

PROCTOR



Queensland
Law Society

February 2017 – Vol.37 No.1

What, who and why – QLS 2017 president Christine Smyth
Sanity in the Magistrates Court | Reform proposals target
elder abuse | A staged approach to elder financial abuse



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The view from the shore

Towards good law, good lawyers and good leadership



Why, you may ask, am I sitting on a rock by the sea on the cover of this month's *Proctor*?

Well, not every picture is worth a thousand words, but this one may come close. Firstly, the location – close to home – immediately identifies me as a Gold Coaster. Like our 2016 president, Bill Potts, I can sometimes be a little 'loud and proud' about our coastal heritage.

It's a great place to live, and a great place to practise. With the largest concentration of QLS members outside of Brisbane, we have a high level of respect amongst our Gold Coast practitioners, and plenty of collegiality.

Surfers Paradise in the background. Today Surfers, and indeed all of the Gold Coast, is more cosmopolitan and more commercially-focused than ever before. As colourful as our history might be, the Gold Coast is a 'go-ahead' place where there's a lot happening, not the least of which is next year's Commonwealth Games.

With diverse mix of people converging from around the world, it has a progressive nature, an intriguing contrast to the quite 'mature' population which forms a significant part of my succession law practice.

In terms of symbolism, the choppy ocean waters behind me represent the turbulent times our profession is experiencing. We all know there's a lot going on that creates significant change for many of us, and one of my key concerns is to ensure that your Society is here to advocate for you, educate and inform our members about these changes, and also provide the assistance we all need to navigate our way through.

I toyed with the suggestion that we photoshop some shark fins into the water to represent the threats that our profession face. However, I prefer to focus on the positive, and much of the upheaval we face is bringing positive change to the profession.

And what about that substantial rock in the foreground? I like to think that our Society provides a solid and dependable base – a 'rock' – for its members. We have been here a long time (our origins go as far back as 1873); we have grown from strong foundations to be a robust and capable organisation.

We are the peak professional body for the legal profession in Queensland. Our sights are set on the wellbeing of our members, with an eye firmly focused on the future, an attitude evidenced, for example, in the 'Framing the Future' theme to next month's QLS Symposium 2017.

And what about what I am wearing? I'm dressed in blue and white, colours representative of our society. There is much to achieve, and this best done working together, supporting and enhancing our profession, aware of the turbulence but with eye on the positive.

I look forward to meeting as many members as possible in the year ahead.

In my welcome message, sent to members last month, I noted that solicitors are a cornerstone of our society, upholding and guiding our diverse clients through a complex maze of laws and factual challenges. We are the glue of the rule of law, holding fast and enabling our increasingly accelerated society to function well and fairly for all citizens.

In serving you and our profession, I intend to embody the values and integrity solicitors bring to the role of trusted advisors. Thank you for supporting and encouraging me in this role. I am humbled and motivated by your support, knowing that you are among the great lawyers who make up a noble profession.

I see my role as being a balanced and passionate advocate on behalf of Queensland solicitors with the support of the dedicated QLS team. Together we will champion good law, good lawyers and good leadership.

I am optimistic for the future and enthusiastic, safe in the knowledge our profession has the skills and talent to embrace these challenges, and to evolve and thrive. I am here to serve your interests, confront these challenges and nurture QLS as the genuine membership organisation for all Queensland solicitors. This is regardless of area of practice, stage of career, or region.

Over the years I have served on Council, I have worked with immediate past president Bill Potts to ensure QLS fulfills its core objectives of representing members, defending the rule of law and the independence and integrity of the court system.

My objectives are advancing our members' interests through advocacy, policy, professional standards and innovation, while respecting and promoting tradition, diversity and inclusivity.

I am excited about the year ahead – in particular working with you, our valued members, to meet the challenges that confront us and to celebrate and champion our contribution to society and your achievements.

I welcome your feedback. To have your voice in the discussion please follow me via Twitter or LinkedIn. You can also learn a little more about me and my aims in the feature profile on page 22.

Christine Smyth
Queensland Law Society president

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Hurry! Time is running out

There are less than 2 weeks until our earlybird offer expires for Symposium 2017. Register today to make a saving on your ticket.

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Full steam ahead for 2017

New and revitalised events to benefit members



We are just one month into 2017 and Queensland Law Society is already at full speed planning the production of events and services for our members.

Our opening event, the New Year Profession Drinks on 2 February, promises to be a memorable night as we formally welcome 2017 president Christine Smyth. Christine needs little introduction, as she has been heavily involved with the Society and its activities for several years, and is already well known by the profession.

Those who may not have been introduced to Christine previously should read the interview on page 22 to understand her vision for this role.

On 18 February we celebrate our profession's 'night of nights', the 2017 Legal Profession Dinner, which will be held at Brisbane's Royal International Convention Centre. I am especially looking forward to hearing our president outline her vision for the profession, the first presentations in our revitalised awards program and hearing our guest speaker, presenter/writer and UNICEF ambassador Tara Moss, whose words will undoubtedly leave us with something to think about.

I hope you can make it on the night to support your colleagues as they line up for the four major awards and share time with our vibrant QLS legal community.

The QLS Innovation in Law award will go to a firm or individual solicitor who has achieved excellence in the development and/or application of technology. Given the many changes that have come upon us, chiefly due to technological innovation, it is entirely appropriate that we recognise those ensuring that technological progress is a help rather than a hindrance.

The Community Legal Centre (CLC) Member of the Year award will recognise a solicitor who has been working or volunteering in a Queensland CLC and has made outstanding

contributions to the community by influencing community justice programs or initiatives which benefit the local community.

The Honorary Life Member award, determined at the discretion of QLS Council, will honour a member who has been practising for at least 20 years and has made an outstanding contribution to the legal profession.

The QLS President's Medal has been a key fixture of our awards program since 2013 and recognises a person with an abiding commitment to justice, leadership and the legal profession.

This person will have made a significant contribution to community access to justice, legal policy or legislation, upholding the rule of law, justice administration, or provided exceptional service or support to Queensland solicitors.

This month also marks our first 2017 QLS Regional Roadshow initiative, which will kick-off in Bundaberg. This unique event offers members the option of attending the full conference across three days or participating in the sessions that suit their needs.

It includes a debate ('Regional lawyers are tougher than city lawyers') and networking drinks on day one, intensive workshops on day two, and then a half-day workshop on the final day covering all three core CPD points.

Of course, the legal profession's biggest event of the year, QLS Symposium 2017, is just around the corner – 17-18 March at the Brisbane Convention & Exhibition Centre. Symposium offers something for all members, whether it be the thought-provoking plenary sessions, 10 streams that can be tailored to easily meet your professional development needs, the collegiate networking opportunities, or simply the ability to earn your 10 CPD points in one hit.

New on the Symposium agenda this year is a half-day stream dedicated to early career lawyers and featuring mentoring sessions at the interactive Knowledge Café as well as mental wellbeing tips

and networking opportunities.

Also new is Law on the Lawn, a space for attendees to mingle with our presenters. The Symposium by Night networking event will return, following our great debate at the completion of Day 1.

In the December *Proctor*, we introduced you to Holly Ransom, our keynote opening speaker, who will look at the way forward in the rapidly changing legal landscape. In line with the Symposium theme of 'Framing the future', futurist Gihan Perera will explain how our current assets and strengths may become weaknesses and threats as firms transition to tomorrow. Look for Gihan's profile and an interview in this edition of *Proctor*.

Symposium registrations are currently up on last year and I would urge you to take advantage of the earlybird discount rate (available until 17 February).

There is much more coming up that I can't wait to tell you about, but I'd like to conclude this month's column with a reminder that, as we gather pace in what will be another busy and potentially stressful year, your QLS will continue to discuss resilience and wellbeing in the legal profession.

Our Love Law Live Life Working Group is working on new initiatives to assist mental health awareness in the profession. Its projects include resilience workshops and vicarious trauma sessions to better support, educate and raise awareness on this crucial topic.

The group works closely with LawCare, which has seen increasing patronage of its services. It reported that, from 1 October 2015 to 30 September 2016, 25.7% of issues reported through the service related to mental health.

For more information, see the Love Law Live Life portal at qls.com.au/lovelawlivelife.

Amelia Hodge
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Technology-assisted review 101 – The rise of machines in eDiscovery

by Milan Gandhi (The Legal Forecast)

In an age of email, metadata and countless other forms of electronically stored information (ESI), the prospect of ascertaining and reviewing potentially relevant documents for discovery is an increasingly daunting one.

Technology, however, could provide the solution to a problem of its own making. In *McConnell Dowell Constructors (Aust) Pty Ltd v Santam Ltd & Ors* (No. 1) [2016] VSC 734, technology-assisted review (TAR), sometimes referred to as predictive coding,¹ received judicial approval for the first time in Australia.

It is timely for litigators to consider how TAR works, whether it may be beneficial to their clients, and the associated risks and costs.

TAR endorsed in Australia

McConnell Dowell Constructors concerned a complex construction dispute. In the court's reasons for judgment, Justice Vickery estimated that, after dispensing with duplicates, it would take 583 working weeks for a junior solicitor to conduct a preliminary review of the 1.4 million potentially relevant documents (provided he or she spent no longer than one minute on each document).²

His Honour appointed a special referee to consider alternatives to manual review, which led to the parties agreeing to implement TAR. This resolution was endorsed by Justice Vickery, who referred to the judicial recognition of TAR in other jurisdictions.³

TAR and its benefits

TAR works as follows: a person reviews a sample of documents (called the 'seed set'); software receives information about how the seed set was reviewed and applies what it has 'learnt' to review a larger batch of documents.⁴ Human input can continue throughout the main review in order to progressively hone the software's accuracy.

In traditional or manual document review, lawyers (or a supervised battalion of fresh-faced clerks) manually analyse *all* potentially relevant ESI by applying search terms with

Boolean operators. By contrast, one academic study suggests TAR requires human review of, on average, only 1.9% of documents.⁵

But what of TAR's accuracy? Endorsing its use in a case in which there were over three million potentially relevant emails, United States magistrate Judge Andrew Peck commented that "while some lawyers still consider manual review to be the 'gold standard', that is a myth, as statistics clearly show that computerized searches are at least as accurate, if not more so, than manual review".⁶

Application

Any strategy for pre-trial document management must be proportionate to the nature, size and complexity of the case.⁷ Use of TAR software costs less than manual review only when "the exercise is large enough to absorb the up-front costs of engaging a suitable technology partner".⁸

TAR was endorsed by the British High Court in *Pyrho Investments Ltd v MWB Property Ltd* [2016] EWHC 256 (Ch). There, the parties were faced with reviewing about 17.6 million documents to litigate claims in the tens of millions of pounds. The costs of TAR were estimated to be somewhere between A\$293,464 (plus monthly hosting costs of A\$25,344) and A\$756,487 (plus monthly hosting costs of A\$33,585).⁹

'Garbage in, garbage out'

The biggest risk associated with TAR is captured by the maxim, 'garbage in, garbage out'. TAR is a computerised mimicry of a sample of human review. If the foundational human review contains errors, these will be replicated by the software. Avoiding this risk requires an upfront investment of time by lawyers intimately familiar with the case.

The future

Plaintiffs in the United States have gone as far as to argue, albeit unsuccessfully, that courts should *compel* parties to utilise TAR on the basis that it is a "more sophisticated tool than the traditional search term or search query approach" and "would save time and money for both sides [in litigation]".¹⁰ It is conceivable TAR will be mandatorily implemented in the future.

In the medium-term, as trust in TAR increases, it is highly likely that parties will seek to utilise it when faced with a high volume of potentially relevant ESI in the context of high-value disputes.

In Queensland, as in other jurisdictions, the philosophy underlying civil procedure "is the just and expeditious resolution of the real issues in civil proceedings at a minimum of expense".¹¹ Faced with the volume of ESI encountered by parties in cases like *Pyrho Investments* and *McConnell Dowell Constructors*, in circumstances in which TAR is cost-effective, it is difficult to see how manual methods of review will remain reconcilable with this philosophy.

Milan Gandhi is national director of The Legal Forecast and undertaking his final year of a Bachelor of Laws at the University of Queensland. Special thanks to James Arklay (McCullough Robertson) for editorial advice. 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.

Notes

¹ Predictive coding is technically just one manifestation of TAR.

² *McConnell Dowell Constructors (Aust) Pty Ltd v Santam Ltd & Ors* (No. 1) [2016] VSC 734 [5].

³ See paragraphs [18] to [31] of *McConnell Dowell Constructors (Aust) Pty Ltd v Santam Ltd & Ors* (No. 1) [2016] VSC 734.

⁴ For a more detailed but nonetheless easy-to-understand description of this process, see paragraphs 17 to 24 of *Pyrho Investments Ltd v MWB Property Ltd* [2016] EWHC 256 (Ch).

⁵ Maura Grossman and Gordon Cormack, 'Technology-Assisted Review in E-Discovery can be more Effective and more Efficient than Exhaustive Manual Review' (2011) 17 *Richmond Journal of Law & Technology* 11, 43.

⁶ *Da Silva Moore v Publicis Groupe*, 287 FRD 182, 189 (2012).

⁷ See, for example, paragraph 3.5 of the Federal Court's 'Technology and the Court Practice Note (GPN-TECH)'.

⁸ *Pyrho Investments Ltd v MWB Property Ltd* [2016] EWHC 256 (Ch) [24].

⁹ *Pyrho Investments Ltd v MWB Property Ltd* [2016] EWHC 256 (Ch) [33](7).

¹⁰ *In re Viagra (Sildenafil Citrate)* 2016 US Dist. LEXIS 144925 (ND Cal. Oct. 14, 2016).

¹¹ *Uniform Civil Procedure Rules 1999* (Qld), s5(1).

From QPILCH to LawRight

Since the first meeting to form QPILCH in December 2000, there has been much discussion about its name.

Queensland Public Interest Law Clearing House was selected to be consistent with its southern counterparts. Since then, the 'clearing house' concept has become outdated and difficult to explain. While the QPILCH acronym is reasonably well known in its target areas, it does not indicate what the organisation does.

QPILCH's new name, LawRight, will be formally launched by Chief Justice Catherine Holmes at a function at the Banco Court on 15 February, 2017. Guest speakers at the event will include journalist Peter Grete and his pro bono solicitor, Christopher Flynn.

The new name was developed by branding company DAIS after consultation with staff and management committee members.

According to LawRight's president, barrister Matthew Jones, the new name and its technical descriptor, 'Access | Justice', signifies that the organisation provides access to justice, connecting people with the right representative to deal with specific legal problems.

"The experience and expertise of our members and staff enables us to direct clients to the right adviser for their individual needs," Mr Jones said. "This is no mean feat given the wide range of issues clients face – for example, mental health, homelessness, self-representation, immigration, domestic and family violence, guardianship, wills and estates, consumer complaints, credit and debt, property disputes, employment and discrimination.



LawRight

Access | Justice

direct.connect

"In the most recent financial year, we have directly assisted 3104 people across Queensland, involving more than 22,000 hours of pro bono legal services."

QPILCH has earned a reputation for innovation and leadership, with many of its practices and projects being replicated by other community legal centres in Queensland and other states. The self-representation services in state and federal courts and tribunals is one example, while the Legal Health Check tool has been adopted across Australia for identifying the legal problems of people who are often overwhelmed by their presenting problem, or are unaware of they have a legal problem.

It will be business as usual for LawRight, with the name change being the start of a new chapter. Over the next six months,

LawRight will consult with its members, supporters and clients to make sure that 'business as usual' is the best way to operate.

"We will be seeking views about our systems and the focus of our services," Mr Jones said. "Are we really working on the key issues facing our communities? Are we really addressing issues that advance the public interest?"

"Just as QPILCH did, LawRight will continue to coordinate and facilitate pro bono civil law services for people unable to afford private legal services and ineligible for Legal Aid. LawRight looks forward to the continued support of its members and funding bodies as it seeks to fulfil its promise of 'a voice for those without'."

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Congratulations to our new QLS accredited specialists

Queensland Law Society congratulates the 17 practitioners who successfully completed specialist accreditation in the 'class of 2016'.

The new accredited specialists – in the fields of business law, commercial litigation, criminal law, personal injuries law, and workplace relations law – were awarded their certificates by Chief Justice Catherine Holmes at the annual Specialist Accreditation Breakfast at the Hilton Brisbane on Friday 2 December.

Events were also held in Cairns and Townsville to celebrate the work and successes of regional accredited specialists during 2016. They now join a community of 500 accredited specialists across Queensland.

The 2016 successful candidates, 16 of whom are pictured above with the Chief Justice, are:

Business law

Michael Beirne, Barclay Beirne Lawyers

Peter Thelwell, IP Partnership (our highest achiever for business law)

Commercial Litigation law

Berren Hamilton, Moray & Agnew

James Morgan, Tucker & Cowen Solicitors

Shaun Rose, Rose Litigation Lawyers Pty Ltd

Allana Agnew, GRT Lawyers (our highest achiever for commercial litigation law)

Criminal law

Nathan Bouchier, Bosscher Lawyers Toowoomba

Evan Corcoran, AW Bale & Son

Chelsea Emery, Chelsea Emery & Associates

Kenneth Mackenzie, Mackenzie Mitchell Solicitors

Daniel Rogers, Robertson O'Gorman Solicitors

John Cook, AW Bale & Son (our highest achiever for criminal law)

Personal Injuries law

Sebastian Olsen, MurphySchmidt Solicitors

Workplace Relations law

Tammy Lo, People and Culture Strategies

Brad Petley, Acumen Lawyers

Luke Tiley, Hall Payne Lawyers

Bianca Seeto, FCB Workplace Law (our highest achiever for workplace relations law)

Indigenous intern program celebrates first decade

Gadens Queensland has celebrated the 10th anniversary of its Indigenous intern program with an event featuring a keynote address by Justice Anthe Philippides.

The intern program started in 2007 under the auspices of the Department of Education, Employment and Workplace Relations, and in 2013 was aligned with CareerTrackers, a national non-profit organisation that creates internship opportunities for Indigenous university students.

Gadens has employed 23 Indigenous interns across a range of practice groups (including banking and finance, corporate advisory, and property and construction) over the past 10 years. A number of past interns have gone on to secure positions at the Australian Securities and Investments Commission, Australian Competition and Consumer Commission, Queensland Civil and Administrative Tribunal, Cape York Land Council and in private practice.

Justice Philippides praised the interns for their commitment to seek a career in law and wished them well with their future endeavours.



Celebrating the 10th anniversary of Gadens' commitment to the Indigenous intern program were, *from left*, interns Suzie Howard, Kathryn Dorante, Zachary Frazer, Justice Anthe Philippides, Gadens chair Paul Spiro, Liam Roberts, Chloe Heterick and Mikaela French.

"You have what it takes to be at the pinnacle of whatever career path you choose," her Honour said. "Your abilities mean that you will, inevitably, be in positions of power and influence and you will provide an important Indigenous presence in your chosen fields. You will help change perspectives.

"You will help non-Indigenous people to also understand how much is to be gained by acknowledging, respecting and making an important place for Indigenous culture."

AG Edwards merges with Rostron Carlyle

Rostron Carlyle has strengthened its commercial and property expertise through a recent merger with Brisbane and Gold Coast-based firm AG Edwards.

AG Edwards has provided corporate and commercial legal, property and compliance solutions to a range of national and multinational clients since 2013.

Rostron Carlyle commercial and property partner Gavin McInnes said the merger was a significant step in adding greater depth and experience to his team and the firm.

"AG Edwards brings additional expertise to Rostron Carlyle's commercial and property group, in particular the team's specialised experience in corporate and commercial, capital markets, banking, finance and financial services sectors," Mr McInnes said.



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**The first lecture of 2017 will be delivered by
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FLPA welcomes new president

The Family Law Practitioners Association of Queensland (FLPA) has appointed Fiona Caulley as 2017 president following its annual general meeting.

"I look forward to working with the committee and the more than 900 members throughout Queensland, northern New South Wales and the Northern Territory," Fiona, a senior

associate at Phillips Family Law, said. "The family law profession and the practice of family law continues to change, and FLPA works hard to respond to members' needs in this evolving environment."

She succeeds 2016 president Clarissa Rayward. James Steel, a partner at Barry.Nilson Lawyers, became FLPA's new vice-president.

Cairns venue for women in policing conference

The 2017 International Women & Law Enforcement Conference is to be held in Cairns from 17 to 21 September.

The conference, hosted by the International Association of Women Police (IAWP) and the Australasian Council of Women and Policing (ACWAP), supported by Queensland Police Service (QPS), has 'Global Networks: Local Law Enforcement' as its theme, highlighting the importance of partnerships and celebrating the cooperation between law enforcement agencies and communities around the world.

It will incorporate the 55th IAWP Annual Training Conference & Award and Recognition Programs, the 10th Biennial ACWAP Conference and the 19th ACWAP Excellence in Policing Awards. Delegates and presenters will include experts from national and international law enforcement agencies, family and community agencies, legal representatives, academics, researchers and community groups.

See 2017iwlec.com.au.

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McCullough earns third equality citation

McCullough Robertson Lawyers has received the Workplace Gender Equality Agency's Employer of Choice for Gender Equality citation – for the third consecutive year.

The national citation recognises employers adopting leading practices to promote gender equality in the workplace.

McCullough Robertson partner and diversity committee chair Guy Humble said gender equality in the workplace wasn't about ideology or political correctness but economic opportunity.

In the past 12 months the national firm has appointed four new partners to its Brisbane and Sydney offices, all of whom are women.

It has also piloted a program to help its most senior women manage the competing demands of work and family life. During a four-month trial, the firm's 'concierge' service coordinated an insurance claim for building repair, sourced accommodation options, helped plan a first birthday party and carried out various domestic tasks.

Leah Cameron wins national Indigenous legal award

Cairns-based solicitor Leah Cameron, from Marrawah Law Pty Ltd, has won the federal Attorney-General's 2016 National Indigenous Legal Professional of the Year Award.

The 33-year-old Palawa (Tasmanian Aboriginal) woman is one of the youngest to receive the award, which highlights the achievements of Indigenous Australians who improve justice outcomes for Indigenous Australians.

Leah has represented numerous traditional owners in successful native title claims and negotiated Indigenous land use agreements and large-scale commercial agreements with companies, government and other land users.

She said her practice prided itself in tailoring representation to clients' needs, law and cultural responsibility, and working outside of the confines of the usual Monday-to-Friday, 9-5 routine.



"We don't just give our clients a voice," she said. "We let them speak through us in accordance with their laws and customs, on country."

Leah and Marrawah Law were profiled in the November 2016 edition of *Proctor*. The firm is Queensland's only Supply Nation-certified Indigenous legal practice and more than 75% of the staff are Indigenous.

Leah also volunteers at the Homeless Persons Legal Clinic in Cairns and speaks every Friday on Bumma Bipperra Media and the National Indigenous Radio Service's Talk Black Program.



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New roadshows: Showcasing expertise in our regions

Queensland Law Society launches a new regional roadshow program in Bundaberg this month, with four district law associations (DLAs) coming together to support practitioners in surrounding areas.

This first event will set the tone for the year, and will showcase local and interstate experts who will speak on popular practice areas such as family law, succession law, property law and business law.

Day one, Thursday 9 February, at the Rock Bar & Grill, features several elements, including a JobConnector workshop, Roadshow Debate ('Regional lawyers are tougher than city lawyers', 25-year pin presentation and more, while days two and three, Friday and Saturday 10-11 February, at the Burnett Club, offer an extensive range of presentations (see the full program and register at qls.com.au).

QLS chief executive officer Amelia Hodge said that the new initiative complemented the current regional intensive program.

"Our regional members are an integral part of the Society and we are always looking for better and more efficient ways to engage them," she said. "I appreciate the support of the local DLA presidents who have come together to assist us with producing a high-quality and high-value event for practitioners in the area."

Bundaberg District Law Association president Rian Dwyer said that the DLA and its members welcomed the QLS Roadshow.

"The roadshow will provide practitioners in the Bundaberg and surrounding regions the opportunity to gain CPD points and network with other practitioners," he said. "The continued support of regional areas by QLS is invaluable and the roadshow demonstrates the ongoing commitment, by the QLS, to the regional areas."

For the first time, QLS will bring in-house experts to the innovative QLS Guru Bar over lunch. This will provide practitioners with the opportunity to meet the QLS team and gain great advice and ideas.

Gladstone DLA president Bernadette le Grand said that it was great to see QLS organising

CPD events in regional areas, as they enabled practitioners to obtain CPD points without the need to travel long distances from their practice.

"These events are a wonderful opportunity for regional practitioners to meet together, to meet and get to know QLS staff, and to discuss with QLS staff and each other matters affecting the regions," she said. "I encourage as many practitioners as possible to attend to ensure that regional events remain viable and can continue."

Fraser Coast DLA president Rebecca Pezzutti said that having QLS visit the region was an opportunity that she strongly encouraged local practitioners to take advantage of.

"There is no better way to build new relationships and to strengthen existing ones than in person," she said.

"When it comes to getting the most out of our membership, it's all about relationships and making the effort to be connected with our Society, and with each other."

For information on future regional events and webinars, visit the QLS website or check forthcoming editions of *Proctor*.

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Survey on new AML/CTF compliance for solicitors

The Australian Government has released proposals to extend Australia's anti-money laundering and counter terrorism financing (AML/CTF) regime to solicitors and others.

Submissions on these proposals were due by 31 January.

"This will be one of the most important and vexed issues Queensland solicitors will face this year," QLS president Christine Smyth said. "Its impact upon our clients will be far-reaching, by imposing unprecedented obligations on solicitors to report on their clients' activities. Quite apart from imposing a burdensome compliance regime, it strikes at the heart of the sanctity of the solicitor/client relationship."

The consultation follows a statutory review of the *Anti-Money Laundering and Counter Terrorism Financing Act 2006* and an evaluation of the Australian AML/CTF regime by the Financial Action Task Force (FATF). The Government consultation flows from Recommendation 4.6 of the statutory review, which proposed developing options for the regulation of lawyers and conducting a cost-benefit analysis of those options.

To assist in making further submissions showing the probable cost burden for law firms in implementing the proposed AML/CTF reforms, QLS is conducting a brief anonymous survey available at surveymonkey.com/r/GDLWQR8, which members are encouraged to complete.

The statutory review and related material can be sourced from the federal Attorney-General's Department at ag.gov.au/Consultations.

Ongoing cost disclosure on LSC radar

Queensland Law Society is aware that the Legal Services Commissioner, in his annual report to State Parliament, has raised concerns on the prevalence of complaints relating to ongoing cost disclosure.

While the Society is confident the vast majority of members comply with this obligation appropriately, it is the Society's view that assistance in this area may benefit some practitioners.

The Society is therefore creating a workshop series focused on ongoing cost disclosure, to be held across 2017. These workshops will provide guidance and specific tools to ensure that members are discharging their disclosure obligations appropriately.

In the meantime, members are referred to the QLS *Guidance Statement No.2 – Ongoing Costs Disclosure* and the QLS *Costs Guide*, both of which are available from the QLS Ethics Centre (qls.com.au/ethics).

Members with specific questions or in need of urgent advice on this issue should contact the QLS Ethics Centre (07 3842 5843 or ethics@qls.com.au).

Appointment of receiver for Conveyancing Solicitors, Bundall

On 12 December 2016, the Executive Committee of the Council of the Queensland Law Society Incorporated (the Society) passed resolutions to appoint officers of the Society, jointly and severally, as the receiver for the law practice, Conveyancing Solicitors.

The role of the receiver is to arrange for the orderly disposition of client files and safe custody documents to clients and to organise the payment of trust money to clients or entitled beneficiaries.

Enquiries should be directed to Sherry Brown or Glenn Forster, at the Society on 07 3842 5888.

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Committees that 'change the world'

Did you know that Queensland Law Society has 27 policy committees made up of volunteers? Our committees are instrumental in protecting the rights and interests of the Queensland legal profession and community.

Assisted by the QLS advocacy team's experienced policy solicitors, our volunteer policy committees provide expert advice to QLS Council, formulate submissions and policy positions, liaise with government and, most importantly, advocate for good law.

Looking back on 2016, QLS congratulates and thanks all members of the policy committees for their generous contributions to the Queensland community and legal profession. Our advocacy successes highlight our positive track record of effecting change by bringing members' opinions to the attention of government, the judiciary and the public.

One of the key legal developments in Queensland in 2016 was the removal of limitation periods for child sex abuse claims and the introduction of class actions legislation. The Litigation Rules Committee, Accident Compensation & Tort Law Committee and Not for Profit Law Committee made submissions on:

- the Government's Limitation of Actions (Institutional Child Sexual Abuse) and Other Legislation Amendment Bill 2016
- the Member for Cairns' Limitation of Actions and Other Legislation (Child Abuse Civil Proceedings) Amendment Bill 2016, and
- the Department of Justice and Attorney-General's issues paper, 'Child sex abuse – civil litigation issues review'.

Key points of advocacy included:

- advocating for the removal of limitation periods applying to institutional child sex abuse claims

- advocating that this removal be balanced by the express retention of the courts' existing jurisdictions and powers to stay proceedings, where it would be unfair to the defendant to proceed and that the court should decide whether to set aside a previously made deed of settlement
- that further consideration be given to extending the removal of limitation periods beyond institutions and beyond sexual abuse
- advocating against reversing the onus of proof in these claims
- allowing class actions to be brought in Queensland.

"Never doubt that a small group of thoughtful, committed citizens can change the world: indeed, it's the only thing that ever has."

– cultural anthropologist, author and speaker Margaret Mead.

In late 2016, QLS, in consultation with the Department of Natural Resources and Mines, successfully launched the Land Access Hub, a resource for landholders (owners or occupiers) who are approached by resource tenement holders to find experienced practitioners able to assist them in any ensuing land access and compensation negotiations. QLS acknowledges the efforts of the Mining & Resources Committee in preparing this invaluable resource.

- The Land Access Hub also includes links to relevant websites with additional information. The QLS 'Find a solicitor' referral list now includes practitioners with the requisite experience listed under the 'Natural Resources and Mining – Land Access' category.

- QLS was pleased to be involved in the working group established by the Department of Environment and Heritage Protection which assisted the development of the draft statutory guideline under the *Environmental Protection (Chain of Responsibility) Amendment Act 2016*. The QLS advocacy team attended a number of working group meetings during 2016 and the views of a wide range of stakeholders were considered during the process. QLS is grateful for the guidance offered by a cross-section of our policy committees, including members of the Mining & Resources Law Committee, the Corporations Law Committee, the Banking & Financial Services Law Committee and the Planning & Environmental Law Committee.
- During 2016, the Property & Development Law Committee made submissions responding to a number of issues papers released by the Queensland University of Technology Commercial and Property Law Research Centre. This work forms part of a comprehensive review of Queensland's property laws for the Queensland Government and will continue during 2017.
- In November 2016, president Bill Potts and past president George Fox appeared before the Queensland Parliament Finance and Administration Committee to support the Society's submission on the Farm Business Debt Mediation Bill 2016, prepared with the assistance of the Alternative Dispute Resolution Committee.

Also in November 2016, QLS made submissions on the Transport Operations (Road Use Management) (Offensive Advertising) Amendment Bill 2016 and subsequently QLS, represented by government relations principal advisor Matthew Dunn and policy solicitor Kate Brodnik, appeared before the Queensland Parliament Transportation and Utilities Committee.

What Lord Atkin did for us – what we can do in his memory

This year marks the 150th anniversary of the birth of one of the greatest judges of all time – and he was born in Tank Street, Brisbane.

Dick Atkin rose from humble beginnings to improve the law for the greater good. The neighbour principle he articulated in *Donoghue v Stevenson* guides tort law today. He defended liberty and the rule of law in the 1941 executive detention case of *Liversidge v Anderson*. In 1943 he represented Australia on the War Crimes Commission and advocated the idea of ‘crimes against humanity’.

Lord Atkin’s leading judgment in *Donoghue v Stevenson* reformed the modern law of negligence in most of the common law world. The law at the time did not give consumers like Mrs Donoghue a remedy for personal injury from a defective product. Lord Atkin and two Scottish law lords, against fierce opposition, reformed the law.

Over decades, Lord Atkin toiled as a master craftsman of law and language. His judgments showed an understanding of the conditions in which ordinary citizens lived and worked. He applied his intelligence and industry to achieve justice according to law.

Lord Atkin’s inspiration: a remarkable father

Lord Atkin’s father, Robert, and his mother, Mary, settled in Queensland in 1865. After battling drought and misfortune as farmers in Central Queensland, the family moved to Brisbane. Robert became a journalist and an MP, and championed the causes of ordinary Queenslanders. His resignation from Parliament enabled another great Queensland, Samuel Griffith, to enter politics. Atkin and Griffith shared a strong commitment to liberal democracy.

Robert Atkin died from consumption in 1872, aged only 30, greatly mourned by the Queensland community he had served, and a monument was erected in his memory in Sandgate *pictured*.

Dick Atkin’s mother returned to Wales, where he won scholarships to Oxford and joined the Bar. In England he met and later married Lizzie Hemmant, who, as fate would have it, had also been born at North Quay.



The Atkin Monument at Sandgate

A sandstone monument in Sandgate remembers Lord Atkin’s father. Typical of the Victorian period, a broken column symbolises a life cut short and irreparable loss. An inscription describes how Robert Atkin was distinguished in the press and the Parliament by “large and elevated views, remarkable powers of organisation, and unswerving advocacy of the popular cause, his rare abilities were especially devoted to the promotion of a patriotic union among his countrymen, irrespective of class or creed, combined with a loyal allegiance to the land of their adoption”.

The monument was erected in the late 19th Century by the Hibernian Society of Queensland, which Robert, a Protestant from Ireland, co-founded with Irish Catholics.

Late in his life, Lord Atkin wrote, “My father must have been a man of exceptional gifts”, and pointed to the words on the monument. Never a rich man, Lord Atkin donated to the monument’s restoration in 1937.

The monument and its restoration

Today, the monument is in a sad state of disrepair, affected by tree roots and hemmed in by an aluminium shed. A group of individuals, organisations and firms are supporting a community-based project to restore the monument, and to honour the values and contributions to society of Robert Atkin, son Dick Atkin, and other members of their family.

The project aims to raise awareness of the monument, and the history of Lord Atkin and his family. Funds are needed to restore the monument. Hopefully, in the 150th year since Dick Atkin’s birth, Queensland lawyers can help fund restoration of the monument, in memory of Robert Atkin, whose example of integrity and achievement inspired Lord Atkin throughout his long life.

The restoration will not be possible without financial support from Queensland lawyers.

How much has to be raised and what has to be done?

About \$30,000 is required to restore this heritage-listed, but sadly neglected, monument.

The restoration will involve physical repairs to the monument, work by arborists, removal of a garden shed, and some landscaping. The plan is to make the restored monument a place where members of the community can learn about the virtues and achievements of people like Robert Atkin and other members of his family, including his famous son, Lord Atkin.

Should any person, organisation or firm wish to contribute to the restoration fund, the account details are:

Account Name: Atkin Monument Restoration Fund – Sandgate and District Historical Society and Museum Inc.

BSB: 084 365

Account Number: 91-002-5880

The historical society will forward a receipt for any donation.

For more information on the project, see facebook.com/roberttraversatkin

For more details on Lord Atkin and his local origins, see legalheritage.sclqld.org.au/lecture-five-lord-atkin.

Article prepared by Justice Peter Applegarth, Supreme Court of Queensland.

Boyhood dreams become ocean-going reality

Brisbane solicitor Steve Kerin and wife Stephanie, *pictured*, competed in the 2016 Rolex Sydney to Hobart Yacht Race in Stephanie's Dk46 yacht, *Dekadence*.

Steve managed to keep his business, Kerin Lawyers, ticking along while preparing *Dekadence* for the big race. With Stephanie as office manager, they had been dividing their time between work and the huge task of organising the boat, crew and the paperwork just to enter.

In the 2015 race, the yacht was forced to retire.

"That was disappointing," Stephanie said. "*Dekadence* had successfully survived the first night, during which there was 56 knots over the deck and 12 to 14-metre seas. Having successfully pumped out about two tons of water on a nine-ton yacht, it was very disappointing to have to turn around, and that necessity inspired better preparation for this year's race to complete the journey."

This year's finish was a culmination of two years of preparation and the dream of an 11-year-old boy who sat on the beach at Sandy Bay south of Hobart watching Sydney to Hobart yachts tack less than 10 metres in front of him. Since that time Steve has nursed a desire to race the Hobart.

Finishing the 2016 race brought with it a bonus in that Stephanie finished as the first female skipper over the line and in doing so won the Jane Tate Memorial Trophy.

Steve started sailing in his early teens when he was living in Hobart. He and Stephanie purchased a Rainbow sailing boat when they were at the University of Tasmania, and Steve sailed occasionally in keel boats in his early 20s.

Around six years ago Steve and Stephanie, along with fellow solicitor John Horrocks and wife Leanne – purchased a Bavaria 38 cruiser. This was good for a while, but a bigger boat was soon purchased, a Bavaria 42, which was raced in the Royal Queensland Yacht Squadron's Wednesday Afternoon Go Sailing (WAGS) races. Some 3½ years ago Steve had a tumour removed from the middle of his spine. Fortunately it was benign and he was at home recuperating when the America's Cup was on. He became inspired and decided that the time was right to buy a race boat.

Steve enlisted the help of his father-in-law, who has sailed offshore for decades and competed in the Sydney to Hobart, to find a boat that would get to Hobart safely. The 46-foot *Dekadence* was purchased. There was very steep learning curve going from a conservative cruiser to a racer/cruiser – a sophisticated machine with a big sail plan requiring a crew of 12.

The boat is sailed with a nucleus of mates from Commercial Rowing Club, who have also been sailors in the past. Over the past two seasons *Dekadence* received a significant refurbishment, including refairing the hull, repainting the top sides and deck, reseating all the fixtures and fittings, upgrading deck hardware and rigging. Prior to this race, sailmakers Evolution made a complete new downwind wardrobe, including a significant larger, light-weather 'Code Zero'. The new Code Zero proved worthwhile when put up in this year's race, digging *Dekadence* out of a couple of wind holes where the jellyfish were going faster than the boat!

"All of the experts are saying that this year's race was a light-weather dream run," Stephanie said. "But going from Tasman Island to Cape Raoul there were three to four-metre seas,

28 knots with larger gusts on the run. The boat broached (knocked over to go flat on the water) four times, even with the smallest spinnaker up (the 'chicken shute') and *Dekadence* hit just under 18 knots in boat speed. It was a fantastic fun ride and everyone on board really enjoyed the conditions.

"The most difficult and challenging part of this year's race was the organisation of the campaign, including boat preparation, gear transport and crew organisation – getting everything to and from Hobart.

"Getting your head around the idea that you are good enough to compete in one of the world's great ocean races is also a big thing."

The most exciting part of the race was the start. Sailing master Peter Walsh, competing in his 21st Sydney to Hobart, and tactician Dr Dave Austin, a highly experienced New Zealand ocean racer, helped enormously in keeping a lookout and calling the tactics so that the boat got a good start. All on board learnt new descriptive words only yachties could understand.

"The most emotional part of the race was the finish," Stephanie said. "The wind died out with a mile to go and *Dekadence* literally drifted over the line.

"Steve drove the boat along the Hobart wharf at the Taste of Tasmania, to a standing ovation 'rock star'-type reception. Family and friends clapped, cheered and screamed."

The late Roger Hickman, doyen of ocean racers, always said the Sydney to Hobart was to Sydney people all about the start, but to sailors and competitors it's all about the finish in Hobart, *pictured below*. Steve and Stephanie fully agree.



Celebrating 100 years of public defence in Queensland

In 1916 Queensland's first Public Defender, Sir William Flood Webb KBE, was appointed under the *Public Curator Act* "to assist a poor person" in any civil or criminal proceedings (*Queensland Times*, 31 March 1916).

A century later, current Public Defender John Allen QC and Legal Aid Queensland acting CEO Paul Davey hosted a special event in the Banco Court on 11 November 2016 to celebrate 100 years of public defence in Queensland, a milestone in Queensland's legal history.

Childrens Court president Judge Michael Shanahan, a former Public Defender,

delivered the keynote speech at the event, highlighting the important role Public Defenders have played in the rich history of Queensland's justice system.

Court of Appeal president Justice Margaret McMurdo AC also shared reflections of her own career within the former Public Defender's Office.

During the event, Paul Davey noted that while the scope and reach of Legal Aid Queensland's services have expanded over the years, its central purpose today remains the same as it was 100 years ago – to represent and defend those in our

society who have no means to provide that representation or defence for themselves.

More than 150 guests at the event included Chief Justice Catherine Holmes, judges of the Supreme, District and Federal Courts, Chief Magistrate Ray Rinaudo and Deputy Chief Magistrates Leanne O'Shea and Terry Gardiner, magistrates, retired judges, Director of Public Prosecutions Michael Byrne QC, former staff of the Public Defender's Office and current Legal Aid Queensland staff.

After the official proceedings, guests enjoyed catching up with former colleagues and friends over canapés and drinks in the Banco Court Portrait Gallery.



Public Defender John Allen QC with speakers Justice Margaret McMurdo, Judge Michael Shanahan and Paul Davey.

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Presidents of the past, present and future

Queensland Law Society's past, present and future presidents gathered on 20 November for their annual dinner, congratulating Bill Potts on his year in office and welcoming 2017 president Christine Smyth to the role.

Front row: Gerry Murphy AM, Bill Potts, Christine Smyth

Second row: Greg Vickery AO, Bruce Doyle, Julie-Anne Schafer, Amelia Hodge, Peter Short AM

Third row: Joe Tooma, Dr John de Groot, Tom Sullivan, Megan Mahon

Back row: Ian Berry, Rob Davis, Glen Ferguson AM, Michael Fitzgerald, Rob Hill, Chief Magistrate Ray Rinaudo, Peter Carne



Early career merriment

Queensland Law Society's early career lawyers celebrated the festive season in style at the end-of-year Early Career Lawyers Christmas Party at Aquila Caffe Bar on 8 December.

1. Dr Zita Megyeri, Sam Marsh, Cody Niezgoda, Tamara Orah, Uditi Desai
2. Merinda Gilmour, Catherine Bub, Rina Biswas, Michael Morris, Aidan Parsons
3. Joanna Lane, Robbie Ah Chee, Tracy Carr, Catherine Nufer-Barr
4. Jo Chyi, Elizabeth Colbran, Melinda Willis, Eva Coggins
5. Kayne Ballard, Wade Dominic, Jasmine Dominic, Leon Bertrand
6. Timothy O'Brien, Brendon Dewar, Jun Choi
7. Tom O'Donnell, Sky Kim



Internet law research earns top honour

Professor Dan Svantesson of the Bond University Faculty of Law has been awarded the university's 2016 Vice-Chancellor's Research Excellence Award.

The award recognises the global impact he has had in his research area of internet jurisdiction.

Since starting his PhD in 2011, Professor Svantesson has authored four books, six book chapters, 80 conference papers and more than 140 journal articles, book reviews and editorials. He is a sought-after speaker, having delivered guest lectures and papers in 24 countries since 2001, and holds a wide range of professorial affiliations with international institutions.

"What appeals to me about internet law is its size, scope and complexity – and that it constantly evolves as technology evolves," Professor Svantesson said.

"The internet is 'borderless' by its very nature, with a remarkable ability to connect people from different countries, however there is a complete mismatch between the 'globalness' of the internet and the territorial nature of the law."

Faculty executive dean Professor Nick James said that, through his role as co-director of the faculty's Centre for Commercial Law, Professor Svantesson



had provided strong leadership and direction in the centre's initiatives.

"He has also extended his reputation and sphere of influence beyond traditional institutional and academic spaces to include Australian and international courts, as well as Google Inc., who recently sought and supported his intervention in a matter before the Supreme Court of Canada," he said.

International award for Queensland lawyer

Matthew Murphy, the managing partner and CEO of MMLC Group Lawyers and Consultants, has won the Australia China Alumni Association's Award for Corporate Achievement.

The award has rarely been won by a Queenslander, and never by a Queensland lawyer.

Matthew, who has more than 20 years of international legal and business experience, has played a prominent role in the rapidly expanding fields of intellectual property, mergers & acquisitions, and international trade in China and the Asia-Pacific.

His MMLC Group, which he co-founded in 2002 in Beijing, consists of an Australian law office, a Chinese IP agency and a Chinese consulting company. Fielding four main partners plus a number of senior associates in mainland China, the company has worked with various Global Fortune 500 companies providing advice and navigating the complexities of IP licensing, patent and trademark litigation, anti-trust laws, IT encryption and regulation, anti-piracy and counterfeiting, mergers and acquisitions and unfair competition issues in Greater China. Blue-chip clients include Apple, Coca-Cola, Honda, Fannie Mae, Google, Gap, Novartis and General Motors.

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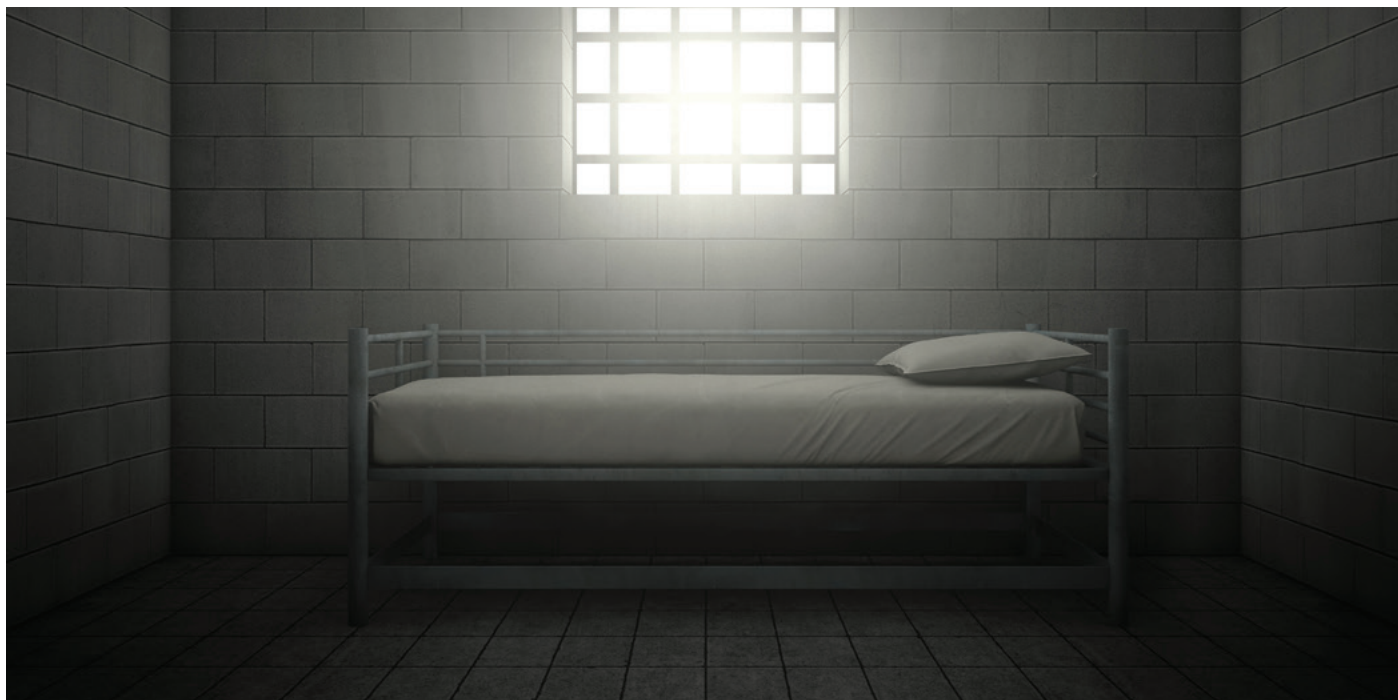
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Sanity in the Magistrates Court

Act heralds a better approach to mentally ill offenders



Significant changes to the way mental health issues are handled in criminal proceedings have been introduced by the new *Mental Health Act 2016* (the Act), which was passed by Parliament on 18 February 2016.

The Act is scheduled to commence on 5 March this year.¹ This article contains a brief summary of the changes, and specifically deals with the (welcome) changes to Magistrates Court processes in particular.

Overview

The Act is significant in size (more than 600 pages) and makes substantial changes to the treatment of the mentally ill by the legal system in Queensland. In broad terms, those changes include:

- revision of the Mental Health Review Tribunal's powers and responsibilities

- the use of a new “treatment support order” as an alternative to forensic orders, to provide a less intensive means of managing mentally ill offenders
- allowing for a non-revocation period of up to 10 years for forensic orders resulting from serious violent offences
- providing a power by which magistrates can dismiss charges based on a defendant's lack of mental capacity.

The new powers for magistrates changes to Magistrates Court processes and powers are dealt with in some detail below.

The current situation

Currently, magistrates are unable to determine that a defendant charged with summary offences is unfit to stand trial. Such powers are limited to the Mental Health Court, where more serious charges are able to proceed on indictment,² or when a summary offence related to an indictable offence is referred to the Mental Health Court.³

Further, the *Justices Act 1886* does not provide for a magistrate to consider whether an accused is fit to plead to a simple offence. This is unlike more serious indictable offences for which section 613 of the *Criminal Code Act 1889* provides the ability for a jury to consider such matters.

The catalyst for change arose from the Court of Appeal case of *R v AAM*⁴ in 2010. In that matter, the court expunged the criminal history of an offender on the basis that she was unfit to plead at the time of entering her pleas of guilty before a magistrate which, the court considered, amounted to a miscarriage of justice. In her judgment, president McMurdo made critical remarks on the unsatisfactory state of the law concerning the mental health of offenders charged with summary offences at [9]:⁵

“It seems unsatisfactory that the laws of this State make no provision for the determination of the question of fitness to plead to summary offences. It is well documented that mental illness is a common and growing problem amongst those charged with criminal offences...

Alexandra Cooper looks at the powers available to magistrates under the new *Mental Health Act 2016*.



The legislature may wish to consider whether law reform is needed to correct this hiatus in the existing criminal justice system.”

Finally, some six years later, the new Act attempts to rectify the deficiencies referred to in that judgment.

Relevant provisions

Section 3 of the new Act sets out its main objectives, which include at section 3(b):

“to enable persons to be diverted from the criminal justice system if found to have been of unsound mind at the time of committing an unlawful act or to be unfit for trial.”

There are two key provisions in the Act which grant power to a magistrate to dismiss a complaint based on mental health grounds. These are:

Section 22, which states:

A Magistrate may dismiss a complaint for a simple offence if the court is reasonably satisfied, on the balance of probabilities, that the person charged with the offence was, or appears to have been of unsound mind when the offence was allegedly committed or is unfit for trial.

And section 177 (reflecting section 22), which provides:

- (1) This section applies if-
 - (a) A complaint for a simple offence is to be heard and determined by a Magistrates Court; and
 - (b) The court is reasonably satisfied on the balance of probabilities, that the person charged with the offence –
 - i. Was, or appears to have been, of unsound mind when the offence was allegedly committed; or
 - ii. Is unfit for trial.⁷
- (2) The court may dismiss the complaint.

Additionally, under section 173, the magistrate can adjourn the hearing of a complaint in circumstances in which they

believe that the person is unfit for trial, but may become fit for trial within six months.

Examination orders

A new power for magistrates to make an examination order of a person charged with a simple offence is provided for under section 177. Under sections 178 and 179, the authorised doctor who examines the person must provide the court with a written report setting out their recommendations/decisions and, if desirable, recommendations for the person's further treatment and care. The doctor must also explain their recommendations for future treatment or care to the person and explain the benefits of undertaking those recommendations voluntarily.

Interestingly, under section 180, the examination report is not only admissible in respect to the current proceedings, but can also be used by the court in future proceedings in circumstances in which the person appears before the court at a future time for further offence/s.

Further treatment when complaint is dismissed

Section 174 of the Act allows magistrates to refer the person, including in circumstances in which the magistrate has dismissed the complaint, to the health department,⁸ relevant agency⁹ or another entity the court considers appropriate for consideration of any future treatment or care to be provided to the person. However, this power does not mandate if/what future treatment or care is to be in fact given to an offender.

Jurisdiction

The power afforded to magistrates by the Act is limited to simple offences only. Under section 4 of the *Justices Act 1886*, a simple offence means “any offence (indictable or not) punishable, on summary conviction before a Magistrates Court, by fine, imprisonment or otherwise”. It does not apply to more serious, indictable offences that cannot be determined by a magistrate. For those matters, the Mental Health Court is still the determining body.¹⁰

Any appeal of a magistrate's decision can be pursued in the usual course, under section 222 of the *Justices Act 1886*, to the District Court.

Summary

The new Act provides for a number of reforms to assist in dealing with persons within the criminal justice system who have mental health difficulties.

It rectifies current inadequacies within the legislation, particularly by granting powers to magistrates to dismiss complaints against persons who appear to have been of unsound mind at the time of an alleged offence or are unfit for trial. This is a long-awaited, but welcome, change to Magistrates Court process in this difficult area.

Alexandra Cooper wrote this article as a solicitor at Gilshenan and Luton Legal Practice. She has recently changed firms and is now an associate at Moray & Agnew Lawyers.

Image credit: ©iStock.com/BorisRabtschik

Notes

- ¹ Queensland Alliance for Mental Health Inc. [2015], ‘Revised Mental Health Act 2016 Commencement Date’ online at qldalliance.org.au/revised-mental-health-act-2016-commencement-date. Accessed 7 October 2016.
- ² Section 256 of the previous *Mental Health Act 2000*.
- ³ Sections 256 and 257(3) of the previous *Mental Health Act 2000*.
- ⁴ *R v AAM; ex parte A-G (Qld)* [2010] QCA 305.
- ⁵ *R v AAM; ex parte A-G (Qld)* [2010] QCA 305 at para [9].
- ⁶ Section 109 of the Act defines the meaning of unsound mind, and confirms that unsound mind does not include “a state of mind resulting to any extent from intentional intoxication or stupefaction alone or in combination with some other agent at or about the time of the alleged offence”.
- ⁷ Refer to the minimum standards of fitness for trial elaborated by Smith J in *Reg v Presser* [1958] VR 45 at 48 and endorsed in the case of *Kesavarajah v R* (1994) 181 CLR 230 at 243.
- ⁸ ‘Health department’ means the department in which the *Hospital and Health Boards Act 2011* is administered.
- ⁹ *Relevant agency* means (a) the department in which the *Disability Services Act 2006* is administered; or (b) the *National Disability Insurance Scheme Launch Transition Agency* established under the *National Disability Insurance Scheme Act 2013* (Cth).
- ¹⁰ See section 175 of the Act.



What, who and why

The year ahead with QLS president Christine Smyth

Queensland Law Society president Christine Smyth outlines her agenda for 2017. Report by **John Teerds**.



It won't take long for those members who don't know 2017 Queensland Law Society president Christine Smyth to realise that her direct approach is based on clear goals and a carefully considered agenda.

The objectives of that agenda are based on 'what, who and why'.

"The 'what' is what we do – our mission – and that is to advocate for good law and good lawyers, and provide good leadership for our profession," she said.

"This means we must strive to meaningfully advance our members' interests through advocacy, policy, professional standards and innovation, while respecting and promoting tradition, diversity and inclusivity."

Christine sums up the 'who', by saying that our members must be at the heart of everything we do.

"My vision is for Queensland Law Society to be a genuine membership organisation for all Queensland solicitors and my key motivation is to strongly represent membership interests.

"Our profession faces unprecedented challenges. Queensland solicitors have to contend with economic and global competitive risks, technological change, regulatory compliance, higher rates of mental distress and graduate oversupply."

And the 'why' – the rationale for this approach – is because lawyers underpin our society, government, business and our community

"We will seek to promote the great work of Queensland solicitors," she said. "Their achievements and integrity deserve celebration. I believe advocacy is key to building and strengthening the reputation of our legal profession, and our advocacy will be for and on behalf of lawyers to government, the courts the business sector and the community.

"We must also value and respect the knowledge and expertise of experienced solicitors, while providing strong mentoring and engagement with early career lawyers. This is a key element in sustaining a thriving profession."

But what do these ideals translate to in practical terms?

Christine said assistance for members in building better business was essential in the realisation of these aims.

"We will pursue further reductions in Lexon insurance premiums and also work to improve access to tribunals for solicitors by the removal of barriers such as those that prevent solicitors appearing as advocates before the Queensland and Civil Administrative Tribunal.

"And expanding our QLS practice management support services and trust accounting support services is also key."

In advocacy, we will focus on policy development for good law through the work of the 27 QLS policy committees and continue to appear before government committees to advocate for – or against – proposed changes to laws.

Access to justice, a critical component of the justice landscape, will see us defending the courts themselves, the independence of the judiciary and the separation of powers. We will also pursue better resources for the courts to enable greater efficiencies in court processes and consequential cost reductions for clients, as well as seek better funding for legal aid and community legal centres.

"Technology will again be a significant focus for QLS," Christine said. "There are many issues that need to be addressed and we will advocate for resources and services for the legal profession around those issues. These include the impact of artificial intelligence on the profession and the threats presented by cyber-attacks and other security breaches.

"To assist in the development of better career pathways, we will aim to expand the Modern Advocate Lecture Series in a number of ways, including courses to help solicitors identify pathways to the bench."

Other important topics include harmonisation, particularly in terms of the regulations affecting firms practising across multiple jurisdictions, and the oversupply of graduates, which necessitates liaison with the universities and law school deans to explore potential solutions.

"Inclusivity is something we will aim to improve this year," Christine said. "This will include our new regional CPD roadshows and the creation of two new policy committees to address issues of importance to in-house and corporate solicitors, and those affecting the RRR (rural, regional and remote) firms.

"The mental health of our members will also continue to be a priority. We will enhance the role of our QLS Senior Counsellors to include mentoring of lawyers on career progression and practice assistance. We will also seek more female QLS Senior Counsellors and continue our engagement with the Tristan Jepson Memorial Foundation.

"A collegiate profession assists in this area, so we will aim to foster this through programs such as our Member Connect Breakfasts.



“Our communications to members are essential in bringing all these initiatives together, so we want to continue modernising and expanding our QLS communication channels. This will mean building on our use of social media and other platforms such as YouTube. Our use of webinars has been very successful, so I aim to see this program expanded.

“To reach the broader community, and elevate the profile and perceptions of the profession, we must also continue our active engagement with the mainstream press.”

For Christine herself, a partner at Gold Coast firm Robbins Watson Solicitors, stepping into the QLS presidency follows a substantial journey in not only developing her highly regarded professional skills but also returning something to the profession through her involvement with various professional bodies.

A QLS accredited specialist in succession law since 2009, Christine has had long involvement with the Society of Trust & Estate Practitioners Queensland Branch and some three years as a co-editor of the Lexis Nexis Retirement and Estate Planning Bulletin.

She has served on the Women Lawyers Association Queensland committee of management and, at QLS, has been a key member of many committees, including the Succession Law Committee, Proctor Editorial Committee, Symposium Succession Law Planning Committee and Specialist Accreditation Board.

Joining the QLS Council in 2014, Christine was elected deputy president for 2016, thereby stepping into the presidency in 2017.

As deputy, she was closely involved with many of our successes last year, including the launch of the Modern Advocate Lecture Series.

Christine, who has written the succession law column in *Proctor* since early 2013, revealed her passion for this area of law in a recent interview.

“I always thought of a lawyer as being a person who is there to champion the rights of those who can’t champion their own rights,” she said. “It’s something that has always been quite dear to me.

“When I became a lawyer, I discovered there’s a real difficulty in bringing the law, which is very complex, and in a lot of cases quite rigid, and applying it to a person’s life. Trying to help people navigate their way through the legal system is where I find a great deal of satisfaction. After all, we can do a lot to prevent things happening. But life happens at us. And the sooner you address it, the better your prospects of avoiding negative consequences later on.

“From working with people in preparing for their declining years, including their wills, to helping families cope with a complex legal landscape after a death, I’ve learnt that while we might accumulate a great deal of wealth or assets, the greatest thing we will leave behind are the relationships that we’ve created over a lifetime.”

John Teerds is the editor of *Proctor*.
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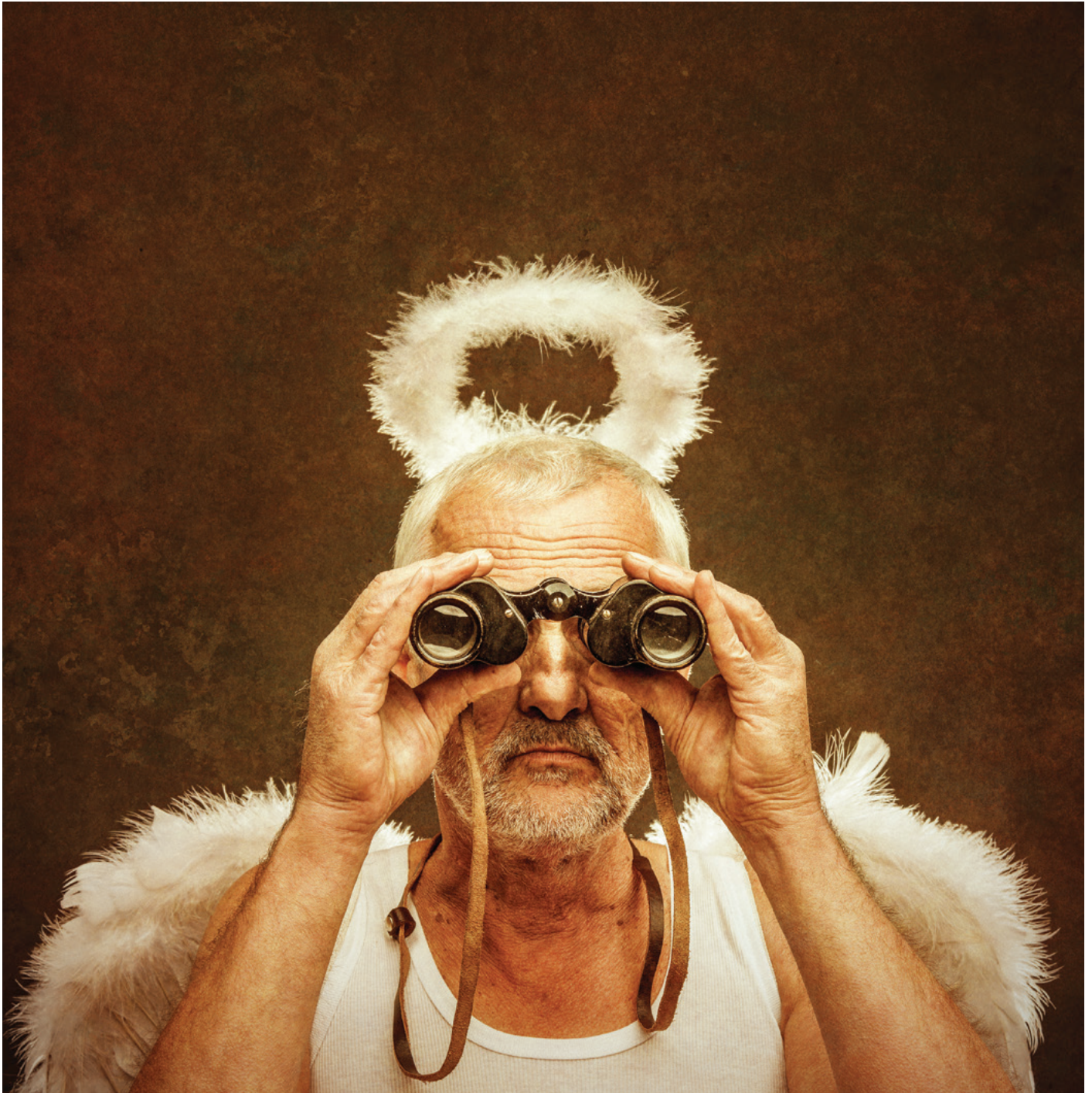


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Reform proposals target elder abuse

Australian Law Reform Commission seeks practitioner input



New proposals from the Australian Law Reform Commission focus on frontloading safeguards to help older persons protect their rights. **Sallie McLean** explains the key suggestions and seeks input from practitioners on these ideas.



The Australian Law Reform Commission (ALRC) released a discussion paper for its Elder Abuse Inquiry in December containing 43 reform proposals that aim to prevent, identify and respond to elder abuse.

Elder abuse may be broadly defined as causing harm to an older person. While there is no universally accepted definition of elder abuse, the World Health Organization has described elder abuse as “a single, or repeated act, or lack of appropriate action, occurring within any relationship where there is an expectation of trust which causes harm or distress to an older person”.¹

Most elder abuse is perpetrated by a family member, carer or close family friend. Commonly recognised categories of elder abuse include psychological or emotional abuse, financial abuse, physical abuse, neglect and sexual abuse.

The ALRC discussion paper (DP 83) is the second consultation document for the Elder Abuse Inquiry, in which the ALRC has been asked to consider existing Commonwealth laws and frameworks which seek to safeguard and protect older persons from misuse or abuse by formal and informal carers, supporters, representatives and others, and to examine the interaction and relationship of these laws with state and territory laws.

The proposals in DP 83 cover a range of state, territory and Commonwealth areas relating to the abuse of older people. There are five themes – national consistency; investigation and response; substitute decision-making; financial and property; and social, health and human services.

The ALRC seeks views from lawyers and other interested parties on the proposals for law reform.

National consistency

Elder abuse can occur in all communities, including culturally and linguistically diverse communities, and Aboriginal and Torres Strait Islander communities. Legislative frameworks relevant to elder abuse are primarily the responsibility of states and territories, such as substitute decision-maker regimes. The need for a national plan to co-ordinate responses across jurisdictions and community groups is supported by government and forms the foundational first proposal of DP 83.

National prevalence studies to ascertain the extent of elder abuse across Australia are also proposed.

Investigation and response

While elder abuse help-lines provide an accessible first point of contact, in most states and territories there may not be an investigative body that a concerned person can contact when it is suspected that an older person is experiencing, or is at risk of, abuse, other than the police.

There may be reluctance to contact police, especially if abuse concerns a family member. To fill this investigative gap, the ALRC proposes to enhance the role of public advocates in states and territories—so that public advocates have investigative powers akin to the Queensland Public Advocate.²

Under the proposed ALRC model, public advocates would have the power to investigate suspected abuse of older persons when the older person has ‘care and support needs’ that render the older person unable to protect themselves.

Substitute decision-making

Enduring powers of attorney are constructive advance planning tools for people wishing to choose a person to make key decisions for them when they may no longer be able to do so. However, enduring powers of attorney have been identified as a key site for the financial abuse of older persons—described by stakeholders to the ALRC as a ‘licence to steal’.

Despite changes to power of attorney legislation in some states and territories, the ALRC considers that legislative regimes and practices relating to enduring powers of attorney and enduring guardianship require significant, nationally consistent reform.

Reform proposals focus on safeguarding the frontend of substitute decision-making processes. The ALRC proposes that the various enduring documents of each state and territory be renamed ‘representative agreements’, which are required to be witnessed, certified and registered on a national register on completion. For Queensland legal practitioners, registration on execution of an enduring document would form an extra step in the process.

The proposed safeguards build on legislative changes originating from Queensland. This includes proposals for enhanced witnessing requirements and certification; greater scrutiny of the appointee; and greater restrictions on the management of a person’s estate by an attorney under power, with particular focus on conflict transactions and record keeping requirements.

Proposals are also made to safeguard and protect older persons subject to guardianship or financial administration orders. This set of proposals operates to enhance the understanding of the roles and responsibilities of guardians and administrators. Particular attention is given to the use of surety bonds against financial administrators in New South Wales.

When financial abuse by a substitute decision-maker does occur, there are few options for redress. They are fiduciary positions, but an action in the Supreme Court may be too expensive and time-consuming. Criminal prosecution may be hampered by evidential issues.

In both cases, the older person may not want to pursue an action in court against a family member – usually an adult child. Under the *Guardianship and Administration Act 2000* (Qld), the Queensland Civil and Administrative Tribunal (QCAT) can order that a court or tribunal-appointed guardian or financial administrator pay compensation for a “loss caused by the appointee’s failure to comply with this Act in the exercise of a power”.³ QCAT cannot order compensation when a person acting under an enduring power of attorney has misused their power. The Victorian Civil and Administrative Tribunal can order compensation against an enduring power of attorney, but not a financial administrator.⁴

The ALRC proposes that all civil and administrative tribunals be vested with jurisdiction to order compensation against substitute decision-makers when the “loss was caused by that person’s failure to comply with their obligations under the relevant Act”. This includes court and tribunal-ordered guardians and financial administrators, and those acting under enduring documents.

Financial and property

The abuse of an older person is most likely to involve the stripping of the older person’s funds or assets.⁵ The ALRC makes specific proposals to safeguard against financial abuse, as well as proposals ancillary to this type of abuse.

In addition to the proposal to vest tribunals with a compensatory jurisdiction, the ALRC also proposes to extend the jurisdiction of tribunals, including QCAT, so that civil and administrative tribunals in each state and territory are able to resolve family disputes involving residential property under ‘assets for care’ arrangements.

Assets for care arrangements are otherwise known as ‘family agreements’ or ‘granny flat interests’ (in Centrelink terminology) – whereby an older person contributes funds or assets to a living arrangement, usually in exchange for ongoing care. The ALRC has heard that when these arrangements break down, the older person may be left without a place to live, and without the means to seek redress, and sometimes with a Centrelink debt.

The ALRC has also heard of older persons being mistreated under these arrangements, but suffering them because they have nowhere else to go, or are afraid that leaving may mean a loss of pension payments. The ALRC proposes that civil and administrative tribunals are well-placed to provide an inexpensive option to resolve these issues and to help prevent or stop abuse.

There is an opportunity for banks to enhance existing policies to safeguard against the financial abuse of older persons. The ALRC proposes amendments to the *Code of Banking Practice* for banks to take reasonable steps to prevent the financial abuse of older customers. Examples of reasonable steps include specific staff training, using software to identify suspicious transactions, and providing a clear reporting line when abuse is suspected. It is proposed that witnessing requirements for third-party access authorisations to bank accounts be enhanced.

Older persons may be coerced or bullied into changing their will, and this can be conduct comprising abuse. Guidelines for legal practitioners who oversee the making and signing of wills and other advance planning instruments are proposed to:

- help practitioners identify common risk factors associated with undue influence
- highlight the importance of taking detailed instructions from the older person alone
- emphasise the importance of ensuring the older person understands the nature of the document – particularly when an unrelated person will benefit.

Social, health and human services

The majority of older persons receive pension payments, making the social security service agency, Centrelink, a key site for the prevention or identification of elder abuse.

The proposals relating to social security aim to enhance the visibility of elder abuse in the laws and legal frameworks that support social security. Three areas that have been identified as having a high risk of interacting with abuse are explored in DP 83, including carer payment, payment nominees and the gifting rules that apply to receiving the age pension, with particular emphasis on the rules guiding ‘granny flat interests’.

To prevent abuse, the ALRC proposes earlier and greater intervention by Centrelink staff in these key areas, and emphasises the need for clear articulation of the roles and responsibilities of all parties to an agreement that involves social security payments.

In the field of aged care, the ALRC proposes to enhance the statutory scheme for reportable assaults in the *Aged Care Act 1997* (Cth), to increase the types of conduct that are reportable, and to place greater emphasis on the need for a systemised response by aged-care facilities. A national employment screening process for aged-care workers is also proposed, with community visitor schemes as oversight mechanisms.

Your say

The ALRC welcomes submissions to DP 83, which is available at alrc.gov.au. In particular, the ALRC is interested to hear from practitioners who deal with older persons, work in equity, social security or other speciality areas, and who can provide a practice perspective. Submissions are due to the ALRC by 27 February 2017.

Sallie McLean is principal legal officer at the Australian Law Reform Commission.

Image credits: ©iStock.com/mammuth;
©iStock.com/ThomasVogel

Notes

¹ World Health Organization, *The Toronto Declaration on the Global Prevention of Elder Abuse* (2002).

² *Guardianship and Administration Act 2000* (Qld) ch9.

³ *Guardianship and Administration Act 2000* (Qld) s59.

⁴ *Powers of Attorney Act 2014* (Vic.) s77.

⁵ See, for example, National Ageing Research Institute and Seniors Rights Victoria, *Profile of Elder Abuse in Victoria. Analysis of Data about People Seeking Help from Seniors Rights Victoria* (2015).

A staged approach to elder financial abuse

The Suncoast Community Legal Service has taken a novel approach to raising community awareness of elder financial abuse. Report by **Kirsty Mackie**.



The misuse of enduring powers of attorney for older Queenslanders is increasing at an alarming rate.

Over the 2015/2016 financial year, the Elder Abuse Prevention Unit (EAPU) estimated that \$281,507,490 had been misappropriated by 89 attorneys. Overall there was a 20% increase in calls reporting elder abuse to the EAPU Helpline. Financial abuse again was the most common form of reported abuse, representing 42% of the reported calls.¹

In response to the increasing financial abuse of older Queenslanders, the State Government conducted a parliamentary inquiry into the issue in 2015. Recommendation 40 of the subsequent report, 'Inquiry into the Adequacy of Existing Financial Protections for Queensland's Seniors', said: "The Committee recommends that the Queensland Government develop an education and awareness program that promotes awareness of elder abuse and incorporates a range of accessible and inclusive

Piano Forte featured actors Rainee Skinner, Cameron Clark and Mary Eggleston. It was written and produced by Toni Wills, and directed by Lucas Stibbard.

community education programs that outline the role and responsibilities of powers of attorney."

Elder abuse was also acknowledged in the 2015 report, 'Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland', as a form of domestic violence and recommended that the Queensland Government develop a communications strategy for elderly victims of domestic violence in addition to a statewide prevalence study.

The Australian Law Reform Commission is undertaking an extensive review into elder abuse in Australia (see *accompanying article*) and one of the issues it is considering is the adequacy of information and community education on elder abuse.

Community education and awareness play key roles in early intervention and prevention of financial exploitation of older people.

As Australia's population ages – estimates suggest that 30% of national wealth is held by people aged over 65 and this is expected to increase to around 47% by 2030² – it is timely to consider alternative methods of community education, particularly in the area of enduring powers of attorney.

The Suncoast Community Legal Service (SCLS) at Maroochydore recently took a unique step to raise awareness in the local community by writing a play about elder abuse, *Piano Forte*. A fictional narrative form was used to explore the subtleties of elder abuse and the role and responsibilities of an enduring power of attorney. The play was based on the fundamental principle that all people have the right to live dignified, self-determined lives, free from exploitation, violence and abuse, and that these rights do not diminish with age.

“Educating people on various aspects of wills, estates and powers of attorney are the bread and butter of community lawyers,” SCLS principal solicitor Julian Porter said. “After many years of delivering formal community legal education sessions at local libraries and community halls, we felt the time was right to shine a light on these subjects in a new way.”

For practitioners in elder and succession law, the fictional scenario is familiar, namely a 78-year-old widow appoints her grandson as her enduring power of attorney. The grandson has conflicting commitments to his wife, who aspires to a higher standard of living, and his grandmother, who wishes to age in her own home.

The principal loses capacity temporarily and during this time her grandson ‘borrows’ \$50,000 from her bank account to buy a house he couldn’t otherwise afford. The educational element is cleverly done with a game-show format called *Families Feuding*, and provides relatively dry factual information to the audience in an engaging way.

While *Piano Forte* has been written for a wide audience, the SCLS recognises in its day-to-day practice that the need for legal and support services for seniors on the Sunshine Coast is trending upwards as the local population ages.

This observation marries with recent Queensland Government data collection. The Queensland Government’s Statistician’s Office found, in its 2015 report, that of all local government areas in the state, Noosa had the highest proportion of seniors (at 20.8%) and the Sunshine Coast was also high (18.6%), compared to the Queensland average of 13.6%.³

The play ran for a brief season on the Sunshine Coast in September 2016 and played to packed houses in Noosa, Nambour and Buderim. A 15-minute Q&A session was facilitated by the playwright and SCLS project officer Toni Wills, accompanied by a number of volunteer lawyers who took questions from the audience.

Despite the information available through the Public Trustee and various government departments, it was a concern that most audience members did not understand the basics of enduring powers of attorney. However, the response was extremely positive with 83% of audience members stating they learnt something new from the play and 67% stating that they would consider getting legal advice on the issues raised in the play.

A performance of the play was filmed and is available as a video resource from the SCLS. A resource kit has also been developed to assist organisations to conduct the Q&As, which prove popular with audiences. It has also been adapted into a radio play. See suncoastcommunitylegal.org for details.

Kirsty Mackie is chair of the Queensland Law Society, Elder Law Committee. Kirsty coordinates the law professional practice program at the Suncoast Community Legal Service, Maroochydore, on behalf of the University of the Sunshine Coast. She is the director of KRM Legal.

Notes

¹ Elder Abuse Prevention Unit Year in Review 2016; eapu.com.au/uploads/annual_reports/highlight_reports/Highlight%20Report%20August%202016.pdf downloaded 10 November 2016.

² J Daley and D Wood, *The Wealth of Generations, Supporting data* (Figure 2.2), Grattan Institute, December 2014, downloaded 10 November 2016.

³ qgso.qld.gov.au/products/reports/pop-growth-highlights-trends-reg-qld/pop-growth-highlights-trends-reg-qld-2015.pdf.

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Resilience tips for early career lawyers

More often than not, newly admitted legal practitioners find it difficult adjusting to the competing pressures of legal practice. However, as the Early Career Lawyers' Committee reports, there are strategies that can be easily implemented to serve as a guide for a happy professional life.

The start of a new year is a great time to revisit the importance of resilience for early career lawyers.

The Queensland Law Society Early Career Lawyers Committee has compiled its top tips in the lead-up to the 'Resilience and Strength' breakfast event on 7 February (see qls.com.au/events).

Balance working life with other interests

It is well-established that the legal profession experiences a higher incidence of mental health-related illnesses than most other professions.

Lawyers face significant pressure in their working life on all fronts – from clients, partners, the courts, and also from their own high expectations. This can all place a great strain on wellbeing, so it is critical to ensure that practitioners balance their working life with regular activities outside of work, such as involvement in a social sport or hobby, or even just reading (so long as it is not file related).

Be kind to yourself

Sometimes, you need to take a break. This means different things for different people. For some, it might mean having that much needed sleep-in on the weekend, for others it could mean being less hard on yourself when you make that mistake at work, especially when it is an error that is easily fixed and learned from.

By being kind to yourself you minimise the additional, and usually self-inflicted, pressures that tend to attach to the working life of an early career lawyer.

Don't take everything seriously

The practice of law is a stressful endeavour. To stave off a mental breakdown, channel Monty Python and try to "always look on the bright side of life".

Make and take time to reward your triumphs and reflect on and laugh about your tribulations and shortcomings (at the appropriate times of course). That way, you will not make legal practice any more demanding on yourself than it already is.

Always debrief with a trusted colleague

A lawyer should never take a bad day at work home with them. The best way to prevent that is to debrief with colleagues you trust. Not only does this preserve your obligation of confidentiality, but also gives you the most appropriate sounding board as your colleagues are often best placed to understand what you are going through.

This is of particular importance to a junior lawyer, as not only will you be able to ventilate the stress of a situation in the appropriate environment, but also get a better understanding and better perspective on an issue which may otherwise consume an inexperienced lawyer's mind.

Exercise

Lawyers will spend most of their working lives sitting at their desks. Mitigate that forced habit by going for a run, a bike ride or even just a daily walk around the block at lunch time. Basically, get moving and boost your endorphin levels.

Connect with law and professionals in a social sense – relationships matter

Relationships in the workplace matter, particularly for the junior lawyer. By investing in good relations with your partners, immediate supervisors and colleagues generally, you are investing in a good working environment. A good working environment facilitates learning, development and guidance; all critical to the successful growth of the early career lawyer.

Equally, relationships are just as important outside the workplace, and in the wider circle of legal professionals. Adding diversity to your current professional circle has the benefit of exposing you to new and interesting areas of law you may not have previously considered, as well as generally increasing the pool of people you can turn to for advice and guidance in the future.

There are opportunities everywhere for young lawyers to connect and expand our networks with colleagues at all levels – make 2017 the year that you do!

Don't take it personally

After excelling through 12 years of schooling and enduring at least four years at university, many young lawyers feel they are ready to take on the world. Some are shocked to realise that there is indeed much more to learn and struggle to take on board constructive criticism from superiors, even when it is provided with the best of intentions.

Remember, this feedback is usually given to help develop your skills and ensure your next attempt is even better than your last, and ultimately become a better lawyer. If you're feeling defensive, it's most likely your ego – don't feed it.

This article is brought to you by the Queensland Law Society Early Career Lawyers Committee. The committee's Proctor working group is chaired by Frances Stewart (Frances.Stewart@hyneslegal.com.au) and William Prizeman (william.prizeman@legalaid.qld.gov.au).

Self-executing orders

Tips for effective drafting

What is a self-executing order?

A self-executing order is an order that imposes a sanction on a party if it fails to comply with a condition in the order. The sanction is imposed automatically on default and without the need for a further order.

The terms, self-executing order, guillotine order and springing order are often used interchangeably.

Self-executing orders often contain a variation of the following formula:

If [party] fails to do X by a certain date, Y will occur.

The X variable may be, for example, filing an amended pleading, delivering particulars or making a certain type of application.

The Y variable may be, for example, being prohibited from filing an amended pleading in the future, a defence being struck out, the proceedings being dismissed or judgment being entered.

A critical element of a self-executing order is the identification of the date by which an act must be done, failing which the penalty will be imposed.

When should self-executing orders be used?

Self-executing orders can be sought by an innocent party when another party to proceedings has not complied with timeframes imposed under the rules of court or deadlines imposed by previous court orders.

In practice, a court is likely to give a defaulting party more than one opportunity to rectify non-compliance before a self-executing order is made. This is particularly the case when the order is sought against a self-represented litigant.

Bringing the application under the UCPR

Under the *Uniform Civil Procedure Rules* (UCPR), a party must send a rule 444 letter to the defaulting party before applying for an order which relies on a failure by that party to comply with the UCPR or with an order of the court.¹ The rule 444 letter must make plain the relief which is proposed to be sought,² which will require you to draft the proposed self-executing order (see below) and include the terms of that order in the letter.

An application for a self-executing order could be brought pursuant to rule 371 UCPR (in the case of a non-compliance with the UCPR) or rule 374 UCPR (in the case of non-compliance with an order of the court to take a step in a proceeding).

Pursuant to rule 372, an application brought under rule 371 must set out details of the failure to comply with the rules.

An application brought pursuant to rule 374 must comply with the requirements set out in rule 374(4). Notably, the application together with all affidavits relied on in support of the application must be filed and served at least two business days before the hearing date.

Application under Federal Court Rules

Under the *Federal Court Rules*, an application for certain types of self-executing orders can be brought pursuant to rule 5.21, which provides that a party may apply to the court for an order that, unless another party does an act or thing within a certain time:

- the proceeding be dismissed
- the applicant's statement of claim be struck out
- the respondent's defence be struck out, or
- the party have judgment against the other party.

An application can also be brought under rule 5.23(2)(e) for orders under rule 5.23(2)(b), (c) or (d) (which are all forms of order giving judgment against a respondent) to take effect if the respondent does not take a step ordered by the court in the proceeding in the time specified in the order. Such an application can only be brought if the respondent is in default within the meaning of rule 5.22.

Drafting the order

It is essential that a self-executing order be drafted with precision.³ As stated by Hargrave J in *Ridge Lane Pty Ltd v Gadzhis* [2007] VSC 212 at [27]:

"The terms of a self-executing order must be clear and unambiguous. The party against whom the order is made should know precisely what must be done in order to comply and avoid the automatic operation of the order. The terms of a self-executing order should not invite debate about whether or not the party required to comply, in order to avoid automatic operation of the order, has in fact complied."

If the terms of the order are ambiguous, it may be ineffective or lead to further disputes about whether there has been compliance or the consequences of non-compliance. In particular, difficulties often arise when an order is drafted in such a way that parties are left in doubt as to whether the order confers a right upon the innocent party to enter judgment or whether the order itself enters judgment upon non-compliance with the stated condition.

As such, it is helpful to consider the wording used in cases where self-executing orders have been effective.

In *Mango Boulevard Pty Ltd v Spencer & Ors* [2010] QCA 207 at [102] – [103], Fraser JA said:

"The words 'unless' and 'upon' are conventionally used in self-executing orders and the expression 'there shall be judgment for the plaintiff' means that such a judgment shall exist. That may be contrasted with other orders which provide that a party is or will be at liberty to enter judgment or which

Precision is key to drafting an effective self-executing order.
Report by **Kylie Downes QC** and **Borcsa Vass**.



direct the registrar to enter judgment... I do not see any relevant distinction between the expression 'there shall be judgment' and the expression that the proceeding 'is to stand dismissed'."

Also in that case at [7], Muir JA noted:

"[The language of] '[s]tand dismissed' is commonly used terminology [in self-executing orders] but is frequently departed from as the following examples show: 'In the event that the defendant fails to comply with the order ... the action be dismissed with costs'; 'the defence and counter-claim ... be struck out'; 'if the documents ... were not delivered within 10 days the action be struck out'; and 'Unless a statement of claim were delivered within a week the action should be at an end'." [footnotes omitted]

These examples may be contrasted with other orders which provide that a party will be at liberty to enter judgment or which direct the registrar to enter judgment. Such orders require a further step to be taken before judgment is entered.

Similar drafting considerations apply to self-executing orders for case management purposes. It is helpful to phrase those orders using words and terms such as 'if', 'then', 'prohibited', 'will be' or 'must'. For example:

If the plaintiff does not file an amended statement of claim by [date] then the plaintiff is **prohibited** from filing an amended statement of claim in this proceeding and **will be** taken to rely on the statement of claim filed on [date].

There are numerous ways to draft a self-executing order and it will depend on the circumstances of the case. The key is to strive for precision in the drafting of the terms of the order to avoid later debate about its terms and to insert appropriate words which ensure that the order does not require a further step to be taken to obtain the desired result, such as judgment.

Kylie Downes QC is a Brisbane barrister and member of the *Proctor* editorial committee. As of 1 January, she has been a member of Northbank Chambers. Borcsa Vass is a Brisbane barrister.

Notes

¹ Rule 443(c) UCPR.

² Rule 444(1)(c) UCPR.

³ *Broers v Forster* (1981) 36 ALR 605.

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Footy coach's 'unfair dismissal' gets the boot

Is a paid volunteer an employee?



According to the latest census, 19.4% of Australians are involved in formal volunteering and another 11.9% in informal volunteering, such as providing care for a person with a disability, long-term illness or age-related health issues.¹

As a general rule, volunteers are not paid for their time or services and are not employees for the purposes of the *Fair Work Act 2009* (Cth) (FW Act). This means volunteers are prevented from making claims for unfair dismissal, adverse action and employment entitlements among other things.

The position is less clear if a volunteer is paid an honorarium and the volunteering arrangement has the characteristics of an employment relationship, as was the case in *Adam Grinholz v Football Federation Victoria Inc.* [2016] 7976.

Background

Mr Grinholz was the head coach of a girls' soccer team for Football Federation Victoria Inc. (the club) during the 2015 and 2016 seasons. For both seasons, Mr Grinholz signed a "voluntary services agreement" with the club, which required that he attend a number of training sessions, matches and competitions during the season as well as liaise with the club's full-time coaches and administrators. Mr Grinholz received a \$4000 honorarium under the 2015 agreement that was increased to \$6000 under the 2016 agreement. The honorarium was paid in two equal instalments – half at the beginning of the season and half at the end of the season.

On 9 October 2016, the club ended Mr Grinholz's coaching role and did not pay him the second instalment of the 2016 honorarium, on the grounds that he had forfeited a game without appropriate approval.

Mr Grinholz made an unfair dismissal application to the Fair Work Commission under s394 of the FW Act. The club objected to the application on the grounds that Mr Grinholz was a volunteer and therefore was not entitled to an unfair dismissal remedy under the FW Act.

Indicia to be considered an employee

The issue in contention was whether or not the essential character of the relationship was one of an employee-employer relationship.

Commissioner Roe considered the employee indicia as identified in *Abdalla v Viewdaze Pty Ltd t/a Malta Travel*² and subsequently in *Jiang Shen Cai t/a French Accent v Do Rozario*.³

The relevant criteria to be considered are whether the:

- employer exercises, or has the right to exercise, control over the manner in which work is performed, the location and hours of work etc.

If a paid volunteer is sacked, can they be considered an employee for the purposes of an unfair dismissal action? Report by **Sara McRostie** and **Matthew Giles**.



- employee works solely for the employer
- employer advertises the goods or services of its business
- employer provides and maintains significant tools or equipment
- employer can determine what work can be delegated or sub-contracted out and to whom
- employer has the right to suspend or dismiss the worker
- employer provides a uniform or business cards
- employer deducts income tax from remuneration paid
- employee is paid by periodic wage or salary
- employer provides paid holidays or sick leave to employees
- work does not involve a profession, trade or distinct calling on the part of the employee
- work of the employee creates goodwill or saleable assets for the employer's business
- employee does not spend a significant portion of their pay on business expenses.

Factors indicating Mr Grinholz was an employee

The commission found the club exercised control over the manner, location and hours of work performed by Mr Grinholz. It also required that he promote the club, wear its uniform, participate in personal development, meet the club's performance criteria, and comply with its code of conduct and other employment policies.

Factors indicating Mr Grinholz was a volunteer

The commissioner found that Mr Grinholz did not receive a periodic wage and the payment to him of an honorarium for expenses was reasonably proportionate to his likely out-of-pocket expenses. Further, no income tax was deducted and payment to Mr Grinholz was by invoice, with his Australian Business Number and goods and services tax not deducted.

Mr Grinholz also did not receive paid annual or personal leave during the engagement.

The essential character of the relationship

Commissioner Roe concluded that Mr Grinholz's circumstances could "point both ways" and did not "yield a clear result".

Given the circumstances, he said the focus should be on whether the essential character of the arrangement is more like that of an employee or volunteer.

In this instance, Commissioner Roe was satisfied the mutual intention of the parties in the signed contracts was clearly to establish a volunteer relationship and not an employee relationship. The level of control over the work performed by Mr Grinholz was not inconsistent with a volunteer relationship and the contract had other legitimate purposes, including protecting the coaching standard, the reputation of the club and the interests of the young people participating in sporting activities.

Had the honorarium been an amount of \$20,000 or more, Commissioner Roe said he could not be satisfied that the honorarium was purely to cover expenses. Consequently, Commissioner Roe held Mr Grinholz was a volunteer and dismissed the application.

Lessons learned

The decision reinforces the importance of having a written agreement in clear and certain terms, which sets out the character of the working arrangement. For not-for-profit organisations, this judgment confirms that a strong level of control over the work to be performed and the standard of that work is not necessarily inconsistent with a volunteer relationship, and that the amount of an honorarium should be reasonably proportionate to the volunteer's costs of performing the role.

Sara McRostie is a partner and Matthew Giles is a lawyer at Sparke Helmore Lawyers.
Image credit: ©iStock.com/Halfpoint

Notes

¹ Volunteering Australia. 2015. 'Key facts and statistics about volunteering in Australia', volunteeringaustralia.org > Research and advocacy > Volunteering facts.

² (2003) 122 IR 215, [34].

³ (2011) 215 IR 235, [30].

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Undertakings – a matter of honour?

by Stafford Shepherd



Undertakings made in the course of our work for and on behalf of clients enable legal services to be delivered in a timely and efficient manner.

Our strict observance of an undertaking “is an important component” of our ethical obligations we owe to the courts, our clients and our colleagues.¹

It is a promise to do or not to do something.² It must be honoured and we must ensure it is delivered in a timely and effective manner.³

An undertaking should never be given without regard to its potential consequences.

Remember:

- It is usually seen as personal to us (unless otherwise stated).
- It must be given in a professional capacity.⁴
- It should be given in clear and unambiguous terms.
- It must be capable of performance at the time it was made.
- It must be performed in a timely and effective manner.⁵
- We must not seek from our colleagues, their employees or associates, an undertaking in respect of a matter that would require the cooperation of a third party who is not a party to the undertaking.⁶

A breach of undertaking can lead to:

- a charge of contempt of court
- civil liability in contract or tort, or
- disciplinary proceeding.

When giving an undertaking, make certain that if disclaiming personal liability, this is clear from the undertaking itself. The Law Institute of Victoria has recommended to its members using the phrase “I am instructed that my client undertakes...”⁷

In *Bhanabhai & Burgess v Commissioner of Inland Revenue*⁸, a New Zealand practitioner was held personally liable for an undertaking given in these terms:

“We are solicitors for Golden Gate Holdings Ltd. We have been instructed to settle the sale of the units in the development and undertake that on settlement of those units [these are then specified], we will forthwith pay to you the GST component of the sale consideration.”⁹

We should only give personal undertakings where we are able to ensure fulfilment and have control in relation to it.¹⁰

In *Legal Services Commissioner v McColm*,¹¹ a charge was brought against a solicitor alleging that he had failed to honour an undertaking given by him in writing to another firm of solicitors.

The solicitor acted for the seller of a business. A term of the contract of sale provided that \$70,000 of the sale price be retained on completion and held in the trust account of the seller's solicitor. The money was held as a retention sum for possible contract adjustments.

Prior to settlement the solicitor wrote to his colleague undertaking “to hold the sum of \$70,000 of the purchase price pursuant to the terms of special condition 10 of the contract of sale”.

Due to what was accepted as human error, the sum of \$70,000 was not held in the seller's solicitor's trust account but paid out to the seller.

When the solicitor discovered the error he requested his client to restore the amount to his trust account. The seller was unable to do so. Subsequently the seller formed the opinion that no restoration was required due to what it saw as a breach by the buyer of another dependent stipulation in the contract.

The buyer in due course became aware that the retention sum was no longer held in the trust account of the seller's solicitor.

The Chief Justice held that the charge was made out.

The Legal Services Commissioner accepted that the undertaking had not been deliberately breached. The Chief Justice noted that it was “unfortunate that (the seller's solicitor had) not quickly informed the purchaser of what had occurred, effectively leaving it to the purchaser itself to draw the inference...”¹²

The tribunal described the conduct as falling “just short of the level of professional misconduct and that it should be characterised as unsatisfactory professional conduct...”¹³

The Chief Justice accepted that there were a number of matters in mitigation:

- It was an isolated incident.
- No allegation of dishonesty was made.
- The solicitor was remorseful and had apologised for the breach of undertaking.

- He indicated at an early stage that he would not contest the matter.
- He had cooperated with the investigation.
- He had not been the subject of any other adverse disciplinary finding.
- It was unlikely that he would err again.
- He had taken steps to ensure such a breach did not occur again.
- He had restored the trust fund to alleviate the position of the buyer.

The solicitor was publicly reprimanded, ordered to pay a penalty of \$3000 and the commissioner's costs in the agreed sum of \$2000.

Before we or our employee¹⁴ or agent give an undertaking, remember that it is a matter of honour for the undertaking to be performed in a timely and effective manner. Once an undertaking is given, only the recipient or a court of competent jurisdiction can relieve us of its performance.

Stafford Shepherd is the director of the Queensland Law Society Ethics Centre.

Notes

¹ Gino Dal Pont, *Lawyers' Professional Responsibility* (Thomson Reuters, 5th ed, 2013), 723.

² *Ibid.*

³ *Australian Solicitors Conduct Rules 2012* (ASCR) rule 6.1.

⁴ *Ibid.*

⁵ *Ibid.*

⁶ ASCR rule 6.2.

⁷ Law Institute of Victoria, *If I give an undertaking on behalf of my client, am I personally bound by it?* <liv.asn.au/For-Lawyers/Ethics/Common-Ethical-Dilemmas/Undertakings>.

⁸ [2007] 2 NZLR 478.

⁹ *Ibid* [1].

¹⁰ *Ibid* [43].

¹¹ [2006] LPT 14.

¹² *Ibid* 4.

¹³ *Ibid.*

¹⁴ In general, an undertaking given by our employee or agent will bind us professionally: *Enenco Pty Ltd v Australian Building Construction Employees and Builders Labourers Federation (Qld Branch)* [2001] 2 Qd R 118. An undertaking given by our clerk at a settlement is seen as an undertaking by the legal practice, even if given without the proper authority of the partner, sole practitioner or legal practitioner director: *Hawkins v Gaden* (1925) 37 CLR 183.

The 'Magic Pudding' estate

Funeral and estate administration expenses

with Christine Smyth



Did you stick to your budget over Christmas? I recall the days of receiving a pay packet with notes and coins in it, and I would thumb through the \$20 notes and peel off portions for my expenses.

Somehow, receiving physical money made it easier to stick to my budget.

Now we live in a digital age filled with digital transactions and easily available credit at the click of a button, or the tap of a thumb. It makes it far more difficult to maintain or track one's own expenses and requires great discipline.

Financial discipline is essential for those administering estates, not just for members of parliament seeking to claim travel expenses.

So it is no surprise that I encounter executors and administrators who are confronted when I tell them that they are the ones who are responsible for the expenses they incur and that they must justify those expenses in order to claim an indemnity from the estate. They are even more confronted when informed that this includes legal and accounting fees. The estate is not a financial 'magic pudding'.

These issues were recently canvassed in *Foster v Takai*.¹

The matter addressed a claim for wrongful distribution of trust property. The administrator's defence involved her claiming parts of the estate distribution were properly incurred as she was entitled to claim them. Some of those expenses included airfares, accommodation and transport for relatives to attend the funeral; contributions to the deceased's sibling, nieces and nephews; costs of well-being (health issues due to stress); costs of gravesite maintenance; hardship costs, etc. These expenses totalled \$223,750 and formed the basis of the dispute.

"The Magic Pudding is a pie, except when it's something else, like a steak, or a jam donut, or an apple dumpling, or whatever its owner wants it to be. And it never runs out. No matter how many slices you cut, there's always something left over. It's magic."

– Lindsay, Norman, *The Magic Pudding*, Australia: HarperCollins Publishers (Australia) Pty Ltd, 1918.

After various concessions and mathematical recalculations, that amount was reduced by \$38,886.04, which included funeral expenses allowed at \$20,500.00. In respect of funeral expenses Morzone J affirmed at [19]-[24] the principles applied to claims for funeral expenses in Queensland. Ultimately the court found the administrator had made wrongful distributions and made orders as to the amount of that wrongful distribution plus interest.

In respect of estate administration costs, those administering the estates have a responsibility to the beneficiaries of the estate to properly manage the expenses if they seek to have them reimbursed from the estate.

It is trite law that a personal representative and trustee of a deceased estate is entitled to be reimbursed from the estate for the expenses they reasonably incur in the administration of the estate. In Queensland, this right is enshrined through the combination of s49(1) of the *Succession Act 1981* and Part 6, of the *Trusts Act 1973* – in particular s72.

In the decision of the *Public Trustee of Queensland v Macpherson* [2011] QSC 169, McMeekn J stated at [25] that "a trustee or executor is entitled as of right to be indemnified for expenses incurred before paying out the trust funds to anyone else".

Nevertheless, it is important to appreciate the extent and limitations of this indemnity. A person administering an estate may be at risk if they are unable to demonstrate a measurable benefit to the estate in incurring the expense.² The demonstrable benefit does not need to be a pecuniary benefit. It must, however, be in furtherance of the administration of the estate.³

That is not to say that all improper expenses may not be recovered. In this respect, in the matter of *Beath v Kousal* [2010] VSC 24 (12 February 2010), the court said:

"[20] ...A trustee is, however, entitled to be indemnified in respect of a liability improperly incurred to the extent to which, acting in good faith, he has benefited the trust estate."⁴

"[21] the unauthorised expenditure by the trustee must demonstrate 'a measurable benefit to the trust estate'.⁵

"[24] ...a trustee may only recover an 'improper' or unauthorised payment or expense, if the payment or expense has resulted in a corresponding benefit to the estate of at least equivalent value."

Finally, when it comes to an administrator recovering their legal costs from the estate, they ought to be cautioned that their right to indemnity "...only exists in respect of expenditure reasonably incurred in identifying, recovering, realising and protecting trust assets (or attempting to do so)".⁶

What this tells us is that claiming estate administration expenses requires a legal analysis and applying the 'pub test' is not enough.

Christine Smyth is 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.

Conduct at trial 'relevant to appeal costs'

with Robert Glade-Wright



Costs – discontinuance of appeal – conduct of parties during trial is relevant to appeal costs under s117(2A)(g) *Family Law Act 1975*

In *Parke & The Estate of the Late A Parke* [2016] FamCAFC 248 (24 November 2016) the husband appealed the setting aside of a financial agreement by Judge Howard who found that the husband acted dishonestly in his financial dealings ([23]-[24]). The mother was granted expedition of the appeal. Two weeks after the husband's death his personal representative discontinued the appeal. The wife applied for her costs of her expedition application, the appeal and her costs application on an indemnity basis in the sum of \$119,500.

May & Ryan JJ said ([18]) that the filing of a notice of discontinuance "does not automatically lead to a costs order". The wife's counsel argued ([24]) that the husband's "deplorable" conduct, including the finding that he had forged the wife's signature in relation to their superannuation funds, "deserved" an indemnity costs order. The majority said (at [30], [36] and [52]):

"No offers to settle ... were made after the Notice of Appeal was filed. The question therefore is whether offers to negotiate in the trial proceedings can be considered in a costs application for the appeal. Additionally, should the husband's conduct during the trial ... and his failure to make any offer to settle, be considered ... relevant ...?"

"We are of the opinion that ... the criteria in s117(2A)(b)-(f) ... are matters which are limited to the appeal proceedings because in each case those sections refer to 'the proceedings'. However, other matters ... may be considered by reason of ... s117(2A)(g) which does not contain the limitation of 'the proceedings' ..."

"... Although the circumstances relating to the trial might attract an order on an indemnity basis, it could not be justified in the conduct of the appeal. Taking into account the timing of ... the Notice of Discontinuance we are of the view that costs should not be ordered on an indemnity basis."

The wife was awarded party/party costs of the three proceedings sought. Murphy J agreed but fixed those costs at \$51,000.

Procedure – publication of proceedings – use of Family Court documents in Supreme Court case between interrelated parties did not offend s121 FLA

In *R Pty Ltd atf the Fletcher Trust & Jones and Anor* [2016] FamCA 928 (4 November 2016) Carew J granted an application for leave to use in Supreme Court proceedings between interrelated parties' documents produced in earlier property proceedings between Ms Fletcher and Mr Jones ([1]). The applicant was R Pty Ltd which became trustee of the Fletcher Trust (FT) upon the death of Ms Fletcher and continued the proceedings as her personal representative. Mr Jones had a group of entities, some of which were in partnership with the trust. The property case was resolved by a consent order for the assignment of debt to the group and an indemnity of Ms Fletcher. The order noted that "all matters relating to the assets of [FT] will be resolved outside the jurisdiction of the Family Court" ([16]).

Carew J ([38]) accepted the submissions for both parties that "the proposed use of the documents is not a breach of s121 because it is not intended to publish or disseminate within the meaning of s121(1) and in any event the proposed use is an exemption within the meaning of s121(9)(a)."

The court added ([64]):

"... it could not be said that the dispute is the same in both courts nor ... that the parties are the same. However I accept ... that there is a commonality of subject matter and interrelationship between the parties. Further, it was ... anticipated at the time of the consent order that the disputes relating to the assets of FT would be determined in another jurisdiction."

Children – international child abduction – interim order for return of child to China where mother unilaterally removed child from father's care

In *Hsing & Song* [2016] FamCA 986 (17 November 2016) the father applied for the immediate return of a four-year-old child to the People's Republic of China. Both parents were Chinese citizens but met as students (and married) in Brisbane. The child was born in Australia and lived here for his first 10 months with the mother and her mother while the father returned to China for

treatment for a serious illness that left him paraplegic, requiring the use of a wheelchair for mobility. The mother took the child to China in 2013 for the child to live with the father and his parents while the mother returned to Australia to run and sell their business there.

A consulate document was in evidence where the mother had agreed to the child living in China until February 2018. The mother travelled there to see the child for birthdays and celebrations. She returned to China in April 2016, taking the child with the agreement of the father to visit her family there, but in August 2016 she absconded with the child to Australia ([21]).

Forrest J referred (at [26]) to the father's evidence that from July 2014 to June 2015 the child attended childcare in China and from June 2015 to June 2016 kindergarten for five days a week at a school in their neighbourhood and ([32]) that from the age of 10 months to four years the child was mostly cared for by the father with help from the paternal grandparents.

Forrest J said ([38]-[39]) that as China is not a signatory to the Hague (Child Abduction) Convention the case would be heard not under the *Family Law (Child Abduction Convention) Regulations 1986* (Cth) but the jurisdiction of the court under s69E FLA, the child being an Australian citizen (and present in Australia) when the application was filed. His Honour added ([43]) that "the Court must, nevertheless, still regard the best interests of the child as the paramount consideration", citing *ZP v PS* [1994] HCA 29 and other authorities which "countenance an order ... for the immediate return of a child to another country from which the child has been taken, upon a summary hearing, if the Court, having regard to the best interests of the child ... determines that should happen."

Forrest J so determined after considering the matters set out in s60CC and made an interim order accordingly.

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).

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with Supreme Court Librarian David Bratchford



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Presented by Justice Roslyn Atkinson AO
- Notable Trials – *The trials of Oscar Wilde*
Presented by the Hon. Alan Wilson SC
- *The Lord Atkin Lecture*
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Costs orders on security for costs applications

Plyable Pty Ltd v Go Gecko (Franchise Pty Ltd)
(No.2) [2016] QSC 256

Plaintiffs ordered to provide security for costs – whether costs should be reserved or made costs in the proceeding – application of UCPR r681 – costs to follow event unless otherwise ordered

In *Plyable Pty Ltd v Go Gecko (Franchise Pty Ltd)*(No.2) [2016] QSC 256 Bond J considered the question of the appropriate costs order to make on successful applications that the plaintiffs provide security for costs. His Honour rejected the notion that there is a ‘normal’ or ‘usual’ rule that costs of such applications should be reserved or made costs in the proceeding.

Facts

The plaintiffs were ordered to provide security for costs on the application of the first defendant, and the first plaintiff was also ordered to provide security for costs on the application of the second, third and eighth defendants: *Plyable Pty Ltd v Go Gecko* [2016] QSC 249.

In his reasons, Bond J expressed his preliminary view that costs should follow the event in each application, but his Honour indicated that he would hear the parties on that question.

Submissions

The successful applicants submitted that costs should follow the event. They also relied on some of the evidence before the court on the principal application as supporting the view that the need for the fully argued applications was brought about by the unreasonable conduct of the plaintiffs in various respects.

The plaintiffs submitted that the costs should be reserved, or that they should be costs in the proceeding. Reference was made to the decision of Holmes J in *Iron Gates Pty Ltd (in liq) v Richmond River Shire Council* [2002] QSC 458 (*Iron Gates*), in which it was ordered that the plaintiff provide security for costs, and that the costs of the application were costs in the cause.

They also argued that an analogy could be drawn with applications for interlocutory injunctions, on which costs are not usually awarded against an unsuccessful opposing party but are either reserved or made costs in the proceeding.

Analysis

Bond J found that the analogy sought to be drawn by the plaintiffs was not valid. His Honour regarded the differences between the nature of the discretion and the risks which must be addressed as too great to make the analogy useful.

The reference to the decision in *Iron Gates* was also viewed as of limited assistance because it did not involve any discussion of principle. However, his Honour found support for the plaintiffs’ contention in *Quick on Costs* [R Quick and E Harris, *Quick on Costs*, Thomson Reuters, vol.2 (at update 55)]. The authors state there that if a defendant is successful in an application for security for costs, the costs of the application are usually reserved to the trial, or made costs in the cause. The authors also express the view that: “It is more usual and sensible to make the costs costs in the cause or reserve them because the application is posited upon a certain outcome to the trial, namely the plaintiff’s failure at trial: Budd and Ryan, ‘Security for Costs – A Practitioner’s Guide’ (1990) 20 QLSJ 215 at 220.”

However, after discussion of the cases and article referred to in that work, Bond J was not persuaded that the authorities cited established the existence of the approach for which the authors contended. His Honour noted in particular that some of the cases referred to were merely examples of the exercise of the costs discretion in a particular way, without discussion of principle. He also regarded the assertion that a security for costs application assumes the plaintiff’s failure at trial as wrong. He suggested that the discretion was much more nuanced, as demonstrated in his discussion of relevant principle in the judgment on the merits of the application (at [18]-[21]).

Reference was also made to the consideration of the issue in Dal Pont’s *Law of Costs* [GE Dal Pont, *Law of Costs* (Butterworths, 3rd ed., 2013) at 28.6]. After consideration of the authorities cited by the author, Bond J concluded (at [12]):

“In my view the authorities cited by Dal Pont do not establish that there is any particular ‘usual’ approach to the question of the nature of the award which should be made in the event of a successful security for costs application. Nor do they provide evidence in support of the proposition the exercise of the costs discretion by reserving costs or making them costs in the cause occurs more frequently than the exercise of the discretion in any other way.”

A recent Supreme Court of Queensland case illustrates the reasoning likely to be followed after a successful application for a plaintiff to provide security for costs. Report by **Sheryl Jackson**.



Bond J then considered the decision of the Court of Appeal of the Supreme Court of Western Australia in *Frigger v Clavey Legal Pty Ltd* [No.2] [2015] WASCA 258 (*Frigger*). In that case the Court of Appeal rejected the notion that there was a 'normal' rule that if the respondent had successfully applied for security, the 'normal' order for costs was that the costs of the application were the respondent's costs on the appeal. That court considered the relevant factors and ordered that the appellants pay the respondent's costs of the application.

Bond J concluded that the approach taken in *Frigger* was the correct one. His Honour proceeded (at [14]):

"I have the discretion which the rules of procedure in this jurisdiction give me and I should exercise that discretion judicially having regard to the particular circumstances of the case."

His Honour noted that the general rule is that set out in r681 of the *Uniform Civil Procedure Rules 1999* (Qld), namely that costs of an application in a proceeding "... are in the discretion of the court but follow the event, unless the court orders otherwise".

His Honour was not persuaded that in the particular circumstances of the case he should order otherwise than that the costs of the application should follow the event. He noted in particular that:

1. The applications were fully argued and the applicants succeeded on all the bases on which they sought security.
2. The successful applicant defendants had on a very early basis invited the plaintiffs to agree to provide security without the need for making applications, but the plaintiffs determined to oppose the applications and responded inadequately and unreasonably to requests on behalf of the applicant defendants.
3. The application was opposed on a number of bases which, objectively, had little or no merit.

Comment

The decision makes it clear that all the usual discretionary considerations will be taken into account in determining the appropriate order to be made on a security for costs application, including the merits of the application and the opposition to it, and the reasonableness of the conduct of the parties generally.

In circumstances in which there are strong grounds that an application for security for costs will be successful, the plaintiff should seriously consider offering to provide security in an appropriate amount, even if the quantum offered is not the full amount sought by the defendant.

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.



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High Court and Federal Court casenotes

High Court

Tax – income tax – assessable income

In *Blank v Commissioner of Taxation* [2016] HCA 42 (9 November 2016) the High Court considered whether amounts received by the appellant on the termination of his employment as part of an employee incentive profit participation plan were ordinary income and assessable for income tax. The appellant was involved in the plan through various agreements with companies in the corporate group of his employer. Ultimately, the appellant had an entitlement to “deferred compensation”. Pursuant to that entitlement, after the termination of his employment the appellant relinquished his claims under a profit-sharing agreement and assigned shares he held in one of the companies. He thereby became entitled to a lump sum paid in instalments. The High Court noted that reward for services in the form of remuneration or compensation is obviously income, and that is so even if the payment is in a lump sum or deferred until after retirement. In this case, the court held that the instalments paid to the appellant were deferred compensation for the services performed and were therefore income according to ordinary concepts. French CJ, Kiefel, Gageler, Keane and Gordon JJ jointly. Appeal from the Full Federal Court dismissed.

Workers’ compensation – whether injuries suffered ‘as a result of’ reasonable administrative action

In *Comcare v Martin* [2016] HCA 43 (9 November 2016) the High Court considered the causal connection required to meet an exclusion from the *Safety, Rehabilitation and Compensation Act 1988* (Cth) (the Act). Ms Martin was diagnosed with an adjustment disorder after being treated following a work “break down”. The break down occurred after Ms Martin was told that she would not be appointed permanently to a higher position in which she had been acting. That decision meant Ms Martin would return to being supervised by a man with whom she had a poor working relationship. Ms Martin made a claim under the Act for aggravation of a mental condition. Comcare argued that Ms Martin was precluded from compensation because the aggravation had occurred “as a result of reasonable administrative action”. The Administrative Appeals Tribunal (AAT) found that the causal connection required by that phrase was met, but that the action was not reasonable in the circumstances. A majority of the Full Federal Court held that the phrase “as a result of” required a “common sense approach” to causation. The High Court rejected that approach. It held that an employee will suffer injury “as a result of” administrative action if that action is a cause in fact of the disease suffered. That is, the employee would not have suffered the disease as defined (which includes aggravation) if the action had not been taken. That connection

was met in the case of an aggravation of a mental condition suffered in reaction to a failure to obtain promotion. The matter was to be remitted to the AAT to consider again the reasonableness of the action. French CJ, Bell, Gageler, Keane and Nettle JJ jointly. Appeal from the Full Federal Court allowed.

Practice and procedure – Anshun estoppel – abuse of process

Timbercorp Finance Pty Ltd (in liquidation) v Collins; Timbercorp Finance Pty Ltd (in liquidation) v Tomes [2016] HCA 44 (9 November 2016) concerned actions brought by the appellants to enforce loans made to the respondents. In their defences, the respondents alleged that the loans were invalid. The respondents had also been members of an earlier group proceeding in which it was alleged against the appellants that they had failed to disclose required information. The relief would have been the invalidity of loans, including those made to the respondents. The appellants argued that the claims raised by the respondents in their defences should have been put in the group proceeding and that the appellants were now estopped in the *Anshun* sense from raising them. In part, this argument relied on the lead plaintiff in the group proceeding being a privy in legal interest of the respondent. The High Court held, after reviewing the group proceeding provisions, that the lead plaintiff was not such a privy. The level of control of the group members could not go that far. The lead plaintiff represented the group in relation to the claim the subject of the proceedings, but not in relation to the individual claims of the group members. *Anshun* only operated when the defence raised in the later proceeding is so relevant to the subject of the first proceeding that it would have been unreasonable not to raise it. That could not be said in this case. The only connection was the relief in the two proceedings. Further, there would be no conflicting judgments if the defences were allowed. The court also rejected an argument based on a broader concept of abuse of process. French CJ, Kiefel, Keane and Nettle JJ jointly; Gordon J concurring separately. Appeal from the Supreme Court (Vic.) dismissed.

Taxation – income tax – residence of a company – central management and control of company

In *Bywater Investments Limited v Commissioner of Taxation; Hua Wang Bank Berhad v Commissioner of Taxation* [2016] HCA 45 (16 November 2016), the High Court held that the central management and control of the appellants was exercised in Australia and therefore the appellants were resident in Australia for tax purposes. The appellants argued that the directors of the companies were resident abroad, and the board of directors of each appellant met abroad and took company decisions abroad, meaning that the companies were resident abroad for tax purposes.

The High Court confirmed that the question of the place of exercise of a company’s control and management is a factual one, determined through scrutiny of the company’s actual business and trading, not just the company documents. Ordinarily, business will be conducted where directors and boards of directors conduct their business. But the same does not follow if a board of directors abrogates decision-making power in favour of an outsider and operates as a puppet, ‘rubber-stamping’ the decisions of the outsider. In this case, Perram J at first instance held that the appellants’ real business was run from Sydney, and the role of the directors was “fake”. Tax liability could not be escaped because the boards were overseas. French CJ, Kiefel, Bell, and Nettle JJ jointly; Gordon J concurring separately. Appeal from the Full Federal Court dismissed.

Criminal law – summing up – the ‘proviso’ and substantial miscarriage of justice

In *Castle v The Queen; Bucca v the Queen* [2016] HCA 46 (16 November 2016), the appellants were convicted of murder. The deceased met Castle in a parking lot, got into Castle’s car and was shot. The prosecution alleged Bucca was in the boot, crawled into the back seat and shot the deceased. Castle alleged another man, Gange, was the shooter. The prosecution relied on telephone records and evidence of Gange’s partner, M, to show that Gange was not at the murder scene. The appellants alleged that the trial judge’s summing up was unbalanced and favoured the prosecution; that evidence of handguns owned by Bucca should not have been admitted; and that evidence of a statement of Bucca, relied on as an admission, should not have been admitted. The High Court held that, in all the circumstances, the case was fairly left for the jury in the summing up, though some comments of the judge would better not have been made. The High Court also rejected the argument that the handgun evidence should have been excluded, finding that it was open to conclude that it was probative and outweighed any prejudice. However, the court held that the “admission” was not properly an admission and should not have been allowed in. That raised the question of the application of the “proviso”: whether the error meant there had been a substantial miscarriage of justice. The court held that there had been because, notwithstanding the strength of the prosecution case, it could not be concluded that Bucca was guilty beyond reasonable doubt. The conviction had to be quashed and a new trial ordered. Kiefel, Bell, Keane and Nettle JJ jointly; Gageler J separately concurring. Appeal from the Court of Criminal Appeal (SA) allowed.

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with Andrew Yuile and Dan Star



Federal Court

Evidence – legal professional privilege – communication of legal advice to overseas regulator – whether existence and waiver of privilege under common law principles

In *Cantor v Audi Australia Pty Ltd* [2016] FCA 1391 (22 November 2016), the court (Bromwich J) upheld claims of legal professional privilege (LPP) and rejected claims of waiver of LPP.

The privilege dispute arose in the course of five parallel class actions by purchasers or lessees in Australia of various diesel engine models of Volkswagen, Audi or Skoda motor vehicles. The substantive proceedings concerned whether the vehicles had certain software that detected when a test vehicle was being assessed for regulatory approval by the federal authority for motor transport in Germany (the German regulator). The applicants alleged that the software affecting the operation of the vehicles during test conditions was a 'defeat device' forbidden under German and Australian law.

In September 2015, the German regulator commenced investigations into the software that affected laboratory test performance and its impact on approvals that had been given to vehicles. On 25 September 2015, the German regulator wrote to Volkswagen AG and other VW parties, and by its letter ordered certain things and made certain requests (at [12]–[13]). Between 28 September 2015 and 6 October 2015, Volkswagen AG sought and obtained advice in writing from its law firm in Germany, Freshfield Bruckhaus Deringer LLP, which was provided in the form of a memorandum (the Freshfields document). On 7 October 2015, Volkswagen AG wrote to the German regulator and referred to and enclosed the Freshfields document. Subsequently parts of the Freshfields document were reproduced in documents of the German regulator to Volkswagen AG communicating administrative procedures as the regulator dealing with issues concerning the affected vehicles (the ordinances). Volkswagen AG claimed LPP over the communications comprising the Freshfields document and references to its contents in other documents (namely, the ordinances).

It was common ground that the issues in dispute as to the existence of LPP and its waiver were governed by Australian law and, relevantly, the common law (and not the *Evidence Act 1995* (Cth)): at [32].

The court provided a detailed analysis of the legal principles and authorities on the existence of LPP (at [56]–[74]) and implied or imputed waiver (at [75]–[99]). In relation to the latter, Bromwich J examined the different perspectives in different judgments in the major cases of *Goldberg v Ng* (1995) 185 CLR 83 (as well as in the Court of Appeal) and *Mann v Camell* (1999) 201 CLR 1: (at [84]–[88]).

The court held that LPP attached to the Freshfields document (at [117]). From considering the form, context and content of it, the court said "it is plainly and unambiguously legal advice of the kind that would be expected to be provided by any competent lawyer, and especially by a major law firm": at [109]. Although not true of or required of all legal advices, the Freshfields document was not in the form of a submission, did not propose a solution, and was "relatively pure legal opinion". It satisfied the dominant purpose test (at [111]). In relation to the provision of it to the German regulator, "there was no evidence to show that Volkswagen AG had made any decision in relation to the use of the Freshfields document before it was furnished": at [112], [115].

LPP also attached to the subsequent communications by the letter to the German regulator and the ordinances by the German regulator (at [121]–[125]). The court found at [122] that the covering letter referring to the Freshfields document "came under the umbrella of privilege that was maintained in relation to that document. It would be artificial in extreme to suggest that privilege is not maintained because any additional step is taken of this kind." The ordinances were communications from the German regulator back to Volkswagen AG (or Audi AG) as the holder of the privilege in relation the document (at [123]). They did not amount to fresh or new communications, distinguishable from the situation in *Seven Network Ltd v News Ltd* (2005) 144 FCR 379: at [124] (see also [121]).

The court also found there had been no imputed waiver by third-party communication and use (at [133]–[140]) or reliance in litigation (at [145]–[149]).

Protection visa – jurisdictional error from erroneous assumption that formed a critical plank in the tribunal's ultimate decision

In *ABA15 v Minister for Immigration and Border Protection* [2016] FCA 1419 (28 November 2016), the Federal Court allowed an appeal from the Federal Circuit Court of Australia and set aside decision of the then named Refugee Review Tribunal (tribunal).

The tribunal found that the appellant, a Tamil citizen of Sri Lanka, did not satisfy the criteria for a protection visa under s36(2)(a) or (aa) of the *Migration Act 1958* (Cth) (the Act). A ground of review based on the tribunal's assessment in relation to the appellant's credibility was dismissed (at [33]–[40]). However the court (Charlesworth J) held that there was a jurisdictional error by the tribunal in its determination of a factual finding that formed a critical plank in the tribunal's ultimate conclusion that the appellant did not satisfy the grant of a visa under s36(2)(aa) of the Act.

The tribunal found that while the appellant would likely be arrested on returning to Sri Lanka for

departing illegally, he would only be incarcerated for up to a fortnight before being granted bail and would therefore not suffer significant harm (at [14]). According to the tribunal, bail is routinely given on the accused's recognisance, although the accused's relative must also provide surety (at [46]). The court found at [49] that the tribunal in its reasoning had assumed that a relative of the appellant would provide surety, thus bringing an end to his incarceration after a short period. This unstated assumption underpinned the tribunal's factual finding that the appellant spending up to a fortnight in cramped and uncomfortable conditions did not constitute 'significant harm' under s36(2)(aa) of the Act (at [50]). Such a finding was not logically supported, and not capable of being supported, by material before the tribunal (at [52]).

This error did not affect the appellant's outcome under s36(2)(a) of the Act (at [54]). However, the tribunal's conclusion on s36(2)(aa) was materially affected so as to amount to jurisdictional error (at [55]–[58]). One form of significant harm under s36(2)(aa) involves degrading treatment or punishment. In determining whether the appellant would suffer "degrading treatment or punishment" (for the purposes of the definition of 'significant harm' in s36(2A)), the likely period of detention was clearly a relevant consideration. At [57]: "a subjective intention to cause extreme humiliation may be more readily inferred in respect of a lengthy period of incarceration than it might in respect of a relatively brief period." The court held that it could not be safely concluded that the tribunal would make the same conclusion as it did had it applied statutory criteria to a longer detention period.

The appellant also argued that the tribunal breached its obligation under s425 to put him on notice of the finding that his relative would provide surety to secure his bail (at [60]). In *Minister for Immigration and Border Protection v SZTQS* [2015] FCA 1069, the court (Griffiths J) held that the s425 was breached by failing to provide notice of a finding that a relative would provide surety. In that case, the finding was a "crucial plank" in the tribunal's reasoning towards the conclusion that there was no significant harm (at [66]). However in the present case Charlesworth J found that the tribunal's assumption "was not an issue dispositive of the Delegate's decision such that the appellant would otherwise have been on notice of the assumption, potentially forming a critical plank in the Tribunal's own reasoning on review of that decision": (at [70]).

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Court of Appeal judgments

1-30 November 2016

with Bruce Godfrey



Civil appeals

***Shaw v Deputy Commissioner of Taxation; Rablin v Deputy Commissioner of Taxation* [2016] QCA 275, 1 November 2016**

General Civil Appeals – where the respondent commenced proceedings claiming penalties imposed on the appellants *qua* directors for amounts withheld by their company in respect of PAYG tax from payments made to its employees that were not paid to the respondent – where the respondent successfully sought summary judgment against the appellants because the Trial Division judge concluded that the defences pleaded have no real prospect of success – where the appellants allege that there was error in finding that the evidence fell a long way short of establishing an arguable case that they took all reasonable steps to ensure that one of the events under s269-35(2)(a) of the *Taxation Administration Act 1953* (Cth) occurred – where there was no dispute over the existence of steps taken – whether such steps were capable of satisfying the requirement of taking all reasonable steps – where the discretion to give summary judgment under r292 of the *Uniform Civil Procedure Rules 1999* (Qld) is dependent upon the court being satisfied of each of the matters referred to in r292(2)(a) and (b) respectively – where the directors of STL were not obliged to pursue the options of liquidation or voluntary administration whenever they were taking all reasonable steps to enable STL to pay the amounts due to the commissioner – where for how long it was reasonable to pursue the refinancing option in order to pay the amounts due and payable to the commissioner and whether all reasonable steps were taken to pursue that option within that period, are factual questions to be answered by reference to, and upon a consideration of, the constellation of primary facts relevant to them – where in response to an application for summary judgment, it was not necessary for the appellants to have adduced evidence, as they might at trial, which comprehensively addressed all such facts – where the facts deposed to by Mr Shaw are sufficient to warrant a conclusion that a possible defence under s269-35(2) is potentially available to the appellants – where there is a need for a trial in which the factual issues relevant to the defence can be investigated – where in this regard there is no differentiation between Mr Shaw and Mr Rablin – where it is not appropriate at this point to conclude against the latter that, in relying on Mr Shaw consistently with the allocation of responsibilities between them, he must not have taken all reasonable steps – where insofar as the primary judge expressed scepticism

towards the defence, it would be agreed that serious questions might well be posed about a number of matters including the adequacy of the proposed increase in the facility limit, the adequacy of the approved refinancings, the vigour with which each of them was pursued, and justification in pursuing them in the face of the bank's requirement that STC be sold – where, however, they are questions that would be appropriate to an inquiry into whether a defence has been made out – where to pose them at this point would risk error by substituting such a test for the one of no real prospects of successfully defending the claim set by r292 – where moreover, to infer that the questions could never be satisfactorily answered because they were not comprehensively addressed in response to a summary judgment application, would tend to compound such an error.

Each appeal allowed. Orders of 1 April 2016 set aside. Refuse the relief sought in paragraph 1 of the applications filed in that proceeding on 24 August 2015. Otherwise remit the applications to the Trial Division for further consideration. Costs.

***Murstaff Industries Pty Ltd & Ors v Cross* [2016] QCA 292, 11 November 2016**

Application for Leave s118 DCA (Civil) – where the applicants granted a lease of premises at Helensvale to a third-party company – where the lease was assigned to a new lessee by deed – where the respondent director agreed to guarantee to the applicants all money payable by the new lessee and indemnify the applicants against loss or damage incurred or suffered in connection with the new lessee's failure to comply with any term or condition – where the lessee exercised its option to renew – where the applicants commenced proceedings in the Magistrates Court against the lessee company and respondent guarantor for unpaid rent and outgoing and damages connected with the new lessee's departure from the subject premises – where the respondent brought an application for summary judgment on the claim against him on the basis that he was not the guarantor of the lessee's obligations under the lease and assignment deed pursuant to r293 of the *Uniform Civil Procedure Rules 1999* (Qld) – where the magistrate refused the application, holding there was at least a case to be tried – where the District Court allowed the respondent's appeal – where the applicants contend the judge erred in construing the guarantor provisions of the assignment deed – whether on the correct construction of the lease and assignment deed the respondent was obliged to indemnify the applicants against

any loss or damage in connection with the lease – where the District Court judge was correct in his analysis of the reasoning of the magistrate – where the District Court judge's view was that the respondent was not within the extended definition of 'Guarantor' within cl.21.4 of the Lease – where the term 'Guarantor' was defined to include "any other person required to give a Guarantee and Indemnity from time to time" – where his Honour reasoned that that did not include the respondent because, as it happened, he gave a different (and more confined) guarantee and indemnity in the assignment deed – where under such an interpretation a person would become a guarantor only if that person in fact gave a guarantee and indemnity in the terms of cl.7 of the lease – where that interpretation cannot be accepted, because the relevant person is one *required* to give a guarantee and indemnity, whether or not such a person does in fact do so – where the definition is not in terms of [Mr Green, the original lessee] "and any other person who has given a Guarantee and Indemnity from time to time" – where the expression "a person required to give a Guarantee and Indemnity" suggests the need for some legal entitlement of the lessor to call for that person to give the security – where it cannot have been intended that the expression would refer to any person from whom the lessor might wish to have such a security – where that entitlement of the lessor could not be an entitlement as against the proposed further guarantor, because such a person, not being a party to the lease, would not be bound by the lease to provide a guarantee – where rather the entitlement of the lessor to a guarantee and indemnity must be an entitlement as against the lessee – where the word 'required' refers to a requirement, that is to say a demand for a guarantee, which, as between the lessor and the lessee, the lessor is entitled to make – where on the evidence presented in the application for summary judgment and on the agreed premise that the option to renew had been exercised, the new lessee had breached cl.21.4(c) of the lease and the applicants were affected by that breach by being unable to recover from the respondent, as debts due and owing under a guarantee, the sums which it claimed – where by cl.7.3(b) of the assignment deed, the respondent was obliged to indemnify the applicants against any such loss – where there was a sufficient basis for the applicants' claim that the application for summary judgment should not have been refused.

Grant leave to appeal. Allow the appeal. Orders of the District Court set aside. Order that the appeal to the District Court be dismissed. Costs.

Gilligan's Backpackers Hotel & Resort Pty Ltd & Anor v Mad Dogs Pty Ltd [2016] QCA 304, 18 November 2016

General Civil Appeal – where the first appellant and respondent entered an agreement in 2005 under which the respondent was to supply food and catering services at the first appellant's hotel – where the agreement was terminated by the respondent in September 2007 upon the first appellant's purported repudiatory conduct – where the respondent commenced proceedings in the Trial Division seeking damages – where the first appellant argued that the respondent was in fact insolvent at the time of termination and was therefore barred from recovering damages because it was not ready, willing and able to perform – where the trial judge found the respondent was solvent and awarded damages – where the first appellant contends the trial judge erred in finding the respondent's solvency – whether the respondent was solvent at the time of terminating the agreement – whether the respondent was ready, willing and able to perform – where it is clear that the respondent was unable to pay its debts as they fell due, at least from the respondent's conduct of the business, at any time from September 2006 – where default in paying all of its creditors did not commence only in the month or so prior to the termination of the agreement – where this was not an instance of a solvent company having a temporary lack of liquidity – where it was not open to the trial judge to conclude that the company was solvent at the date of termination of the agreement – where it follows that the respondent was not able to perform the agreement and it should not have been awarded damages for the loss of its contract.

Allow the appeal by the first appellant. Set aside the judgment and order for costs against the first appellant. Dismiss the claim by the respondent against the first appellant. Costs.

Criminal appeals

R v OS [2016] QCA 278, 1 November 2016

Sentence Application – where the applicant pleaded guilty to one count of trafficking in dangerous drugs and a breach of suspended sentence was proved – where on the count of trafficking in dangerous drugs, the applicant was ordered to be imprisoned for a period of 10 years with the time spent in pre-sentence custody declared as imprisonment already served under the sentence pursuant to s159A of the *Penalties and Sentences Act 1992* (Qld) – where a serious drug offence certificate was issued with regard to that conviction and the conviction was automatically declared to be a conviction for a serious violent offence – where there was an extremely marked disparity in the discounts to the sentences imposed on the applicant and a related offender given in recognition of their co-operation, and undertakings to provide further co-operation, in the administration of justice – whether the applicant had a justifiable sense of grievance with the sentence imposed upon him when compared to the sentence imposed on the related offender – where the related offender participated in an interview with police and gave extensive and very detailed information about the operation of the drug trafficking business in which he and others were involved well before any information given to police by the applicant – where the applicant's information was useful in that it complemented the information given by the related offender but it was not the primary source of that information – where in all of the circumstances it could not be considered that the applicant's co-operation was of nearly the same value as the related offender's or merited nearly the same discount on sentence – where however, the extremely marked disparity in discount for co-operation given to the applicant and the related offender is sufficient to give rise to an objectively justifiable sense of grievance – where it would appear that the discount

given to the applicant for his co-operation was insufficient when it is compared to the discount given to the related offender for his co-operation – where the sentence which should have been imposed on the applicant should be reduced both to achieve parity with the sentence imposed upon the related offender and to give adequate weight to the applicant's undertaking to provide further co-operation in the administration of justice.

Application for leave to appeal granted. The appeal is allowed only to the extent of replacing the sentence of 10 years' imprisonment with a sentence of nine years' imprisonment, without a declaration that the applicant has been convicted of a serious violent offence.

R v Mallory [2016] QCA 296, 16 November 2016

Sentence Application – where the applicant pleaded guilty to various offences including one count of robbery with personal violence – where the applicant was sentenced to three years' imprisonment for said offence, with a parole release date fixed at 2 March 2017, with lesser sentences for the other offences to be served concurrently – where the applicant was affected by medication and alcohol during the offence – where the applicant's conduct was bizarre and irrational – where there was some analogy with *R v Rogers* [1998] QCA 382, characterised as a stealing followed by an assault whilst escaping – where the offending involved a prolonged course of conduct – where the offending involved racial abuse – where the absence of prior convictions and the fact that there no person was injured are matters of considerable importance when comparing the sentence imposed on Mr Rogers to that imposed on the applicant – where this is not a case where there has been a marked deterioration of the offender's conduct over a period of time, so that the need for personal deterrence would warrant a harsher penalty than might otherwise be imposed – where on the contrary, the



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number of years which had passed since the earlier offences committed by the applicant, and the fact that he has no recent offences associated with illicit drugs, point to efforts at rehabilitation which have had some success.

Grant the application for leave to appeal against sentence. Allow the appeal. Vary the sentences for counts 1 and 2 by imposing a term of imprisonment of 18 months and nine months respectively. Fix the applicant's parole release date as 16 November 2016.

***R v Abdi* [2016] QCA 298, 16 November 2016**

Sentence Application – where the applicant was convicted on his own plea of guilty to one count of robbery in company with violence and sentenced to three years' imprisonment with a parole date fixed after three months – where the applicant contends that the sentence is excessive for essentially a first-time offender – whether the sentence was manifestly excessive – where precedent cases confirm that a head sentence of three years was within the range for the applicant's offence and he had the benefit of an order that he be released after serving only one-sixth of that term – where the applicant's Australian visa was cancelled pursuant to the *Migration Act 1958* (Cth) because of his conviction – where the applicant was placed into immigration detention upon his release on parole in preparation for deportation – where the fact of detention and deportation prevents the applicant from complying with parole conditions – where the sentencing judge was aware of the applicant's nationality and the possibility of deportation but no submissions were made as to their effect on structuring the sentence – whether the sentencing judge erred in not considering the relevance of deportation to the efficacy of ordering a parole release date – where the effect of the orders in the present case was to subject the applicant to a statutory regime with which he would be unable to comply if, as was at least very probable, he

was deported upon his release from prison – where moreover the applicant's noncompliance with those conditions would expose him to the consequence of a cancellation of his parole so that he might be required to serve the whole of his three year term – where the recognised benefits of the parole of prisoners, in the applicant's case, were of no practical relevance – where the likelihood of deportation was high, not only because of the applicant's circumstances but also because the time until his release was only six months.

Grant leave to appeal. Appeal allowed. Vary the order made in the District Court by, in lieu of the fixing of a parole release date, ordering that the applicant's sentence of three years' imprisonment be suspended as and from 26 October 2016 and that the applicant must not commit another offence punishable by imprisonment within a period of three years if the applicant is to avoid being dealt with under s146 of the *Penalties and Sentences Act 1992* (Qld) for the suspended sentence.

***R v Wilson* [2016] QCA 301, 18 November 2016**

Sentence Application – where the applicant pleaded guilty to three counts of supplying a dangerous drug – where the applicant was sentenced to three years' imprisonment on each count, to be served concurrently, with parole eligibility after one year – where a serious drug certificate was issued – where the applicant was also disqualified from holding or obtaining a driver's licence for a period of four years – where the applicant seeks leave to appeal against her sentence solely in relation to the disqualification of the driver's licence on the ground that it is manifestly excessive – where police targeted the supply of drugs in a particular area of the Gold Coast using law enforcement participants, who surveilled the applicant and others involved in drug supply – where the sentencing judge

exercised the discretion under s187 *Penalties and Sentences Act* which allows the court to disqualify a driver's licence if the operation of a motor vehicle has been used in connection with the commission of an offence – where the applicant, on appeal, contends that the circumstances of the offence did not warrant the exercise of the discretion – whether the sentence was manifestly excessive, by way of the disqualification of the applicant's driver's licence – where Ms Wilson's driving to pre-arranged meeting places with the methylamphetamine which she then supplied was, on each occasion, sufficient in terms of s187(1)(a) to make each offence one "in connection with" the operation of a motor vehicle by her – where in exercising that discretion his Honour made two errors in the *House v The King* (1936) 55 CLR 499 sense – where firstly, His Honour was wrong to state that "each of the offences were [sic] committed by [Ms Wilson] when [she was] driving a BMW motor vehicle" – whilst all offences were committed by Ms Wilson in connection with her driving, none were committed when she was driving – where she committed count 1 and count 3 whilst seated in her parked vehicle and count 2 whilst seated in a vehicle belonging to someone else – where secondly, his Honour erred in failing to invite submissions from defence counsel as to whether he should exercise the discretion under s187(1) to disqualify Ms Wilson from obtaining or holding a driver licence – where it could be inferred that disqualifying her from holding or obtaining a driver licence could affect her future employment prospects; possibly create a disincentive to her rehabilitation on release from custody; and operate as an additional penalty to her prison sentence.

Application for leave to appeal granted. Appeal allowed. Set aside the sentence imposed on 11 January 2016 in so far as it disqualified the

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applicant from holding or obtaining a driver's licence for four years from 11 January 2016. The orders made on 11 January 2016 are otherwise affirmed.

R v MCI [2016] QCA 312, 25 November 2016

Appeal against Conviction – where the appellant was convicted of three counts of indecent treatment of a child under 12, under care, and one count of rape – where the appellant contends there was no corroboration of the complainant's evidence, there were inconsistencies between the complainant's account and the preliminary complaint witnesses's accounts, and there was a long delay – where the jury was entitled to accept the complainant's account as reliable beyond reasonable doubt – where the complainant seems to have given her evidence in a matter-of-fact way – where as well, there was a substantial degree of consistency in her accounts on several different occasions and to different people in her life – where a prosecution witness gave inadmissible evidence in cross-examination about an earlier allegation against the appellant of sexually abusing a child – where the trial judge refused to discharge the jury and gave a direction that the jury should disregard the inadmissible evidence – where the inadmissible evidence was highly prejudicial – whether the refusal to discharge the jury occasioned a miscarriage of justice – where it was concerning that the witness, the complainant's stepmother, adverted to a matter in cross-examination which the jury was likely to have understood as relating to an earlier and different allegation that the appellant had sexually abused a child, perhaps the complainant – where there is a significant possibility that, despite the judge's request to the jury, the inadmissible and highly prejudicial evidence from the complainant's stepmother may have caused a substantial miscarriage of justice in that it deprived the appellant of the chance of an acquittal on the charges on which he was convicted – where the appellant was acquitted of one count of indecent treatment of a child under 12, under care, and one count of rape – where the appellant contends that all alleged counts occurred serially on the same day and it was illogical for the jury to be satisfied that some counts occurred while others did not – where the quality of evidence in relation to each count varied – where the evidence of preliminary complaint witnesses supported some counts but not others – whether the verdicts were inconsistent – while some inconsistency is inevitable in the detail of what is related on occasions separated in time, and inevitable too when it is clear that the complainant was not attempting to give an accurate and comprehensive narrative of events to her friends, the omission completely of the matters alleged, or the appearance in some but not other accounts, or the existence of countervailing evidence each deserved weight and could logically give the jury pause in deciding guilt beyond reasonable doubt where as well the jury may have had a view that some of the preliminary complaint witnesses through

their demeanour, provided greater support for the complainant's credibility than others – where these were matters for the jury to judge.

Application for leave to adduce further evidence is refused. The appeal is allowed. The convictions are set aside. A retrial is ordered.

Powell v Chief Executive Officer of Australian Customs Service [2016] QCA 313, 25 November 2016

Application for Leave s118 DCA (Criminal) – where the applicant was convicted after trial in the Magistrates Court of importing a prohibited part of a firearm – where the Chief Magistrate was satisfied that the applicant held an honest and reasonable belief that the subject part was not prohibited, imposed a recognisance and discharged the applicant with no conviction recorded – where the respondent appealed against the sentence to the District Court – where the District Court judge characterised the nature of the appeal as one in which the judge could decide the proper inferences to be drawn from the uncontested facts before the Chief Magistrate – where the judge reviewed the evidence, reached a different conclusion as to the applicant's state of mind, set aside the order and resentenced the applicant, but did not identify any error in the Chief Magistrate's reasoning – where the applicant contends the District Court judge gave insufficient weight to the Chief Magistrate's factual findings – whether the District Court judge erred in the exercise of the court's appellate function – where because the applicant's evidence was by affidavit and he was not cross examined, the Chief Magistrate did not have what is said to be the usual advantage of seeing the witness – where it was not a case of the kind in *Warren v Coombes* (1979) 142 CLR 531 and her Honour proceeded upon an incorrect characterisation of the reasoning in the primary judgment – whether it was open to the District Court judge to reach a different factual conclusion without identifying any error in the reasoning of the Chief Magistrate – where the Chief Magistrate's reasoning was logical and apparently sound – where the Chief Magistrate's reasoning was not analysed by her Honour – where the judge was obliged to consider also the applicant's evidence and the particular evidence which the Chief Magistrate found had supported it.

Grant leave to appeal against the judgments. In each case allow the appeal and set aside the orders made in the District Court. Costs.

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 scqlqd.org.au/caselaw/QCA. For detailed information, please consult the reasons for judgment.

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Tanya Sayers

Career moves

Bouchier Khan Lawyers

Nathan Bouchier and Yassar Khan have re-branded their legal practice, previously known as Bosscher Lawyers Toowoomba and Bosscher Lawyers Ipswich. The new firm, which commenced operating from 28 November 2016, is known as Bouchier Khan Lawyers. The practice is also opening a Brisbane office and will predominantly service the south-east Queensland region.

The firm's focus is on criminal and traffic law, with all solicitors having extensive experience in that area. Dylan Hans and Claire Graham will continue to serve the firm in its new incarnation in the Ipswich and Toowoomba regions, respectively.

Broadley Rees Hogan

Broadley Rees Hogan has welcomed Danielle Sibenaler as a special counsel leading its planning and environment team.

Danielle has significant experience acting for local government authorities, submitters and developers in the Planning and Environment Court, as well as advising on development applications, environmental issues, infrastructure, development offences and enforcement, development entitlements and planning matters generally.

BTLawyers

BTLawyers has announced that solicitors George Williams and Brooke Wilton have been promoted to associate.

George has extensive experience advising and representing insurers and employers in workers' compensation claims, and has also provided advice to employers including not-for-profit aged care insurers, Queensland Government departments as well as clients in the meat processing and port industries.

Brooke has worked exclusively in personal injuries law in various capacities since 2006. She provides advice to employers and workers' compensation insurers across several industries including meat processing, retail, mining and manufacturing.

Cooper Grace Ward

Cooper Grace Ward has announced the promotion of Monica Jaynes and Jaclyn Lloyd to associate.

Monica has been with the firm since joining as a law clerk in November 2012 and has produced excellent results for the firm's insurance team since her admission in 2014.

Jaclyn joined the firm in November 2014 and has excelled in the firm's property, planning and environment practice.

Gilshenan & Luton Legal Practice

Gilshenan & Luton Legal Practice has announced the promotion of Callan Lloyd to associate. Callan joined the firm in December 2011 and has extensive experience in professional regulation and discipline, coronial inquests and general criminal defence, particularly fraud, drug, assault and proceeds of crime offences.

MacDonnells Law

MacDonnells Law has promoted commercial lawyer Juanita Maiden to senior associate, and government lawyer Julian Bodenmann to associate.

Juanita was admitted in 1997 and joined the firm in 2009, practising predominantly in wills and estates and succession law. She has built a successful practice in estate administration and disputes, commercial law, and sports law.

Government lawyer Julian began his legal career as a summer clerk at the firm six years ago. While completing his university studies, he became a legal clerk in 2012 and underwent his training in the firm's Brisbane and Cairns offices. Since being admitted in 2013, Julian has advised local government, corporate and commercial clients in property, planning and development, commercial litigation and mining matters.



Claire Graham



Danielle Sibenaler



George Williams



Brooke Wilton



Juanita Maiden



Julian Bodenmann



Brad McCosker



Daniel Davison



Sarah Twinn



Elise Fordham



Tim Gerbanas



Robert Champney

McCullough Robertson Lawyers

McCullough Robertson Lawyers has welcomed former partner **Brad McCosker** as the firm's chief executive officer.

Brad commenced as a partner in 1994 and during his 20-year tenure held various leadership positions, including on the executive committee, and advised clients in construction, engineering, mining and infrastructure both in Australia and internationally. Leaving the firm in 2014, he has remained connected as a member of the alumni program and an adviser to many clients, working closely with the local government industry group.

Meridian Lawyers

Meridian Lawyers has announced several promotions, including three in Brisbane.

Daniel Davison, who has been promoted to principal, focuses on health law, public liability, property and professional indemnity-based claims. He manages litigation and dispute resolution in a range of matters for insurers and self-insurers in the health, transport, mining and energy industries.

Tanya Sayers, who has been promoted to associate, has worked exclusively in insurance litigation for the past eight years and has developed a broad knowledge of insurance law while providing advice and managing litigation for Australian and London insurers.

Sarah Twinn, also promoted to associate, has practised as an insurance and litigation lawyer for almost six years, with recent expertise in health law, professional indemnity claims and government regulatory work.

Pullos Lawyers

Gold Coast family law firm Pullos Lawyers has announced the addition of **Elise Fordham** to its team. Elise, who has previously worked with firms in Toowoomba and New South Wales, has broad experience with family law matters such as domestic violence, divorce, spousal maintenance, child protection and issues relating to the Hague Convention.

Redchip

Redchip has announced the appointment of two associate directors, **Tim Gerbanas** and **Robert Champney**.

Tim, a commercial lawyer, has been an integral part of the firm for five years and a leader in its innovation and technology team. He advises emerging companies and the start-up sector on business and corporate structuring, intellectual property matters, fundraising and exit processes. Tim also focuses on corporate advisory and mergers and acquisitions.

Since joining Redchip 12 months ago, Robert has driven the firm's litigation team, with a particular focus on commercial litigation, insolvency matters and building and construction disputes. He works collaboratively with the firm's commercial and property sectors to find commercial solutions to clients' conflicts and issues.

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.

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Kimberley Arden, Gadens Lawyers – Brisbane
Thomas Armstrong, Herbert Smith Freehills
Marya Atmeh, Piper Alderman
David Audley, Evans Lawyers
Hyeoksu Bae, Avanti Lawyers
Joanne Baker, Slater & Gordon
Francesca Barnes, Littles Lawyers
Sarah Bastian-Jordan, Phillips Family Law
Lorien Beazley, Clayton Utz
Shane Berkery, Herbert Smith Freehills
Marc Berry, CS Energy Limited
Praneel Bhela, Bottoms English Lawyers Pty Ltd
Chloe Blaney, Harding Richards Lawyers
Rachel Boivin, Maurice Blackburn Pty Ltd
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Timothy Borham, Sajen Legal
Thomas Bowen, LawLab Pty Ltd
Shannon Bownds, Kelly Lawyers
Ashlee Brain, The Law Office
Emily Brown, Bell Dixon Butler
Lawry Brownlie, Norton Rose Fulbright
Nicholas Burkett, Piper Alderman
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Fiona Caulley, Phillips Family Law
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Kristy Cherry, National Storage Pty Ltd
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Marie Clifford, Donaldson Law
Davina Cochrane, Tien Nguyen
Alexandra Coleman, Ray White Group
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Christopher Harriss, Doyles Lawyers Pty Ltd

Nicole Haverkamp, The Fold Legal Pty Ltd
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Annie Hayes, SR Wallace and Wallace
Yasmin Head, Purcell Fox Pty Ltd
Angela Healy, Paragon Law Group
Amy Hehir, Smith Criminal Law Pty Ltd
Lauren Hicks, Hix Lawyers
Darius Hii, H&H Legal
Teneka Hill, Hofstee Lawyers
Craig Hong, Hillhouse Burrough McKeown Pty Ltd
William Houston, Norton Rose Fulbright
Feng-Yu Huang, Steps Law
Geoffrey Ingram, Pollock Ingram
Travis Irons, Corrs Chambers Westgarth
Aisha Ismail, Corrs Chambers Westgarth
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Jock Lindores, Doyle Wilson
Ruth Link, Ernst & Young
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Georgia MacGinley, Broadspectrum
Jaide Macklin, RA Solicitors Pty Ltd

Queensland Law Society welcomes the following new members who joined between 5 November 2016 and 9 January 2017.

Geoffrey Maguire, non-practising firm
Rebekah Malherbe, Corney & Lind
Warwick Marler, Warwick Marler, Solicitor
Naomi Mason, MBA Lawyers
Mary McAteer, CLH Lawyers
Olwen McClintock, Powerlink Queensland
Melanie McComb, Clayton Utz
Riki McConaghy, Jensen McConaghy Lawyers
Holly McConnell, Amity Law
Christopher McCray, Connolly Dore Lawyers
Alice McDonald, Herbert Smith Freehills
Mary McKenzie, non-practising firm
David McKewin, McKays
Daniel McLean, Whitehead Crowther Lawyers
Meghna Mehra, Senior Legal
Claire Membery, Boeing Defence Australia Ltd
Naomi Midha, Norton Rose Fulbright
Christy Miller, Clayton Utz
Romana Miller, Custodian Funds Management Group Limited
Sarah Miller, Subway Systems Australia Pty Ltd
Jessica Mills, Yarrabilba Legal
Simone Mizikovsky, Holding Redlich
Safeera Moosa, Corrs Chambers Westgarth
Edwin Morris, Edwin Morris Lawyers
Alice Morrow, RBG Lawyers
Adam Moschella, Macrossan & Amiet
James Mourdhuj, MVP Lawyers
Rebecca Mullins, Go To Court
Jessica Murray, QBM Lawyers
Clancy Murree, Australian Taxation Office
Lisa Napper, Cube Workplace Solutions
Akshaykumar Naran, King & Wood Mallesons
Samantha Nean, Norton Rose Fulbright
Emily Ng, Cooper Grace Ward
David Northcott, Minter Ellison
Jamie Nuich, Middlegrounds
Katelyn Nunan, McMahon Clarke
Christie O'Donnell, Clayton Utz
Craig Oliver, Shine Lawyers
Caitlin Oxley, Clayton Utz
Rachael Ozanne-Pike, North Queensland Women's Legal Service Inc
Jenna Pacholke, Sheehan & Co
Sidney Page, Barry.Nilsson. Lawyers
Toni Palmer, Palmers Compensation Lawyers
Lescha Palmore, James Cook University – Legal & Compliance Services Unit
Alpa Patel, Ferguson Cannon
Katrina Pedersen, Shine Lawyers
Jared Peut, Herbert Smith Freehills
Elly Phelan, Minter Ellison
Charlotte Pilcher, Herbert Smith Freehills
Daniel Posner, Antigone Legal

Felicia Quagliata, Holding Redlich
Simone Quilligan, InjuryLawExperts Pty Ltd
Kaitlyn Rafter, RACQ
Lana Ristic, Minter Ellison
Emmalene Roberts, Turnbull Mylne
Tracey Robinson, Enyo Lawyers
Teryl Robinson, R Simmonds & Assoc. Pty Ltd
Sean Roche, Roche Legal Pty Ltd
Damian Roe, HopgoodGanim
Michael Ronan, non-practising firm
Tasmyn Rose, Virgin Australia Airlines Pty Limited
Kate Ross, Littles Lawyers
Dennis Rounsefell, Rounsefell Lawyers
Rachel Rowlands, non-practising firm
Janice Saddler, Shine Lawyers
Debbie Sage, Attwood Marshall Lawyers
Aaron Santelises, NB Lawyers
Amanda Sapolu, Whitsunday Regional Council
Paula Scheiwe, Australink Alliance Lawyers
Jeannette Scott, Nexus Law Group
Warren Scott, Corrs Chambers Westgarth
Louise Shayler, Dean, Kath & Kohler
Prudence Shelton, Shelton Law
Yi Shen, Fenson & Co. Lawyers
Christopher Slocombe, Clayton Utz
Jasmine Smith, Central Queensland Community Legal Centre Inc
Sarah Smith, Corser Sheldon & Gordon
Anita-Lee Smith, Attwood Marshall Lawyers
Ross Snell, McCarthy Durie Lawyers
Emma-Rose Solomon, RBG Lawyers
Alina Somerville, Cherry Family Lawyers
Christopher Spalding, King and Spalding
Gaikokuho Jimu Bengoshi Jimusho
Peter Spranklin, Spranklin Legal
Simone Steele, Gold Coast City Council
Hayley Stephens, Sentinel Property Group
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Sian Thomas, Sian Thomas Lawyers
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Prathna Tiwari, O'Connor Law
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This month ...

New Year Profession Drinks

Queen Elizabeth II Courts of Law, Brisbane
5.30-7.30pm

Queensland Law Society CEO Amelia Hodge invites you to enjoy a social evening with colleagues and friends to welcome Christine Smyth as 2017 QLS president. Come along to kick off the new year in style with colleagues and friends, along with canapés, drinks and entertainment.

THU
2
FEB

Resilience and Strength for ECLs

Law Society House, Brisbane | 7-8.45am

Queensland Law Society is hosting a complimentary breakfast for our early career lawyers to increase awareness around mental health. Join members of the Love Law Live Life Working Group for a panel discussion at which you will learn coping mechanisms for resilience, strength and managing stress in the workplace.



1 CPD POINT

TUE
7
FEB

In Focus: VLAD the Repealer – Serious and Organised Crime Amendments

Law Society House, Brisbane | 12.30-2pm

Following the repeal of the controversial *Vicious Lawless Association Disestablishment Act 2013* (VLAD) in 2016, the *Serious and Organised Crime Legislation Amendment Act 2016* was made on 29 November 2016. Most of the new Act's provisions took effect in mid-December 2016, with the balance to take effect in mid-March 2017.

Join our expert panelists for a practical and lively discussion around the management of serious and organised crime matters moving forward.

This In Focus session will cover the things you need to know, including:

- the new and quite wide definitions of participant in criminal organisations and the mandatory penalties
- the new and quite comprehensive consorting laws
- the transitional arrangements.



1.5 CPD POINTS

WED
15
FEB

Regional: Bundaberg Roadshow 2017

Rock Bar and Grill, Bundaberg | Thu 5-7pm
Burnett Club, Bundaberg | Fri 8.30am-5pm & Sat 9.30am-12.55pm

Regional members will receive updates in the practice areas that matter to you most: family, succession, property, employment, personal injuries, business and civil litigation. And for the first time, QLS is bringing our in-house trust accounts, limitation of liability, practice support, ethics and CV experts to you at the innovative Pop-Up QLS.



10 CPD POINTS (full roadshow attendance)

THU-SAT
9 TO 11
FEB

Practice Management Course – Sole Practitioner and Small Practice Focus

Law Society House, Brisbane | Thu 8.30am-4.30pm, Fri 9am-4pm, Fri 8.30am-4.45pm

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-FRI
16 TO 17
FEB & FRI
24
FEB

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Purchase the DVD

Look for this icon. Earlybird prices apply.



Young Professionals Networking Event

Blackbird Private Dining and Events | 5.30-7.30pm

Enjoy a social evening with fellow young professionals from Chartered Accountants Australia and New Zealand (CAANZ). This is an opportunity to broaden professional networks over drinks and canapés at one of Brisbane's best-loved riverside venues, Blackbird.

THU
16
FEB

QLS Legal Profession Dinner and Awards 2017

Royal International Convention Centre, Brisbane
6.30-11.30pm

Celebrate the profession's night of nights and join 2017 QLS president Christine Smyth, members of the judiciary, politicians and other key legal professionals. President Smyth will address the profession on her commitments and aspirations for 2017, and will announce the winners of four awards – the President's Medal, Innovation in Law, CLC Member of the Year and the Honorary Life Member award. Keynote presenter for the evening is best-selling author Tara Moss.

SAT
18
FEB

Specialist Accreditation Information Evening

Law Society House, Brisbane | 5.30-7pm

The Specialist Accreditation Information Evening will provide information on the application and assessment process for becoming an accredited specialist in 2017. There will also be the opportunity to participate in a Q&A with accredited specialists and meet members of the advisory committees. Regional practitioners who cannot attend the information evening can obtain a copy of the recording by emailing specaccred@qls.com.au.

WED
22
FEB



Practice Management Course Information Evening

Law Society House, Brisbane | 5.15-6.30pm

This is a complimentary event offered to practitioners interested in undertaking Queensland Law Society's Practice Management Course. The evening will include an overview of the course, study requirements, workshops and assessment items, as well as information on application, waivers and deferrals and an opportunity to meet with past delegates and PMC presenters.

TUE
21
FEB


Save the date

Legal Careers Expo 2017	1 March
Modern Advocate Lecture Series 2017, Lecture Two	2 March
Core Webinar: Profiting from PR & Media	7 March
Introduction to: Conveyancing	9-10 March
QLS Symposium	17-18 March
Core: Better Law Through Movies, Music and My Quirky Family	21 March
Core Webinar: Standing Out From Our Colleagues	24 March
Core Webinar: 5 Things I Wish I Knew When I Started Practice	29 March

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

QLS LEGAL PROFESSION

DINNER & AWARDS

Reserve your place at this year's night of nights with QLS President Christine Smyth and guest speaker Tara Moss.

18 FEBRUARY 2017 | 6.30-11.30PM

Register at qls.com.au/events

Are you fit for the future?

A highlight of QLS Symposium 2017 will be the closing plenary delivered by Gihan Perera, who will take an illuminating glimpse into the future. He speaks with **John Teerds** about the presentation that delegates can look forward to.



Gihan Perera is a futurist, speaker, author and consultant who gives business leaders a glimpse into what's ahead – and how they can become fit for the future.

Since 1997, he has worked with business leaders, thought leaders, entrepreneurs, and other change agents to help them form strategies to thrive in a fast-changing world.

Forbes magazine has rated him as the #5 social media influencer in the world (and #1 in Australia) in his area of expertise.

At QLS Symposium 2017, Gihan will deliver the closing plenary, 'Fit for the Future', on 18 March.

"We'll explore what the legal profession needs to do to look at the future, given that the world is changing so fast," he said. "What worked in the past won't necessarily work now, so even if you have been successful in your business, your practice and your role as a leader, that won't necessarily serve you well in the future.

"In fact, your assets and strengths might be weaknesses and threats."

For example, a firm may have a strong client base that provides ongoing work and income. While the firm may want to maintain this status quo, it can hold back the firm and limit future growth.

Perhaps some of these clients won't want the firm to go digital, offer some of its services online and change its business model, but that might be the best way to ensure future growth.

"A start-up competitor entering the profession doesn't have those clients, so they will just choose the best option available without that restriction," Gihan said.

He likens the situation to owning a home versus renting.

"If you own the house you live in, it's your home, and you stay in it," he said. "On the other hand, renters have the freedom to move wherever they want, as their needs and wants change. Home owners tend to stay in one place because there's a much bigger effort and cost in moving."

Gihan said there were now more people in the world who say 'I matter'. They are smart, passionate, innovative individuals, and have more power than ever before to influence others. Delegates attending the plenary session can expect Gihan to look closely at three key questions:

As a leader, how can you say 'I matter', and what influence can you have?

How can you involve your clients more? Clients can have great ideas, so how can you involve them more in the way that you operate your business?

How can you engage your team? You have people who have many more skills than those included in their job description. They want to help out, and they will if you give them the chance.

"Everyone looks at the future and says it's all about technology, but that's a limited view. Technology has created a world where people now have more ability to influence than ever before. It is all about people, and technology empowers people to make a difference."

John Teerds is the editor of *Proctor*.



Symposium 2017

Framing the future

Register today at qls.com.au/symposium

Earlybird rates available



Find your disruption pressure points

Symposium speaker **Gihan Perera** explains the true impact of 'disruption' for the legal profession.



You might be sick of hearing about 'disruption' in every industry.

And that's no surprise, because examples abound: Uber disrupting the taxi industry, Netflix disrupting movie rentals and cinemas, Apple disrupting the music industry, and so on. In fact, Accenture's *Technology Vision 2016* report suggested most Australian business leaders expected their biggest threats would come from outside their industry.

How do you prepare for this uncertain future, where the rug could be pulled out from under you at any moment?

Of course, it's impossible to predict exactly what will happen, but you *can* prepare for the future by knowing the weaknesses and vulnerabilities – the disruption pressure points – in your business (and the legal profession in general).

I'll explain...

Broadly, the world is becoming 'fast, flat and free':

Everything is moving faster than ever before.

We've broken down hierarchies and barriers.

Things that used to cost a lot now cost a lot less.

If you want to know what could disrupt your business, look at the opposite of 'fast, flat and free' – slow, bumpy and expensive. If you do anything that's slow, bumpy or expensive, beware!

Slow

Danger words (disruption pressure points): technical, complex, service

If your service is technical or complex, computers will be able to do it soon. In fact, if it's a service at all, it will first be outsourced, and then possibly even fully automated. We've seen this happen with travel agents, mortgage brokers, customer service, and – yes, even lawyers.

Smart lawyers find ways to embrace technology, automation and outsourcing rather than fighting them.

Bumpy

Danger words: regulated, licensed, controlled, mandated

As authors Richard and Daniel Susskind note in their book *The Future of the Professions*, the legal profession has four key features that people value: specialist knowledge, credentials and qualifications, regulation, and a common set of values.

In the past, these features protected the profession and their clients, but now might be barriers to progress. Knowledge is easily accessible, you don't need credentials or qualifications to succeed, the industry faces competition from providers outside the regulated regime, and clients don't necessarily value the common values of the profession anymore.

Expensive

Danger words: up-front fees, delayed results, boring

If you provide an expensive service, clients will look for a way to find a more affordable alternative. You might have survived until now because it wasn't easy for them to look elsewhere, but now your competition is just one Google search away. And they are not only doing it cheaper; they are doing it better.

For example, AI (artificial intelligence) has made e-discovery and e-disclosure accurate, fast, and essentially free.

Could any of this affect your business?

That's a rhetorical question, of course – the answer *must* be a resounding 'Yes!'

If you really want to future-proof your business, ask yourself: "What do we do that's slow, bumpy or expensive?"

Then fix it! Isn't it better to disrupt it yourself rather than wait for a competitor to do it for you?

Gihan Perera will present the closing plenary, *Fit for the Future*, at QLS Symposium 2017. See qls.com.au for registration and other details on Symposium, and GihanSpeaks.com for more information on this speaker.

How about some New Year resolutions?

A practice idea that might make a big difference

Make 2017 the year you actively improve the areas you aren't naturally good at.



So we're all back from the beach and ready to go hard again... which is great. It's a good time to reprioritise efforts... not just *going harder*, but identifying areas for personal improvement.

For this issue, we've considered the major parts of practice life. Readers will instantly identify the ones where they are comfortable... and the others as well. So let's go through them and see how we go.

Proactively managing your work

If you're good at this, great. If you're not, you probably spend your life in either urgent mode, or using your time ineffectively on things that don't matter all that much. The trick here is to develop routines. Routines can be a little boring and predictable, but they are supremely productive. Build your routines around whether you are a morning or afternoon person. Allocate the most and least challenging work accordingly. Diarise it all and then apply the necessary discipline.

Business development

Develop the habit of never finishing a week without having coffees/catch-ups/briefings lined up for the following two weeks. Make it personal. Use the phone. It will positively differentiate you from the hundreds of broadcasts your clients receive. Consider going half and half existing contacts and new targets. Have a clear business objective for each meeting, and always try to settle the next contact before concluding. (Note: firms that mostly source work through broadcasting can still benefit through personal network development.)

Supervising

Readers probably tire of my beating the drum on this. Figure out how to get your millennials engaged. Focus communications on *how* and *why* rather than *what* and *when*. With time deadlines, give them a roadmap and plenty of *why* to explain it. Young lawyers are petrified of failure. So convince them that failure is part of learning – and is fine – provided that they keep you informed. Finally, demand that they have a go, and wherever possible resist the temptation to say *I'll do it myself!*

Producing legal work

If you are good at this, then schedule it after your supervising and business development. You will find the time. If you struggle in getting the hours up, consider quarantining blocks of interruption-free time in the day (and step away from that mobile!)

Admin

Admin doesn't earn you money, but poor admin will lose you money. Don't go home until your time is properly accounted for and your next day is clear and organised. Similarly, develop weekly and monthly disciplines around your WIP and bills. Wherever practicable, get someone who doesn't earn fees from legal work to assist.

So which of those are your strong spots and which are you weak spots? See what you can improve in 2017.

Dr Peter Lynch

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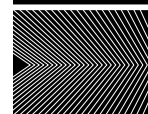
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Would any firm knowing the whereabouts of a will of the late **Vernon Roy Gibson** who died on 13 October 2016 late of 471 Neill Road Mooloolah Queensland 4553 please contact Matthew Love Family Lawyers of Unit 8, 915 Ann Street, Fortitude Valley Qld 4006 phone 07 3252 8233 fax 07 3390 2205 email address info@matthewlove.com.au.

DAVID JOHN DOWNS

The Public Trustee of Queensland has been advised that an original Will may have been executed by **DAVID JOHN DOWNS**, deceased. Would any person or firm holding or knowing the whereabouts of an original or a copy of any Will or Codicil of **DAVID JOHN DOWNS** late of Carramar Nursing Home, Tewantin, Queensland who died on 11 January 2016, please contact Mr Aidan McBarron of the Official Solicitor to the Public Trustee of Queensland, GPO Box 1449, Brisbane Qld 4001, telephone (07) 3213 9381, Email: aidan.mcbarron@ptqld.gov.au. If no response is received within 30 days of this notice, then the Public Trustee intends to distribute the deceased's estate.

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Missing wills continued

Would anyone know of the whereabouts of a will of the late **RONALD JAMES CANNING**, born 16-08-1931 and died 6 MAY 2013. Resided at 33 MARBLE DRIVE, CARRARA, 4211, QLD. Please contact: John Canning; kaen-john@xtra.co.nz; 0064 9 4383 033 or 0064 21 085 23960.

Would any person or firm holding or knowing the whereabouts of any original will of Gwendoline Mavis Mitchell, late of Ballycara Nursing Home, Oyster Point Esplanade, Scarborough but formally of 11 Grimley Street, Kippa-Ring, who died on 26 November 2016, please contact Penny Severin, solicitor of Watt & Severin Solicitors at PO Box 1418, Milton Queensland 4064 or by phone 07 3369 8900 or by email to penny@wattseverin.com.au within 14 days of this notice.

Private notice

Assoc Prof Geoffrey M Boyce
Senior Medico Legal Consultant Neurology

Wishes to advise relocation to:

St Stephens Hospital

1 Medical Place

Urraween Hervey Bay Qld 4655

PO Box 1558, Hervey Bay Qld 4655

Phone 07 4120 1356 Fax 07 4120 5854

Geoffrey.Boyce@uhealth.com.au

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Is gris the new blanc?

with Matthew Dunn



The wine world is a fickle place where fashionable tipples come and eventually go in what wine snobs would call the ‘consumer market’.

For the longest time sauvignon blanc has been the belle du jour, but perhaps the tide is changing and pinot grigio is the new black, or perhaps blanc.

Astute readers of this journal will recall in March 2013 an earlier clarion call on this topic. Much has changed since that time. We have seen SB from NZ drop significantly in price, become ubiquitous to the point of almost being passé in the more economic choice end of the market, and in many cases dial up the sugar (presumably to lure the pre-mixed drinkers out from the shadows into the bright sunshine of wine-drinking).

At this time in Australia the fortunes of SB have been hit by two interesting but unconnected phenomena – the southern states have been taken by a wave of Italophilia, and the ‘wine hipster’ has emerged, looking to jump onto the next big thing early.

Enter the hero, pinot grigio – the Italians are mad for it and so are the Americans (after the mighty chardonnay it is America’s favourite white wine). Despite the name, it has good French origins and is a genetic mutation of pinot noir, with pinky-dusty-grey berries.

The intrepid pinot grigio travelled far and wide from its home in Burgundy, taking root in Germany, Switzerland, Alsace and the Collio region in Italy (in the province of Friuli Venezia Giulia on the border with Slovenia), amongst others. The last two places are the most important breeding grounds for this new hero vine and the ones that have given us the two predominant styles to discover, the dry and lean Italian grigio style of the Collio and the richer, fuller Alsatian gris style (sometimes called Tokay in Alsace).

The two styles appeal directly to those looking for something new. The crisp, dry spritz, yet with full levels of alcohol, of the Italian style made in Australia is the very antithesis of what so many SB have become. The rich, ripe and unctuous mouthfeel of the Alsace style wines made in Australia offers the familiar body of heavy SB but with the added benefits of crisp apple or lime flavours instead of the notorious gooseberry and cut grass.

The pinot grigio also has the advantage that its flavours and structure in either form are more familiar to Australian drinkers’ palates than some of the indigenous Italian varieties starting to come onto the scene. Pinot grigio could be seen as a gateway wine to a whole world of fascinating Italian native white wine varieties – Prosecco, Malvasia, Vermentino, Fiano, Arnesis, Garganega or Tocai Friulano.

The King Valley in Victoria is an incubator of new and interesting Italian varieties and has done much for the cause of grigio. Other cooler areas such as the Adelaide Hills seem to have taken the gris style under their wing and are doing great things.

I still believe in sauvignon blanc and know it is a variety with more stories yet to tell, but the future and many trendy southern state wine lists, for now, belong to the grey pinot.

The tasting Three examples were subject to study.



The first was the **Subida di Monte Collio DOC Pinot Grigio 2015**, which was straw coloured and haunting tinge of pink around the very edge of the rim. The nose was typically demure. The palate was a journey starting with forward fruit which cut back to dryness in the mid palate with a zing of green apple emerging as it went on.



The second was the **Harvest Pinot Gris Adelaide Hills 2016**, which was beautiful rose gold in colour. The nose was restrained lime fruit. The palate was thick and unctuous on the tongue with fruit sweetness to the fore; the cut back of the acid built in the mid palate to bring the experience back toward a dry finish and a note of lime.



The last was the **Pike & Joyce Adelaide Hills Pinot Gris 2016 ‘Beurre Bosc’**, which was palest straw in colour. The nose was crisp but restrained. The palate was almost halfway between the two styles, being both full in the mouth with rounded fruit flavours and crisp apple or perhaps unripe pear undertones.

Verdict: The pick of the day was the rich, heady excess of the Harvest, which demonstrated the balance between fulsome flavours and not-cloying drinkability so well.

Matthew Dunn is Queensland Law Society government relations principal advisor.

Mould's maze

By John-Paul Mould, barrister
jpmould.com.au

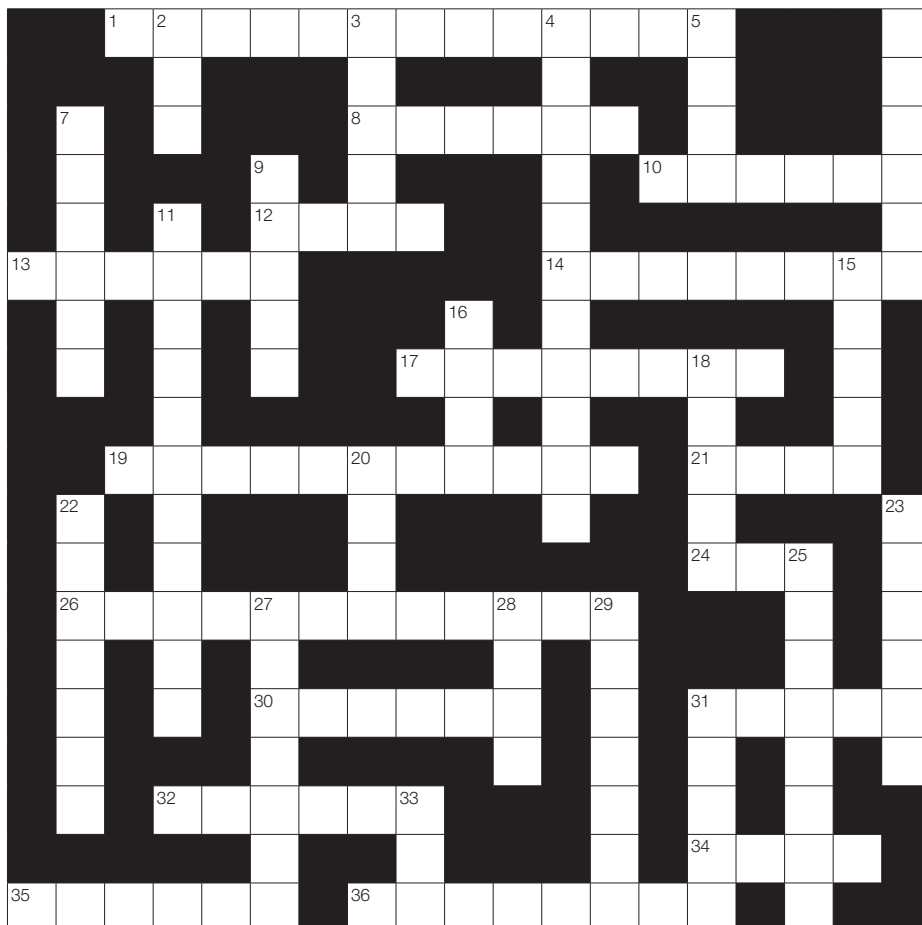


Across

- 1 Junior barrister. (13)
- 8 The UK Supreme Court recently heard an appeal involving whether the British Government could use the prerogative powers of the Crown to give notice of withdrawal from the European Union consequent upon the referendum. (6)
- 10 A in a pleading must be accompanied by a direct explanation of a party's belief that an allegation is untrue or else the allegation will be deemed to be admitted. (6)
- 12 Type of personal property security. (4)
- 13 Maxine Peake played Costello in *Silk*. (6)
- 14 It is better to an affidavit sworn internationally if it is to be admitted into evidence here. (8)
- 17 Latest High Court appeal involving the rule against penalties, v *ANZ*. (8)
- 19 Class of injunction that prevents a respondent from doing a specific act. (11)
- 21 Parliamentary group that opposes the passing of a Bill. (Informal) (4)
- 24 Catch a criminal. (Informal) (3)
- 26 Date from which a de facto relationship will commence. (12)
- 30 Final hearings. (6)
- 31 Trespass involving the unlawful taking away of goods, *de asportatis*. (Latin) (5)
- 32 Trespass to land, *quare clausum* (Latin) (6)
- 34 Police informer or police officer involved with illicit drugs. (Informal) (4)
- 35 Number of years for a life sentence in Queensland. (6)
- 36 High Court case involving trespass to chattels, *Wines Pty Ltd v Elliott*. (8)

Down

- 2 The appointment, tenure and removal from office of a judge is governed by section seventy-... of the Constitution. (3)
- 3 Eric Thomas was formerly known as Tostee. (5)
- 4 The office of magistrate existed in Queensland prior to the introduction of the *Magistrates Act 1991* (Qld). (11)
- 5 The Statute of Westminster was adopted by the Commonwealth Parliament in 193..... (4)
- 6 The number of Senators allocated for each state of Australia, as prescribed by the *Representation Act 1973* (Cth). (6)



- 7 Double jeopardy, *nemo debet bis pro una et eadem causa*. (Latin) (6)
- 9 The *Act 1953* (Cth) prescribes the size, diameter and number of points of the alpha crucis. (5)
- 11 The federally legislated approach to reduce the environmental and other impacts of products by encouraging all manufacturers, importers, distributors and other persons to take responsibility for them, product (11)
- 15 The *Civil Dispute Resolution Act 2011* (Cth) requires lawyers to advise of the requirement to file a 'genuine statement' in certain proceedings. (5)
- 16 A jury is a tribunal of (4)
- 18 Ecclesiastical law, law. (5)
- 20 Editor of *Land Law* Emeritus Professor Peter (4)
- 22 The Christian name of the two silks who defended Mr Baden-Clay in his High Court appeal. (7)
- 23 A legal expert or writer, lawyer or judge. (6)
- 25 'Barney' or '.....' is Cleaver Greene's instructing solicitor and friend in *Rake*. (8)
- 27 Assault involving harmful or offensive contact. (7)
- 28 A dogmatic and unproven statement, *dixit*. (Latin) (4)
- 29 Locke, Hobbes, Hale and Rousseau are all proponents of law. (7)
- 31 Proclamation of impending marriage. (5)
- 33 An illegal contract whereby investors are required to purchase additional shares aftermarket as a condition of being allowed to buy shares in an initial public offer, ...-in agreement. (3)

Solution on page 64

Another great load of lies

Mr Bean tweet to spark global conflict

by Shane Budden



By the time you read this, it will be February, and the realisation will be setting in that just a few weeks ago we were on top of the world celebrating the end of the year, and now we have to start over again.

Just as a cricket batsman can find himself depressed after scoring a century in the previous innings but must start all over again in the next innings with the miserable prospect of a duck hanging over his head, it is easy for all of us to be gloomy at this time of year (even if we don't get a duck).

However, having been buoyed by the relentless bumper-sticker philosophy that flows through my LinkedIn feed, reminding me that crisis is opportunity and that Richard Branson, blue-sky thinking, every buzzword you ever heard blah blah blah... I am going to keep a positive mind and look at the upside of what is in store, even if it appears bad at first.

For example, the President of the United States (an office which, by general agreement, will for the next four years not come with the title 'Leader of the Free World') is an orange-skinned man who cannot control his own hair, let alone a nation.

True, Trump gives every appearance of being a genetically engineered robot from another planet being controlled remotely by aliens unfamiliar with human behaviour and language; also, the possibility exists that he will start a war with Russia by tweeting that Vladimir Putin 'runs like Mr Bean' which is not a good thing (war with Russia I mean,

not Vladimir Putin running like Mr Bean, although that doesn't have much upside either).

On the plus side, for those of us who write humour columns and are in need of material, Trump is a godsend in that he is the most unintentionally hilarious person on the planet now that Joh Bjelke-Peterson is dead. Face it, any man whose take on global warming is, "The concept of global warming was created by and for the Chinese in order to make US manufacturing non-competitive" will be a source of material for years.

Another example of a bad thing with a positive side to it is the fact that we now live in the post-truth era, in which you can publish the greatest load of lies in history and face no consequences (regular readers will no doubt be familiar with this concept). Bill Shorten could tweet that Malcolm Turnbull kidnapped Harold Holt and Elvis and has them tied up in a storage locker in Acacia Ridge, and both Bill's followers would re-tweet it, following which *A Current Affair* would do a two-part exclusive on Turnbull's dark secret.

It may seem bad that lies are the new black, but it can work to your advantage. For example, you could tweet a picture of yourself holding the lid of a Vegemite jar with the caption "A proud moment: my upset win in the Olympic Decathlon" and pretty soon *Wide World of Sports* would be interviewing you for its *100 Greatest Moments in Olympic History* special.

In fact, when combined with another apparently bad thing – the fact that hackers can, and inevitably will, access and disclose all your personal information – it provides a great opportunity to replace your actual life with a much more interesting and exciting one; all you need to do is ensure that all of your most secure information is inaccurate in your favour.

By cutting and pasting from the Wikipedia bios of David Bowie, Steve Waugh and Albert Einstein, you can ensure that once your details are hacked – you can speed this up by clicking on attachments and links in unsolicited emails (*Editor's note: Do NOT do this, really*) – WikiLeaks will reveal you to the world as one of history's greatest thinkers, cricketers and musicians. Sooner or later the *New York Times* or *Washington Post* will pick up the story, and your reputation in history will be set.

I would like to turn, if I may, to something a little more serious, and indeed to be a little self-indulgent if the editor allows (*The whole column is self-indulgent, who would notice?* – Ed.). I would like to take this opportunity to congratulate one of my old friends, Cathy Muir, on very deservedly becoming Judge Muir. Cathy is an outstanding lawyer and even better person, with a very strong commitment to fairness and justice, and she will make an excellent and valuable addition to the District Court. Congratulations, your Honour – somewhere, Moira is raising a glass and smiling.



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Room bookings

07 3842 5962

Crossword solution from page 62

Across: 1 Stuffgownsmen, 8 Brexit, 10 Denial, 12 Lien, 13 Martha, 14 Notarise, 17 Paciocco, 19 Prohibitory, 21 Nays, 24 Nab, 26 Cohabitation, 30 Trials, 31 Bonis, 32 Fregit, 34 Nark, 35 Twenty, 36 Penfolds.

Down: 2 Two, 3 Gable, 4 Stipendiary, 5 Nine, 6 Twelve, 7 Vexari, 9 Flags, 11 Stewardship, 15 Steps, 16 Fact, 18 Canon, 20 Butt, 22 Michael, 23 Jurist, 25 Barnyard, 27 Battery, 28 Ipse, 29 Natural, 31 Banns, 33 Tie.

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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 January 2017 to 30 June 2017	7.50
Federal Court – Interest on judgment debt for half year	1 January 2017 to 30 June 2017	7.50
Supreme, District and Magistrates Courts – Interest on default judgments before a registrar	1 January 2017 to 30 June 2017	5.50
Supreme, District and Magistrates Courts – Interest on money order (rate for debts prior to judgment at the court's discretion)	1 January 2017 to 30 June 2017	7.50
Court suitors rate for quarter year	1 January 2017 to 31 March 2017	0.815
Cash rate target	from 2 November 2016	1.50
Unpaid legal costs – maximum prescribed interest rate	from 1 Jan 2016	8.00

Historical standard default contract rate %

Feb 2016	Mar 2016	Apr 2016	May 2016	June 2016	July 2016	Aug 2016	Sep 2016	Oct 2016	Nov 2016	Dec 2016	Jan 2017
9.45	9.45/9.55	9.55	9.55/9.60	9.60	9.35	9.35	9.35	9.25	9.25	9.25	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.

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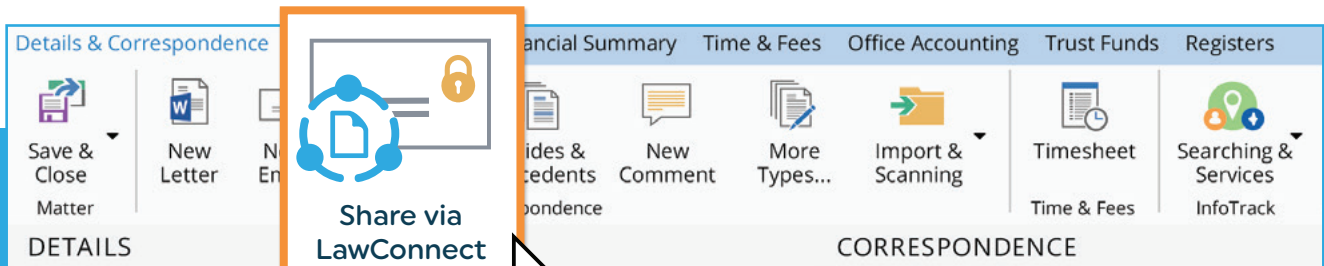
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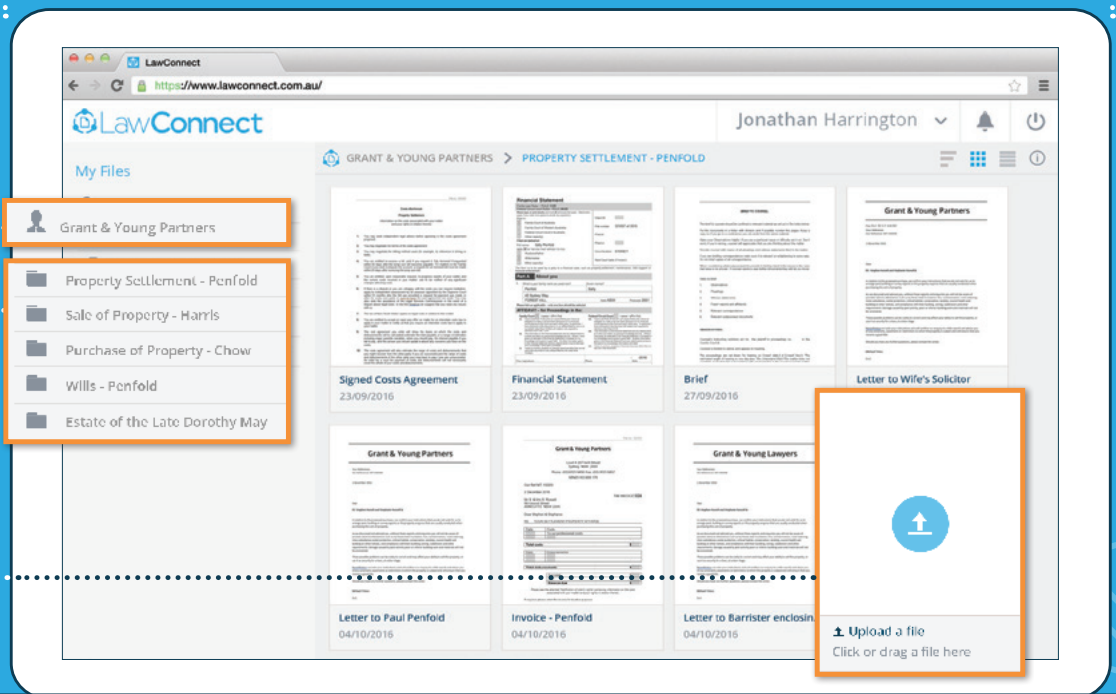


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