

# C ommercial Lawyers Committee

by Kevin Stephens

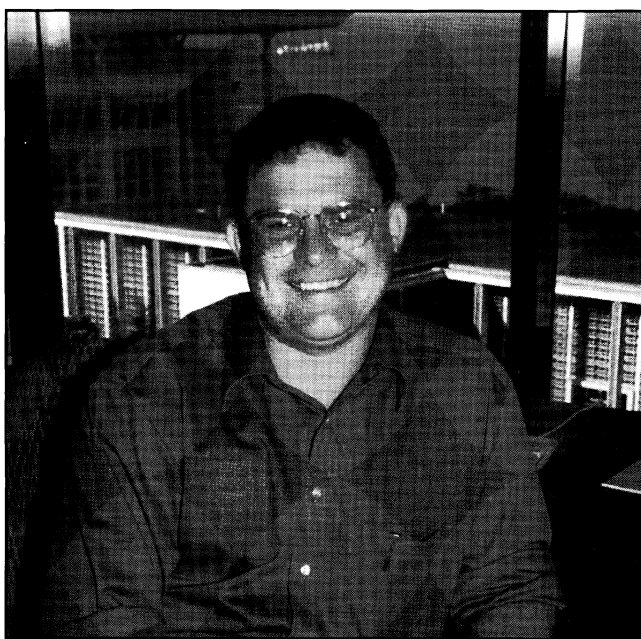
The Law Society now has a Commercial Lawyers Committee whose task it is to raise and address concerns of commercial lawyers, as opposed to litigation lawyers.

The Commercial Lawyers Committee is comprised of David Winter (David de L Winter), Alastair Shields (commercial solicitor with the AG's department), Alison Cassells (Clayton Utz), Dominic McCormack (De Silva Hebron), Peer Schroter (Poveys & Stirk) and Kevin Stephens (Ward Keller). The committee has met twice and will meet on the second Wednesday of each month between 12pm and 1pm. It goes without saying that the committee would welcome any member of the profession raising issues of concern or matters which they believe should be addressed. Matters may be raised by practitioners approaching any of the Committee members or by contacting myself on the numbers set out below.

## Structure of the Commercial Legal Profession

Proposed reforms to the structure of legal profession, which involve de-regulating commercial work is likely to have a significant impact upon commercial lawyers. The Commercial Lawyers Committee supports the Law Society's position that the profession should be de-regulated however the Commercial Lawyers Committee is seeking to ensure that commercial lawyers are allowed to effectively compete by:

- removing cost limitations as contained in Part X of the Legal Practitioner's Act;
- removing s8 of the



Kevin Stephens

Legal Practitioner's (Incorporation) Act which provides that directors of Legal Companies must personally guarantee all the debts of the company.

## Solicitor's Certificates

Financial Institutions routinely require mortgagors or guarantors to obtain legal advice on their documents. A tendency has developed whereby financial institutions are seeking certificates from lawyers (Solicitors Certificates) confirming the advice given. Some Solicitor's Certificates are onerous and attempts to shift risk to the lawyer. In southern jurisdictions Solicitor's Certificates have been a contentious issue.

The Committee has considered three ways to address the issue:

- the minimalist option, of simply raising the issue and drawing it to the attention of lawyers;
- the intermediate option, of preparing a

pro-forma independent Solicitor's Certificate backed by an acknowledgement given by the guarantor to the certifying lawyer, which documents would be raised with financial institutions prior to their introduction; and

- the extreme option, of inserting strict requirements as to Solicitor's Certificates in the Professional Conduct Rules or recommending that lawyers do not provide Solicitor's Certificates.

At the moment the committee is pre-disposed to the intermediate option, but are reserving their judgement until the attitude of our professional indemnity insurers has been ascertained.

## Legislation

The Committee has briefly looked at the Land Titles Bill and the Law of Property Bill and has determined that it is beyond the scope of the committee to review either

bill, given that sufficient work has been done by other members of the legal profession in preparing the bills.

These bills are being tabled for lawyers to review prior to their introduction. We strongly recommend that commercial practitioners at least review the bills as they make certain fundamental improvements and amendments to the law.

## GST

The issue of the GST (if it happens) was considered to be beyond the scope of the commercial committee however we note that the Law Society in general will be arranging a seminar by accountants on the GST. We point out that it may amount to professional negligence for lawyers not to be taking into account the GST in contracts which extend past 1 July 2000, most notably in leases.

## Settlement Moneys

Recently at least one real estate agent has forwarded out a circular requesting that lawyers and conveyancers approve the release of deposit moneys prior to settlement. The Commercial Lawyers Committee advises that such a practice leaves the purchaser exposed and should not be adopted or accepted by lawyers (and for that matter conveyancers).

We look forward to your input or suggestions so that we may provide a form of effective representation for commercial lawyers.

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