 Fax 07 4091 5205.
We accept all types of agency work in the Tablelands district.

CAIRNS - BOTTOMS ENGLISH LAWYERS

of 63 Mulgrave Road, Cairns, PO Box 5196
CMC Cairns, Tel 07 4051 5388 Fax 07 4051 5206. We accept all types of agency work in the Cairns district.

SYDNEY – AGENCY WORK

Webster O'Halloran & Associates
Solicitors, Attorneys & Notaries
Telephone 02 9233 2688
Facsimile 02 9233 3828
DX 504 SYDNEY

Agency work continued

**TWEED COAST AND NORTHERN NSW
O'Reilly & Sochacki Lawyers
(Murwillumbah Lawyers Pty)
(Greg O'Reilly)**

for matters in Northern New South Wales including Conveyancing, Family Law, Personal Injury – Workers' Compensation and Motor Vehicle law.

Accredited Specialists Family Law
We listen and focus on your needs.

FREECALL 1800 811 599

PO Box 84 Murwillumbah NSW 2484
Fax 02 6672 4990 A/H 02 6672 4545
email: enquiries@oslawyers.com.au

NOOSA – AGENCY WORK
SIEMONS LAWYERS,

Noosa Professional Centre,
1 Lanyana Way, Noosa Heads or
PO Box 870, Noosa Heads
phone 07 5474 5777, fax 07 5447 3408,
email info@siemonslawyers.com.au - Agency
work in the Noosa area including conveyancing,
settlements, body corporate searches.

BRISBANE FAMILY LAW –
ROBYN MCKENZIE

Appearances in Family Court and Federal
Circuit Court including Legal Aid matters.
Referrals welcome. Contact Robyn.
GPO Box 472, BRISBANE 4001
Telephone: 3221 5533 Fax: 3839 4649
email: robynmc@powerup.com.au

SYDNEY AGENTS
MCDERMOTT & ASSOCIATES

135 Macquarie Street, Sydney, 2000

- Queensland agents for over 20 years
- We will quote where possible
- Accredited Business Specialists (NSW)
- Accredited Property Specialists (NSW)
- Estates, Elder Law, Reverse Mortgages
- Litigation, mentions and hearings
- Senior Arbitrator and Mediator (Law Society Panels)
- Commercial and Retail Leases
- Franchises, Commercial and Business Law
- Debt Recovery, Notary Public
- Conference Room & Facilities available

Phone John McDermott or Amber Hopkins

On (02) 9247 0800 Fax: (02) 9247 0947

DX 200 SYDNEY

Email: info@mcdermottandassociates.com.au

TOOWOOMBA

Dean Kath Kohler Solicitors

Tel: 07 4698 9600 Fax: 07 4698 9644
enquiries@dkklaw.com.au

ACCEPT all types of agency work including
court appearances in family, civil or criminal
matters and conveyancing settlements.

BRISBANE – AGENCY WORK

BRUCE DULLEY FAMILY LAWYERS

Est. 1973 – Over 40 years'
experience in Family Law

**Brisbane Town Agency Appearances in
Family Court & Federal Circuit Court**

Level 11, 231 North Quay, Brisbane Q 4003
P.O. Box 13062, Brisbane Q 4003

**Ph: (07) 3236 1612 Fax: (07) 3236 2152
Email: bruce@dulleylawyers.com.au**

SUNSHINE COAST SETTLEMENT AGENTS

From Caloundra to Gympie.

Price \$110 (inc GST) plus disbursements

P: (07) 5455 6870

E: reception@swlaw.com.au

RIGBY COOKE LAWYERS

Victorian Agency Referrals

We are a progressive, full service,
commercial law firm based in the heart of
Melbourne's CBD.

Our state-of-the-art offices and meeting
room facilities are available for use by
visiting interstate firms.

Litigation

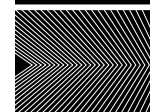
Uncertain of litigation procedures in
Victoria? We act as agents for interstate
practitioners in all Victorian Courts and
Federal Court matters.

Elizabeth T: 03 9321 7864
Guerra-Stolfa EGuerra@rigbycooke.com.au
Rob Oxley T: 03 9321 7818
ROxley@rigbycooke.com.au

Property

Hotels | Multi-lot subdivisions | High
density developments | Sales and
acquisitions

Michael T: 03 9321 7897
Gough MGough@rigbycooke.com.au



www.rigbycooke.com.au
T: 03 9321 7888

NOTE: CLASSIFIED ADVERTISEMENTS

Unless specifically stated, products and services
advertised or otherwise appearing in Proctor are
not endorsed by Queensland Law Society.

Agency work continued



**Adams Wilson
Lawyers**

SYDNEY & GOLD COAST AGENCY WORK

Sydney Office:
Level 14, 100 William St, Sydney
Ph: 02 9358 5822
Fax: 02 9358 5866

Gold Coast Office:
Level 4, 58 Riverwalk Ave, Robina
Ph: 07 5593 0277
Fax: 07 5580 9446

All types of agency work accepted
• CBD Court appearances
• Mentions
• Filing

Quotes provided. Referrals welcome.

Email: info@adamswilson.com.au



GOLD COAST AGENTS –

We accept all types of civil and family law agency work in the Gold Coast/Southport district. Conference rooms and facilities available.

Cnr Hicks and Davenport Streets,
PO Box 2067, Southport, Qld, 4215,
Tel: 07 5591 5099, Fax: 07 5591 5918,
Email: mcl@mclaughlins.com.au.



bdglegal

GOLD COAST AGENCY WORK

Level 15 Corporate Centre One,
2 Corporate Court, Bundall, Q 4217
Tel: 07 5529 1976
Email: info@bdglegal.com.au
Website: www.bdglegal.com.au

We accept all types of civil and criminal agency work, including:

- Southport Court appearances – Magistrates & District Courts
- Filing / Lodgments
- Mediation (Nationally Accredited Mediator)
- Conveyancing Settlements

Estimates provided. Referrals welcome.

Agency work continued

ROCKHAMPTON – DAVID MILLS LAWYERS

Criminal, Traffic & Police matters; Conveyance sales/purchase/lease; Mortgage & General advices; Wills/Probate + more. P 07 4922 6388 dmills@davidmillslawyers.com.au

VICTORIAN AGENCY WORK



**CYNGLER
KAYE LEVY
LAWYERS**

Accepting all types of agency work.
We offer a full range of Personal & Commercial Legal Services.

www.ckllaw.com.au

Ph: 03 9500 1722 | E: ckl@ckllaw.com.au



Penelope Stevens
Family Law Accredited Specialist
PO Box 403
Cannon Hill 4170
0448856730 or enquiries@faradaylaw.com.au

Barrister

**MICHAEL WILSON
BARRISTER**

Advice Advocacy Mediation.

**BUILDING &
CONSTRUCTION/BCIPA**

Admitted to Bar in 2003.
Previously 15 yrs Structural/
Civil Engineer & RPEQ.

**Also Commercial Litigation,
Wills & Estates, P&E & Family Law.**



Inns of Court, Level 15, Brisbane.
(07) 3229 6444 / 0409 122 474
www.15inns.com.au

NOTE: CLASSIFIED ADVERTISEMENTS

Unless specifically stated, products and services advertised or otherwise appearing in Proctor are not endorsed by Queensland Law Society.

Business opportunities

McCarthy Durie Lawyers is interested in talking to any individuals or practices that might be interested in joining MDL.

MDL has a growth strategy which involves increasing our level of specialisation in specific service areas our clients require.

We employ management and practice systems which enable our lawyers to focus on delivering legal solutions and great customer service to clients.

If you are contemplating the next step for your career or your Law Firm please contact Shane McCarthy (CEO) for a confidential discussion regarding opportunities at MDL. Contact is welcome by email shanem@mdl.com.au or phone 07 3370 5100.



Want to be your own Boss?

Achieve freedom through business ownership

**Franchises now available
throughout Queensland**

Opportunities available for qualified lawyers and existing businesses who wish to re-brand or co-brand to leverage off Australia's most recognisable franchise service brand

131 546

For rent or lease

POINT LOOKOUT BEACH RESORT:

Very comfortable fully furnished one bedroom apartment with a children's Loft and 2 daybeds. Ocean views and pool. Linen provided. Whale watch from balcony June to October. Weekend or holiday bookings.
Ph: (07) 3415 3949

www.discoverstradbroke.com.au

POINT LOOKOUT – NTH STRADBROKE

4 bedroom family holiday house.
Great ocean views and easy walking distance to beaches.

Ph: 07- 3870 9694 or 0409 709 694

Casuarina Beach - Modern Beach House

New architect designed holiday beach house available for rent. 4 bedrooms + 3 bathrooms right on the beach and within walking distance of Salt at Kingscliff and Cabarita Beach. Huge private deck facing the ocean with BBQ.

Phone: 0419 707 327

For rent or lease continued

COMMERCIAL OFFICE SPACE

46m² to 138m² – including car spaces for lease

Available at Northpoint, North Quay.

Close proximity to new Law Courts.

Also, for sale a 46m² Commercial Office Unit.

Please direct enquiries to Don on 3008 4434.

Commercial Office Space -

Cleveland CBD office available for lease

Excellent moderate size 127 sq.m of corner office space. Reception, Open plan and

3 offices. Directly above Remax Real Estate

Cleveland. Plenty of light & parking. Only

\$461/week plus outgoings. Ph: 0412 369 840

GREAT BYRON SHIRE GETAWAY

Country style property, very spacious, comfortable and peaceful, running creek, close to golf, beaches, Brunswick Heads 5min, Byron Bay 20 min away.

2 bedrooms, one with ensuite, separate

bathrooms, sleepout with double bed, fireplace, aircon, full kitchen, easy parking.

40 mins Gold Coast, one min from M1.

Ideal for 4 persons and pet friendly.

\$190 per night – 3 night min.

Phone: Jenny 0451 125 537

Email: jwilson_59@bigpond.com

For sale

LAW PRACTICES
FOR SALE

Brisbane South Side \$576k + WIP
Comm, Convey, Lit, Family, W/Estates
Redlands Shire \$115k + WIP

SOLD

Bris' Northern Bayside \$295k + WIP
Commercial, Convey, Wills/ Estates
Sunshine Coast \$130k + WIP

SOLD

Cairns Area - Half Share \$90k + WIP
Conv, Family, W/Estates, Criminal, P.I.
Moreton Shire \$225k + WIP

SOLD

Southern Gold Coast \$425k + WIP
Gross for 2016: \$1,000,000 Nett: \$355,000

Details available at:

www.lawbrokers.com.au

peter@lawbrokers.com.au

Call Peter Davison

07 3398 8140 or 0405 018 480

For sale

FAMILY LAW PRACTICE FOR SALE

SOLE FAMILY LAW PRACTITIONER

CONSIDERING RETIREMENT

SEEKING TO SELL MACKAY PRACTICE

PRACTICE SUITS ANOTHER ICL/SEP REP

CONTACT GREG ON PHONE 07 4944 1866

JIMBOOMBA PRACTICE FOR SALE

This general practice, Est. 1988, handles a wide variety of work. Currently earning ca.

\$71k p.a. PEBIT. It is located in a growth area.

\$69,500 incl WIP. Drive against the traffic!

Contact Dr. Craig Jensen on 07 5546 9033

Job vacancies

maxwell  lancaster
SOLICITORS

Solicitor Warwick

This is an exciting and challenging full time role for a passionate, confident and ambitious Solicitor. You will be given the opportunity to supervise and oversee the general areas of the practice as well as having the opportunity to develop the practice in your chosen area.

- Long established and well respected rural practice;
- Strong practice in conveyancing, property law, commercial law, estate planning and administration and family law; and
- Collegiate office environment and a strong secretarial/admin team.
- Very regular office hours and no minimum billing requirements.
- Offers a true work life balance.
- Future Partnership opportunity.

Please send your CV and covering letter to rebecca@mlsolicitors.com.au

Legal services

A.C.C. TOWN AGENTS est 1989

BODY CORPORATE SEARCHES

From \$80.00

*Settlements: \$15.00 *Stampings: \$12.00

*Registrations: \$12.00

**ALL LEGAL SERVICES & LODGINGS
FOR FAST PROFESSIONAL &
COMPETITIVE RATES CONTACT
SAM BUSSA**

Full Professional Indemnity Insurance

TEL **0414 804080** FAX 07 3353 6933

PO BOX 511, LUTWYCHE, QLD, 4030

Legal services continued

PORTA LAWYERS

Introduces our

Australian Registered Italian Lawyer
Full services in ALL areas of Italian Law

Fabrizio Fiorino

fabrizio@portalawyers.com.au

Phone: (07) 3265 3888



Associate Services
Legal Costing – Queensland

*Providing legal cost solutions -
the competitive alternative*

Short form assessments | Objections
Cost Statements | Itemised Bills
Court Appointed Assessments

Luke Randell LLB, BSc | Solicitor & Court
Appointed Cost Assessor
Admitted 2001

(07) 3256 9270 | 0411 468 523

www.associateservices.com.au

associateservices1@gmail.com

FAMILY REPORTS –
PREPARE YOUR CLIENT

Family Reports are critical to the outcome of parenting matters. Shanna Quinn, barrister and experienced family report writer (25 years) can assist your client prepare for the family report. Shanna reviews relevant documents and meets with the client, in person, by telephone or skype.

Ph: 0413 581 598 shannaq@powerup.com.au

www.shannaquinn.com.au

07 3842 5921
advertising@qls.com.au

NOTE TO PERSONAL INJURY ADVERTISERS

The Queensland Law Society advises that it can not accept any advertisements which appear to be prohibited by the *Personal Injuries Proceedings Act 2002*. All advertisements in Proctor relating to personal injury practices must not include any statements that may reasonably be thought to be intended or likely to encourage or induce a person to make a personal injuries claim, or use the services of a particular practitioner or a named law practice in making a personal injuries claim.

Locum tenens

ROSS McLEOD

Willing to travel anywhere in Qld.
Admitted 30 years with many years as Principal
Ph 0409 772 314
ross@locumlawyerqld.com.au
www.locumlawyerqld.com.au

Greg Clair

Locum available for work throughout Queensland. Highly experienced in personal injuries matters. Available as ad hoc consultant.
Call 3257 0346 or 0415 735 228
E-mail gregclair@bigpond.com

Bruce Sockhill

Experienced Commercial Lawyer
Admitted 1986 available for locums south east Queensland
Many years as principal
Phone: 0425 327 513
Email: ltseasy001@gmail.com

TOM BENCE experienced Solicitor (admitted 1975) available for locums anywhere in Queensland. Many years' experience as principal.
Phone 0407 773 632
Email: tombence@bigpond.com

Mediation

KARL MANNING

LL.B Nationally Accredited Mediator.
Mediation and facilitation services across all areas of law.
Excellent mediation venue and facilities available.
Prepared to travel.
Contact: Karl Manning 07 3181 5745
Email: info@manningconsultants.com.au

COMMERCIAL MEDIATION - EXPERT DETERMINATION - ARBITRATION

Stephen E. Jones
MCIArb (London) Prof. Cert. Arb. (Adel.)
All commercial (e.g. contractual, property, partnership) disputes resolved, quickly and in plain English.
stephen@stephenejones.com
Phone: 0422 018 247

MEDIATION AND FACILITATION

Tom Stodulka

Nationally Accredited Mediator and FDRP
Tom has mediated over 3000 disputes and has 20 years' experience as a mediator and facilitator. He is one of Australia's best known mediators and can make a difference to clients even in the most difficult of situations.
0418 562 586; stodulka@bigpond.com
www.tomstodulka.com

Mediation continued

LYN GALVIN

Nationally Accredited Family Dispute Mediator
Experienced Family Lawyer – Solicitor & Barrister for over 25 years
Accredited Family Law Specialist for 20 years
Experienced Evaluative Mediator for property matters.
Facilitative Mediator for Children's matters
Bookings usually available within 5 days, reasonable rates



- facilitative mediation for children's matters
 - evaluative mediation for property matters
 - 60 (i) certificates
- Contact Lynette on 0488 209 330
Or email lgalvin@qldbar.asn.au

Missing wills

MISSING WILLS

Queensland Law Society holds wills and other documents for clients of former law practices placed in receivership. Enquiries about missing wills and other documents should be directed to Sherry Brown or Glenn Forster at the Society on (07) 3842 5888.

JOHN CHARLES O'NEIL - 11TH FEB 1969.

DIED 5TH SEPTEMBER 2016 AT 10
LEHVILLE STREET, BEENLIEGH QLD 4207.
CONTACT VICTORIA 0416 351 975 OR
PAUL 0438 176 098

Would any person or firm holding or knowing the whereabouts of any original Will of **OLIVE JESSIE SMITH**, late of Ozanam Villa, 20 Matilda Street, Burleigh Heads, who died on 21 June 2016, please contact Reaburn Solicitors of 39 Tallebudgera Creek Road, West Burleigh Qld 4219, or by phone on 0755 862222 or by email to carlab@reaburn.com.au within 14 days of this Notice.

Would any person or firm holding or knowing the whereabouts of any original will of **JOYCE EVELYN BAKHASH** (DOB: 22/02/1935), late of Unit 19, 5 Downs Street, Redcliffe, who died on 30 Sept 2016, please contact Contessa Hall (next of kin) on 0451 669 322 or email conhall@optusnet.com.au

NOTE: CLASSIFIED ADVERTISEMENTS

Unless specifically stated, products and services advertised or otherwise appearing in Proctor are not endorsed by Queensland Law Society.

Missing wills continued

WENDY ANN HARRIS

Would any person or firm knowing the whereabouts of a will or other document purporting to embody the testamentary intentions of Wendy Ann Harris, late of 3/2 Tweed Street, Brunswick Heads, New South Wales, 2483, and who died between 22 August 2016 and 25 August 2016, please contact Greg O'Reilly of O'Reilly & Sochacki Lawyers, PO Box 84, Murwillumbah, New South Wales, 2484, Ph: (02) 6672 2878, Fax: (02) 6672 4990, E: greg@oslawyers.com.au

Please would any person/s and or Firm/s who have any knowledge of the whereabouts of a Will, or who are holding a Will for my late Father please contact me (Julie) asap on 040094003 or jules199@bigpond.com. My Father's birth name was **Brian Gordon Millar**, born in Dundee, Scotland on 11/04/47. He changed his name by Deed Poll to **Rory Angus Andrew Farquharson**. Please check to see if a Will exists under both names. His last known residential address in Australia was in Eagleby Beenleigh Qld. He died in Cambodia on 28/06/16.

Wanted to buy

Purchasing Personal Injuries files

Jonathan C. Whiting and Associates are prepared to purchase your files in the areas of:

- Motor Vehicle Accidents
- WorkCover claims
- Public Liability claims

Contact Jonathan Whiting on
07-3210 0373 or 0411-856798

**hD Lawyers are prepared to purchase your personal injury files in the areas of:**

- * WorkCover Claims
- * Motor Accident Claims
- * Public Liability
- * Medical Negligence

Call us today and learn the difference:
0438 90 55 30

hD Lawyers

Small enough to care, Smart enough to win.

07 3842 5921
advertising@qls.com.au

Victorian bubbles for the Cup

with Matthew Dunn



Corks start popping this month for the race that stops a nation, and what better way to celebrate than with sparkling wine from the state that hosts the great race?

Victoria offers an impressive – if often overlooked – array of great sparkling wine to choose from. While more attention heads south to the cooler climes of Tasmania, sparkling winemaking in Victoria has a long and distinguished pedigree and array of options which would complement any race-day function.

Sparkling wine goes back a long way in Victoria, although in the day it was known as champagne – a reference more to the style of white wine with bubbles than to the place in France long erroneously celebrated as its birthplace.

The Melbourne *Argus* reported as far back as 1875 on a proposal being put to the shareholders of the St Huberts Vineyard Company to make a Victorian champagne, it said:

“The climate of the district of Yering is peculiarly adapted for the production of wine of the strength and qualities required in the manufacture of champagne... There are hills and gentle slopes possessing every

qualification required in a site for vines, and on the estate also exists a hill exactly fitted for the purpose of a cellar for champagne. Mount Mary might be tunnelled from its southern and most precipitous side to any required length; a mile or two of cellar could easily be excavated should the extent of business demand it.”¹

Sadly, the optimistic tunnelling of Mount Mary never came to be. In fact, it was the aptly named Victorian Champagne Company that started the Vic. fizz revolution. The company was established by Melbourne doctor and parliamentarian Louis Lawrence Smith using the talent of French winemaker Auguste D'Argent. The operation, while short-lived, was engaging. In 1882, *The Age* reported on the visit of Russian Admiral Aslanbegoff and a number of his officers to the cellars:

“There are now in the cellars about 100,000 bottles of champagne, besides a large quantity of wine in wood. The whole process was explained by Mr L.L. Smith, the originator of the enterprise, to the Admiral and his officers in French. After having been shown over the cellars, the party were invited to partake of a cold collation... Sir B. O'Loghlen, in proposing success to the Victorian Champagne Company, said that this industry was not only new to this colony, but it was new to any part of the British dominions.”²

While the Victorian Champagne Company folded in 1884, Victorian sparkling rosé to new heights out in the west of the state. Joseph Best established a vineyard in the Great Western region in the 1860s and had out-of-work goldminers dig a series of tunnels through the soft rock to form drives perfect for maturing champagne. It wasn't until the vineyard changed hands that the new owner, Hans Irvine, began making sparkling wines in 1890 with winemaker and Frenchman Charles Pierlot from Rheims. The drives provided the perfect maturing site and Great Western reigned as champion champagne into the 1960s.

The next great development in Victorian sparkling took place in 1986 when French Champagne House Moët & Chandon bought Green Point, an old dairy farm in Victoria's Yarra Valley and founded Chandon. The return of the French signalled a renaissance of sparkling wine production in Victoria and today the options are broad and the bubbles fine.

Notes

¹ *The Argus*, 14 January 1875, page 6, sourced at trove.nla.gov.au.

² *The Age*, 6 February 1882, page 3, sourced at trove.nla.gov.au.

The tasting



The first tasting was the **Yarra Burn Victoria Premium Cuvée Brut NV**, which was lightest yellow with cascades of small tight bead. The nose was lime citrus and steely granite. The palate was quite refined with pronounced lime citrus cutting through a bank of quartz. The flavour intense and quick, delightful and was refreshing for a hot day.



The **Chandon Methode Traditionelle Brut NV** was straw with a persistent medium-sized bead. The nose was a floral hedge of summer jasmine and mock orange. The palate showed some lemon pip tartness matched with a sweet undercurrent that was balanced out finely. The mid-palate citrus carried on the zing.



The last tasting was the **Blue Pyrenees Estate Midnight Cuvée 2012** which was almost green yellow and had the hardest working diligent bead since *The Commitments*. The nose was at another level of sophistication showing toast and fruity substructure. The palate was resplendent with citrus perfectly balanced with the complexity of nuts, brioche and mature fruit. There was a density of flavour that persisted long into the mid palate and beyond.

Verdict: First by two lengths – the stewards all agreed that the clear winner on the day was the Blue Pyrenees.

Matthew Dunn is Queensland Law Society government relations principal advisor.

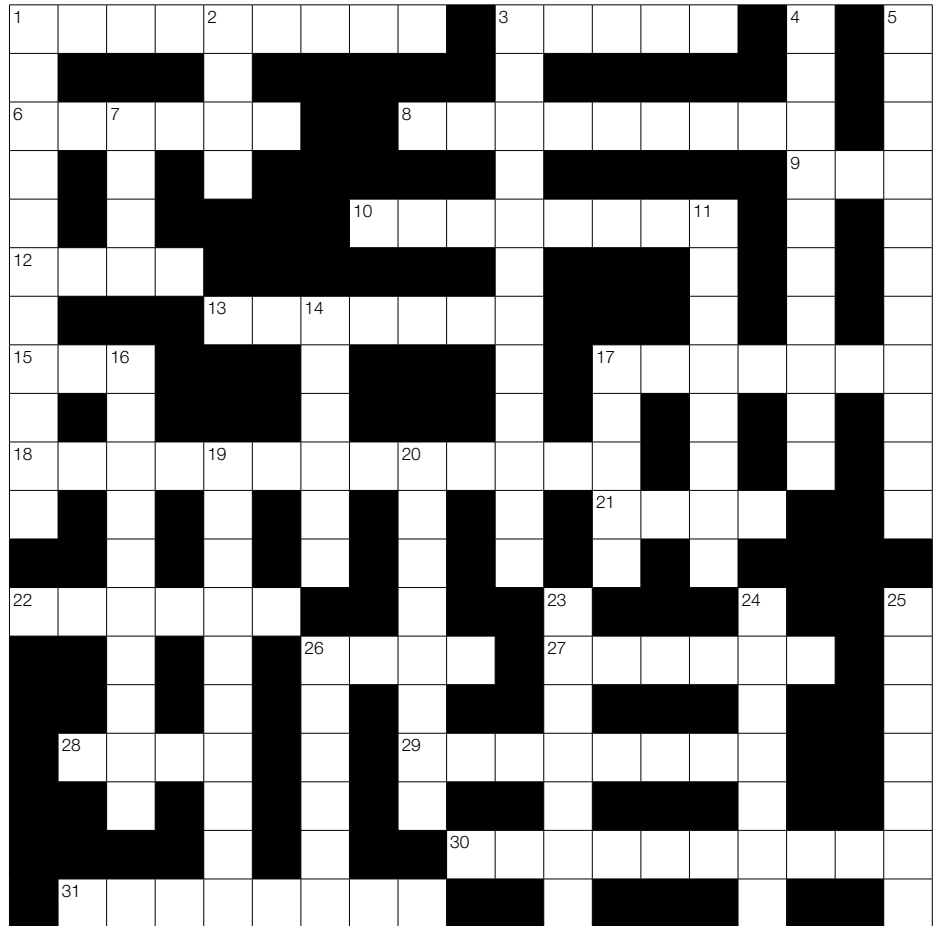
Mould's maze

By John-Paul Mould, barrister
jpmould.com.au



Across

- 1 Payment by a company of dividends to shareholders to give higher franking credits to them because the company tax rate is higher than that applicable to superannuation funds and low-income earners, but lower than that of individual taxpayers at the top marginal scale. (9)
- 3 But for or without which, *sine qua non*. (Latin) (5)
- 6 The rule in 's case provides that although part payment of a debt will not discharge it, if something else of value accompanies that payment, the law may consider it sufficient consideration. (6)
- 8 Using two words when one will do, for example, cease and desist. (9)
- 9 Statute mandating a pre-trial conference in a slip and fall case, ... Act. (Abbr.) (3)
- 10 The grey zone in which interpretation is required in order to apply a legal norm because there is no obvious bright-line rule to apply, of doubt. (8)
- 12 Industrial action in which work is deliberately delayed, go-.... . (4)
- 13 Type of answer given by a mendacious witness. (7)
- 15 Operating a motor vehicle with a blood alcohol concentration exceeding 0.05%. (Abbr.) (3)
- 17 Carrier's document setting out the details of carriage of a consignment of goods by air, rail, road or sea. (7)
- 18 The "..... expedient" contained in Chapter III of the Constitution provided for the vesting of federal jurisdiction in state courts: *Kable v DPP*. (13)
- 21 Informal credit contract, on (Jargon) (4)
- 22 Counsel's opinion. (6)
- 26 Formal rejection. (4)
- 27 Estoppel that applies when a matter could have been, but was not brought, in a previous case. (6)
- 28 *Donoghue v Stevenson* involved a snail in a ginger (4)
- 29 Tort for recovery of personal property which does not allow for compensation for the value of the property. (Archaic) (8)
- 30 *Wilkinson v Downton* (nervous shock intentionally inflicted from a practical joke) is an example of an tort. (10)
- 31 A registered Queensland costs assessor who is admitted as a barrister, Stephen (8)



Down

- 1 Bond required of an appellant who wishes to stay an original judgment. (11)
- 2 Formally state, allege or proclaim. (4)
- 3 Reprehensible and outrageous, used commonly when exemplary damages are awarded. (12)
- 4 Concealment of an offence especially on the part of a public official, (10)
- 5 Liability. (11)
- 7 Plea of no contest (US only), *contendere*. (Latin) (4)
- 11 The condition of a property the ownership of which is claimed but not vested, in (8)
- 14 Founder of legal positivism and the command theory of law, John (6)
- 16 Within the power or authority of a person, official or body. (Latin, two words) (5, 5)
- 17 Destruction by a life tenant inconsistent with the fruitful use of the land which may be restrained, equitable (5)
- 19 Hot-tubbing involves expert evidence. (10)
- 20 Overrule. (8)
- 23 A bona fide purchaser of a legal estate for value without notice of a prior equitable interest is often referred to as Equity's (7)
- 24 A covenant enforceable by and between successors of land title is said to be with the land. (7)
- 25 Person summonsed to court to defend their title. (Archaic) (7)
- 26 Purchaser. (6)

Solution on page 64

Did you want wheels with that?

Another speed bump on life's highway

by Shane Budden



Regular readers who have reliable memories – however small a number that may be – might recall that last column (at least I think it was last column; my memory is up there with current affairs television shows for reliability) I was talking about getting a new car, and that I would keep you updated on progress.

However, I can't do that because progress has been quantitatively non-scalable (that is management-speak for 'zero').

To be fair, this isn't really my fault – as long as by 'fair' you mean 'completely inaccurate' – because a large part of the reason that we have made no progress is that I have not done anything towards the purchase of a new car, including suggesting it to my wife. The reason is that, if I do suggest it, she will not only like the idea but begin to put the plan into operation, looking up cars on the internet and scheduling visits to car yards (my wife is very organised, and if at any given time I am where I should be, when I should be and wearing pants, it is probably due to her; everyone should be thankful for her efforts in this regard, especially in the pants area).

It isn't that I do not want to buy a car, it's just that I don't want to deal with car salespeople – and not just because I have been making fun of them in this column for years, although that would be more of a concern if I thought that any of them could read. The real problem is that they have all been to salesperson school, learning mind-bending sales techniques that do not actually work, but can in fact annoy you so much that you will buy anything, even the car you drove there, just to get away.

The last time we bought a car, I went about it the same way the United States Special Forces went about finding Bin Laden – by conducting what seemed like years of covert research. I jogged past car yards casting furtive glimpses at various vehicles and attempting to read the price tags on the cars, and perhaps what model they were; thankfully I jog so slowly that I could have read *War and Peace* had it been printed on the windscreen of the vehicle in question.

Actually, that would have done me more good, because if there is one certainty in purchasing a car, it is that the price on the windscreen will bear no resemblance, in either amount or the currency that the car dealer will accept, to what you actually pay for the vehicle.

The price is more like the fitness system ads that always pop up on the computer (at least they do on my computer; perhaps they worked out that someone who orders a lot of wine online might need a bit of exercise) promising to eliminate belly fat in three easy steps, two of which turn out to be purchasing expensive gym equipment and hiring a personal trainer ("oh wait, you wanted a car with *wheels* as well? That's another \$5000; will you also want tyres with that?").

Anyway, I continued car purchase by stealth, attempting to inspect cars without drawing the attention of the salespeople – crouching low, sneaking around peering in the windows, looking a bit like a kid playing hide and seek, and unfortunately a lot like someone planning to steal a car. Long story short, I do not recommend this method of car purchase.

Eventually my wife convinced me that we should look at the cars properly, test-drive them, check if they had airbags, that sort of thing – and we picked out the car we wanted.

As anyone who has bought a car knows, we then ran smack-dab into the golden rule of car sales – the car you want, even if it is a bog-standard white Commodore, does not exist anywhere in this temporal phase of the universe. The conversation went like this:

Salesperson: So, what colour would you like?

My wife: Blue.

Salesperson: That model doesn't come in blue.

My wife (pointing at brochure): There is a picture of a blue one right there.

Salesperson: That isn't a real picture.

Me: Do you mean it is a picture of something that isn't real, or the picture itself is fake?

Salesperson (somewhat confused): These aren't the droids I'm looking for...

In the end, we got a silver car, because it was the only one that could be delivered within three weeks, in spite of the fact that there appeared to be dozens of similar cars in the car yard itself; car yards, I suspect, are largely holograms and the cars themselves generally aren't put together until you pay a deposit.

Eventually I expect we will get a new car, hopefully by winning one, but if we have to go to the car yard I hope they have the colour we want; I hope my wife does most of the talking, and most of all I hope the salespeople don't read *Proctor*.



Contacts

Queensland Law Society

1300 367 757

Ethics centre

07 3842 5843

LawCare

1800 177 743

Lexon

07 3007 1266

Room bookings

07 3842 5962

Crossword solution from page 62

Across: 1 Streaming, 3 Causa, 6 Pinnel, 8 Hendiadys, 9 PIP, 10 Penumbra, 12 Slow, 13 Evasive, 15 DUI, 17 Waybill, 18 Autochthonous, 21 Tick, 22 Advice, 26 Veto, 27 Anshun, 28 Beer, 29 Replevin, 30 Innominate, 31 Hartwell.

Down: 1 Supersedeas, 2 Aver, 3 Contumelious, 4 Misprision, 5 Culpability, 7 Nolo, 11 Abeyance, 14 Austin, 16 Intra vires, 17 Waste, 19 Concurrent, 20 Overturn, 23 Darling, 24 Running, 25 Vouchee, 26 Vendee.

DLA presidents

District Law Associations (DLAs) are essential to regional development of the legal profession. Please contact your relevant DLA President with any queries you have or for information on local activities and how you can help raise the profile of the profession and build your business.

Bundaberg Law Association **Mr Rian Dwyer**
Fisher Dore Lawyers, Suite 2, Level 2/2 Barolin Street
p 07 4151 5905 f 07 4151 5860 rian@fisherdore.com.au

Central Queensland Law Association **Mr Josh Fox**
Foxlaw, PO Box 1276 Rockhampton 4700
p 07 4927 8374 josh@foxlaw.com.au

Downs & South-West Law Association **Ms Catherine Cheek**
Clewett Lawyers
DLA address: PO Box 924 Toowoomba Qld 4350
p 07 4639 0357 ccheek@clewett.com.au

Far North Queensland Law Association **Mr Spencer Browne**
Wuchopperen Health
13 Moignard Street Manooora Qld 4870
p 07 4080 1155 sbrowne@wuchopperen.com

Fraser Coast Law Association **Mr John Milburn**
Milburns Law, PO Box 5555 Hervey Bay Qld 4655
p 07 4125 6333 f 07 4125 2577 johnmilburn@milburns.com.au

Gladstone Law Association **Ms Bernadette Le Grand**
Mediation Plus
PO Box 5505 Gladstone Qld 4680
m 0407 129 611 blegrand@mediationplus.com.au

Gold Coast Law Association **Ms Anna Morgan**
Maurice Blackburn Lawyers,
Lvl 3, 35-39 Scarborough Street Southport Qld 4215
p 07 5561 1300 f 07 5571 2733 AMorgan@mauriceblackburn.com.au

Gympie Law Association **Ms Kate Roberts**
Law Essentials, PO Box 1433 Gympie Qld 4570
p 07 5480 5666 f 07 5480 5677 kate@lawessentials.net.au

Ipswich & District Law Association **Mr Justin Thomas**
Fallu McMillan Lawyers, PO Box 30 Ipswich Qld 4305
p 07 3281 4999 f 07 3281 1626 justin@daleandfallu.com.au

Logan and Scenic Rim Law Association **Ms Michele Davis**
p 0407 052 097 md@micheledavis.com.au

Mackay District Law Association **Ms Danielle Fitzgerald**
Macrossan and Amiet Solicitors,
55 Gordon Street, Mackay 4740
p 07 4944 2000 dfitzgerald@macarniet.com.au

Moreton Bay Law Association **Ms Hayley Cunningham**
Family Law Group Solicitors,
PO Box 1124 Morayfield Qld 4506
p 07 5499 2900 f 07 5495 4483 hayley@familylawgroup.com.au

North Brisbane Lawyers' Association **Mr Michael Coe**
Michael Coe, PO Box 3255 Stafford DC Qld 4053
p 07 3857 8682 f 07 3857 7076 mcoe@tpg.com.au

North Queensland Law Association **Ms Samantha Cohen**
Cohen Legal, PO Box 959 Townsville Qld 4810
p 07 4721 0264 sam.cohen@cohenlegal.com.au

North West Law Association **Ms Jennifer Jones**
LA Evans Solicitor, PO Box 311 Mount Isa Qld 4825
p 07 4743 2866 f 07 4743 2076 jones@laevans.com.au

South Burnett Law Association **Ms Caroline Cavanagh**
Kelly & Frecklington Solicitors
44 King Street Kingaroy Qld 4610
p 07 4162 2599 f 07 4162 4472 caroline@kfsolicitors.com.au

Sunshine Coast Law Association **Mr Trent Wakerley**
Kruger Law, PO Box 1032 Maroochydore Qld 4558
p 07 5443 9600 f 07 5443 8381 trent@krugerlaw.com.au

Southern District Law Association **Mr Bryan Mitchell**
Mitchells Solicitors & Business Advisors,
PO Box 95 Moorooka Qld 4105
p 07 3373 3633 f 07 3426 5151 btmitchell@mitchellsol.com.au

Townsville District Law Association **Ms Samantha Cohen**
Cohen Legal, PO Box 959 Townsville Qld 4810
p 07 4721 0264 sam.cohen@cohenlegal.com.au

Interest rates

For up-to-date information and more historical rates see the QLS website qls.com.au under 'For the Profession' and 'Resources for Practitioners'

Rate	Effective	Rate %
Standard default contract rate	3 October 2016	9.25
Family Court – Interest on money ordered to be paid other than maintenance of a periodic sum for half year	1 July 2016 to 31 December 2016	7.75
Federal Court – Interest on judgment debt for half year	1 July 2016 to 31 December 2016	7.75
Supreme, District and Magistrates Courts – Interest on default judgments before a registrar	1 July 2016 to 31 December 2016	5.75
Supreme, District and Magistrates Courts – Interest on money order (rate for debts prior to judgment at the court's discretion)	1 July 2016 to 31 December 2016	7.75
Court suitors rate for quarter year	To 30 Dec. 2016	0.73
Cash rate target	from 3 August 2016	1.5
Unpaid legal costs – maximum prescribed interest rate	from 1 Jan 2016	8.00

Historical standard default contract rate %

Oct 2015	Nov 2015	Dec 2015	Feb 2016	Mar 2016	Apr 2016	May 2016	June 2016	July 2016	Aug 2016	Sep 2016	Oct 2016
9.45	9.45	9.45	9.45	9.45/9.55	9.55	9.55/9.60	9.60	9.35	9.35	9.35	9.25

NB: A law practice must ensure it is entitled to charge interest on outstanding legal costs and if such interest is to be calculated by reference to the Cash Rate Target, must ensure it ascertains the relevant Cash Rate Target applicable to the particular case in question. See qls.com.au > Knowledge centre > Practising resources > Interest rates any changes in rates since publication. See the Reserve Bank website – www.rba.gov.au – for historical rates.

QLS Senior Counsellors

Senior Counsellors are available to provide confidential advice to Queensland Law Society members on any professional or ethical problem. They may act for a solicitor in any subsequent proceedings and are available to give career advice to junior practitioners.

Brisbane 4000	James Byrne	07 3001 2999
	Suzanne Cleary	07 3259 7000
	Glen Cranney	07 3361 0222
	Peter Eardley	07 3238 8700
	Peter Jolly	07 3231 8888
	Peter Kenny	07 3231 8888
	Bill Loughnan	07 3231 8888
	Dr Jeff Mann	0434 603 422
	Justin McDonnell	07 3244 8000
	Wendy Miller	07 3837 5500
	Thomas Nulty	07 3246 4000
	Terence O'Gorman AM	07 3034 0000
	Ross Perrett	07 3292 7000
	Bill Purcell	07 3198 4820
	Elizabeth Shearer	07 3236 3233
	Dr Matthew Tumour	07 3837 3600
	Gregory Vickery AO	07 3414 2888
	Phillip Ware	07 3228 4333
Redcliffe 4020	Gary Hutchinson	07 3284 9433
Toowoomba 4066	Martin Conroy	07 3371 2666
South Brisbane 4101	George Fox	07 3160 7779
Mount Gravatt 4122	John Nagel	07 3349 9311
Southport 4215	Warwick Jones	07 5591 5333
	Ross Lee	07 5518 7777
	Andrew Moloney	07 5532 0066
	Bill Potts	07 5532 3133

Toowoomba 4350	Stephen Rees	07 4632 8484
	Thomas Sullivan	07 4632 9822
	Kathryn Walker	07 4632 7555
Chinchilla 4413	Michele Sheehan	07 4662 8066
Caboolture 4510	Kurt Fowler	07 5499 3344
Sunshine Coast 4558	Pippa Colman	07 5458 9000
Maroochydore 4558	Michael Beirne	07 5479 1500
	Glenn Ferguson	07 5443 6600
Nambour 4560	Mark Bray	07 5441 1400
Bundaberg 4670	Anthony Ryan	07 4132 8900
Gladstone 4680	Bernadette Le Grand	0407129611
	Chris Trevor	07 4972 8766
Rockhampton 4700	Vicki Jackson	07 4936 9100
	Paula Phelan	07 4927 6333
Mackay 4740	John Taylor	07 4957 2944
Cannonvale 4802	John Ryan	07 4948 7000
Townsville 4810	Chris Bowrey	07 4760 0100
	Peter Elliott	07 4772 3655
	Lucia Taylor	07 4721 3499
Cairns 4870	Russell Beer	07 4030 0600
	Anne English	07 4091 5388
	Jim Reaston	07 4031 1044
	Garth Smith	07 4051 5611
Marreeba 4880	Peter Apel	07 4092 2522

Focus on your future

Take the next step in your legal career
and register for one of our upcoming
Practice Management Courses

10-12 November 2016

With a sole practitioner
and small practice focus



16-17 & 24 February 2017

With a sole practitioner
and small practice focus



23-25 March 2017

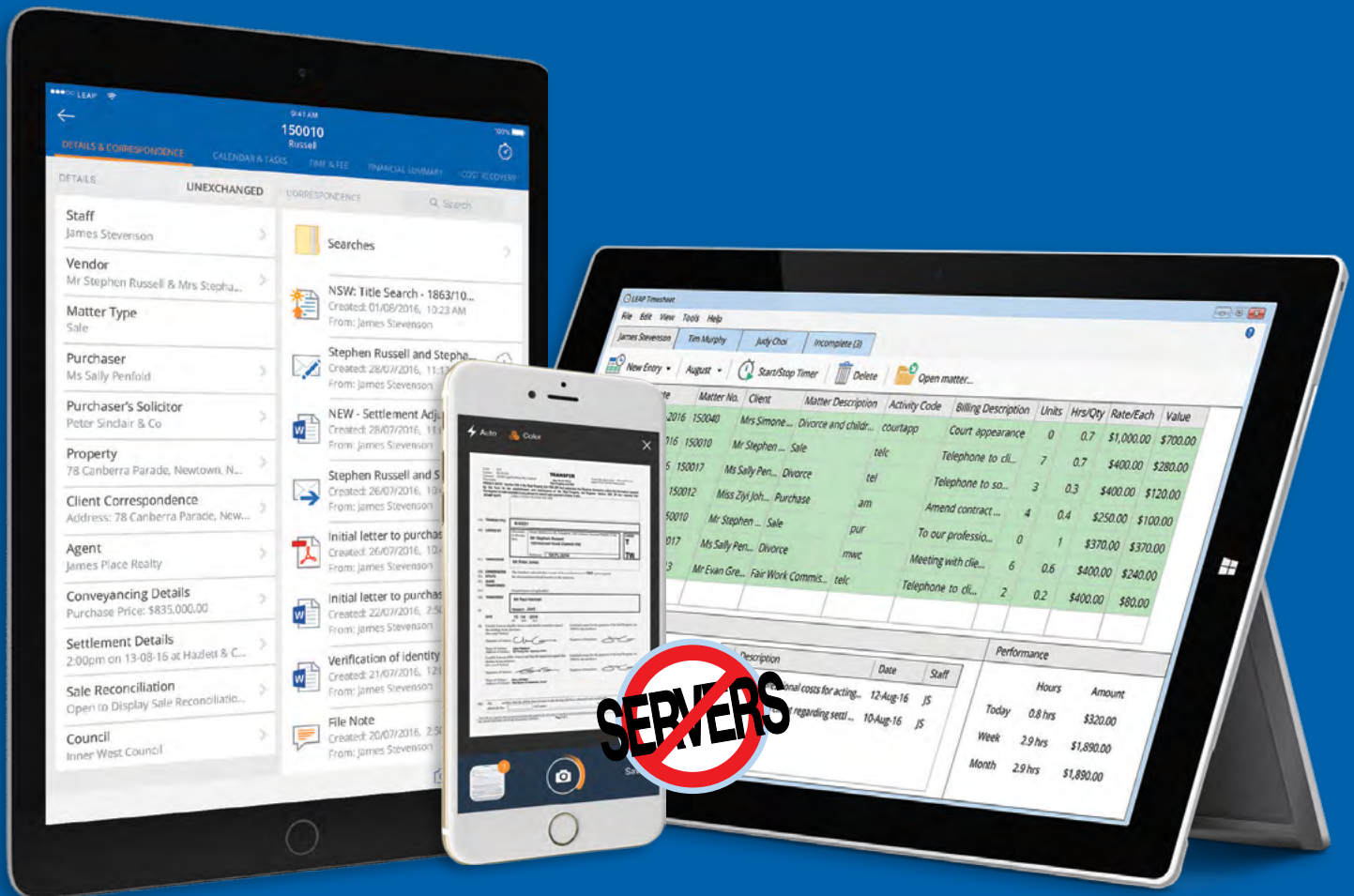
With a medium and large practice focus



Register now qls.com.au/pmc



A Cloud Solution Will Save You Money



- ☒ Work anywhere
- ☒ Automatic backups
- ☒ Secure data storage
- ☒ Reduced IT costs

\$239 per user per month*

*Price excludes GST

Book an obligation free demonstration today!

1300 886 243 | sales@leap.com.au | leap.com.au/cloud