

## An article about nothing much

Seinfeldwise, this article is really about nothing. Well, nothing out of the ordinary anyway. More like everyday things.

It is more along the lines of a wish list for a few things I would like to see happen during the year, a bit of information about what is going to happen this year and maybe some other things that are kind of hanging about waiting to happen this year, or thereabouts, in the nature of those sorts of things.

I can say what this article is not about, but I don't really want to mention buildings or planes. The things I would like to see happen won't necessarily happen in the sort of time I want, in the nature of good things, but some of the things that are going to happen will occur reasonably quickly, but will seem to last longer, in the nature of things that aren't all that good.

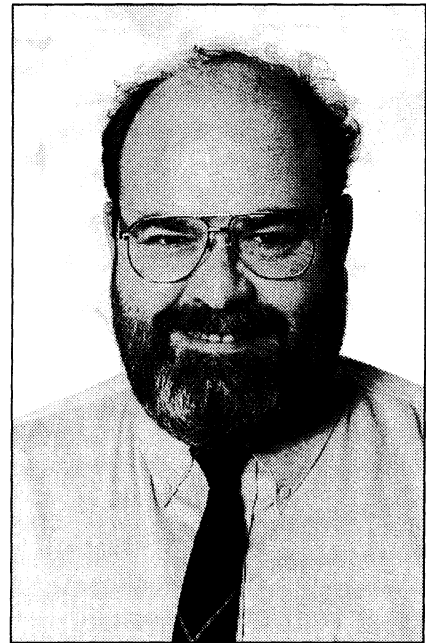
One of the things I would like to see this year is the end of the gestation of possibly one of the most important legal texts of our time, and that is *Riley's Red Book of Advocacy*. I am sure that all of you have read His Honour's texts, but not all of you would have kept them. One reason this will be such a successful book, apart from the obvious quality of the writing, is every advocate ought to have a copy ready at hand and to recollect that His Honour is not known as a vindictive judge. I guess this will actually be the first book published under the auspices of the Law Society, the number seven boomerang will become widely known as one of the great publishing marks.

An event that fits into the latter of the two categories is Professional Indemnity Insurance. The buildings and planes thing that I don't want to talk about is apparently one of the things that has caused PII to become the nightmare that we all expected: the same sort of feeling you have when you eat an overly rich meal too close to bedtime and find yourself waking up with your brain screaming, and when you calm down you realise you shouldn't be surprised.

Well, this dream is worse than normal. Not only has there been an increase in premium that is roughly proportional to the recent hype about the thing I mentioned above without talking about it, but it appears we have been attacked from home as well. APRA, the reputed watchdog of the insurance industry that unceremoniously munched its way through the Medical Defence Fund, has this cute rule that insurers have to promise enough capital to balance the risks they underwrite.

The amount of capital has a yearly span, and as the year runs out, and as insurance is underwritten, the amount of capital available to match against new business becomes less and less, and the risks the insurers wish to underwrite becomes more and more selective. The year runs from 30 September to October 1. That means we are negotiating insurance with fairly toey insurers, and that does not auger well for premiums. So what we are faced with this year is an insurer who is prepared to stand by us, Gerling, who underwrote 50 percent of the original risk last year and eventually took over from the collapsed HIH, an undertaking for which we are very grateful. Gerling will underwrite 50 percent of the risk again, but no other insurer is now willing to undertake the balance of the risk. The premium Gerling has offered is much less than that offered by other 'interested' insurers. So what we have to do is to try and shift the renewal period to another time, like January, and arrange for an interim insurance in the meantime. To that end I will be going to Sydney in the middle of October to meet with some prospective insurers under the auspices of a meeting organised by our brokers, Marsh.

While we are on bad news, I should mention the fact that the practising certificate fees will rise this year. We



Ian Morris, president

told everyone at the AGM there would be a rise and the reason for the rise was to meet the expected loss we predicted in the budget. None of us like an increase in business expenses (particularly after what I said earlier) and at a time when all other costs and charges seem to be increasing. The Society, as I have pointed out in previous articles this last year and in the report to the AGM, has been required to assume a greater and greater burden in the last year, and this is the direct result of local and national expectations.

The good news is we are working on a number of initiatives that will benefit the practice of the law in the Territory and bring it more in line with business standards. We are also exploring a number of ways to provide the Society with better sources of income, so we don't have to do this in the future.

Now to the category of good news and bad news. As you are all aware, there is a proposal from the Priestly Committee and SCAG of a national standard for post degree/pre admission training. What this will require is a more rigorous and structured training process than that represented by articles as it exists in the Territory.

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In the main this initiative will require a more rounded experience for clerks, and that presents a problem for all of the firms in the Territory. I do not think any single firm can offer its clerks the sort of training that will be required by the initiative. That means the Society must work to provide the extra training required.

To start the process the Society commissioned Dr Barry Fitzgerald, the XO of the Law Society of South Australia, to report to us about the way in which we might provide a funded course to meet the requirements of the initiative.

That report is to hand and we will be circulating it for comment. We hope within the next few months we will have a workable proposal to present to the profession.

Public liability is still an ongoing concern as each of the jurisdictions start enacting their own legislation, and drafts of our new legislation become available for comment.

Most of the jurisdictions have taken a conservative view of both the changes to the law of negligence and the changes to the calculation of damages. NSW is out on its own, and you will recollect my comments concerning the length and breadth of the lawyer bashing inherent in their legislation.

It seems to want to continue with strident and ill considered changes and we will have to wait to see what sort of a mess it makes of the changes to the law of negligence.

Law reform as a political football has been comprehensively exported from the Territory to NSW and it is hard to believe the manner in which the pollies down there are outbidding each other with stricter and less workable laws.

The only thing that might stop them is when they start hanging people for minor offences until there are no voters left. The only up side on that is they will have to start hanging themselves.

At last, a sensible meaning for 'well hung'!

Most of the jurisdictions will place maximum caps on damages, both as to economic loss and pain and

suffering. Some have allowed an apology without admission of liability. The Queensland Act has examples in the legislation, and the one about apologies is instructive:

*"Suppose a patient attended a health service and was diagnosed as suffering from gall stones. Removal of the gall bladder was recommended for treatment of the condition. The procedure was attempted but there was an adverse outcome. A health care provider stated that the provider was sorry that there was an adverse outcome. The statement is inadmissible in any future proceeding against the health care provider in relation to a personal injury allegedly arising out of the procedure."*

Sorry will now not be the 'hardest word' as long as the apologiser is very, very, very careful about what is being apologised about!

There are the expected limits on multipliers and home help. 'Recreational' or 'adventure' activities are moved away from ordinary acts of negligence by, for instance in SA, their inclusion in a regulated environment.

As I have queried in an earlier article, who pays for the 'regulator' and who will it be?

For those that are interested, the closest thing by way of a template for all these moves is the speech of

Spigelman J in April this year, which you can find on the NSW Supreme Court website.

We have some other problems with local legislation, and one of those is the proposed amendment to the Crimes Victims legislation.

Stung by rising costs in that jurisdiction, the Territory Government has moved to restrict costs to 40 percent of the Supreme Court Scale. In other words, \$68 per hour! This even-handed approach allows the Government to pay for its own representation at about twice that amount.

This means plaintiff firms will lose about the same sum every hour if a junior practitioner is engaged in the work.

There are no prizes for guessing what is going to happen. I hope the CVA court is up to underrepresented litigants!

The several building company collapses in the Territory has highlighted the need for an insurance to protect innocent consumers who have been the victims of these tragedies.

To assist the Government in formulating the policy necessary for the instruction of this legislation we have established a Construction Committee.

So, that, as they say, is a lot about nothing. But the catfish didn't mind one little bit. ①



## **Drinks night for October**

Come and catch up with the  
NT Young Lawyers at  
Shenanigans

We'll be there from 5.30pm on  
Friday, 11 October

**Hope to see you there!**