

NOTICEBOARD

From the Chief Magistrate of the NT, Hugh Bradley

Contest Mentions in the Court of Summary Jurisdiction – Darwin – Memo to practitioners

In my 2001 Memorandum to Practitioners regarding procedures in the Court of Summary Jurisdiction (CSJ) I noted some initiatives that had been undertaken or intended to make the court process more efficient. I drew attention to the need to avoid multiple adjournments which load up the court lists and practitioners' diaries. Practitioners were advised that, unless there is a good reason, there would normally be only one adjournment of charges without a plea being indicated.

Whilst no statistical evidence is available and we have not achieved the objectives sought it would seem that the various initiatives and the court process have resulted in the reduction of a number of adjournments and a shortening of the time between first appearance and the indication of a plea.

As indicated in the earlier memorandum there was a need also to address issues relating to hearings, given that approximately 60-70% of hearings did not proceed on the hearing day. This is due to a wide variety of reasons known to most of us including the failure of parties or witnesses to appear and/or a change of plea.

The court has attempted to address this long term problem of effective use of the Courts' time since at least the early 1990s. The last serious attempt was in 1998/9 when all the hearing matters were called over on the Monday a week before the trial date to ascertain the state of readiness. Whilst practitioners were expected to appear, defendants were not required. The effectiveness of the mention was thus depleted and no long term benefit was gained.

There has been ongoing discussion about such a system and the possible introduction of a contest mentions system since that time during criminal court users meetings and elsewhere. Fortuitously, there appears this year to be a confluence of practitioners in DPP and legal aid services who strongly favour a system which gives a defendant the opportunity to assess the case against him / her and provides greater certainty to the trial dates so that all the parties, practitioners' and witnesses' time is not wasted.

After consultations with police, DPP, legal aid practitioners and magistrates the court has introduced our own version of the very successful contest mention system which has been in place in Victoria and some other states for some time.

I would emphasise that the procedural systems implemented from December 2002 do not involve any change of law or the negation of rights of victims, defendants or witnesses; the procedures described allow for greater communication and supply of information (including possible sentence indications) so that more informed decisions can be made about the need for hearings. It is hoped that with improved communications and the early supply of prosecution briefs a great majority of cases will be able to be resolved at an earlier date.

In summary, matters where a plea of not guilty is indicated or no plea entered after one or two adjournments the matter will be referred to a contest mention prior to the allocation of a hearing date. Only in unusual cases where all parties (including the court) agree a trial cannot be avoided will matters be set down for hearing without a contest mention being first held.

Upon a matter being set down for contest mention the prosecution will be expected to deliver at least seven days prior to the contest mention date all statements available and/or requested by defence.

In some jurisdictions there are statutory requirements for disclosure of statements and of defences and information concerning expert witnesses etc. In other jurisdictions the system is voluntary. A voluntary system with good communication and free exchange of views seems most likely to produce better and more consistent results than a regulated one.

It is proposed that matters will be referred to contest mention from the bail/arrest/mention court when a not guilty plea is indicated or the court is not prepared to grant further adjournments. Once a matter is referred to contest mention the court expects the guideline annexed to this memorandum to apply.

It is important to restate that the procedures are not regarded as an attempt to remove from the defendant his/her right to have the charges heard on the merits.

Guidelines for Contest Mentions

The following guidelines for the conduct of contest mentions are established for the purpose of more efficiently disposing of the business before the Court and are not to be regarded as an attempt to remove the defendant's right to have the charges heard on the merits.

1. REFERRAL TO CONTEST MENTION

Matters will be initially mentioned in the bail/arrest mention court and if a not guilty plea indicated, referred to contest mention at the discretion of the court. Ideally the Court will try to do this by the second mention.

2. IMMEDIATE HEARINGS

The court shall have discretion to refer matters direct to hearing where there is no prospect of early resolution. This is expected to be in a small percentage of cases.

3. LISTING

Matters referred to contest mentions will be listed for initially for Monday and Thursday afternoons commencing at 2pm and allocated 15 minutes each. It is expected that the contest mention date will be a reasonable time (six weeks) into the future, to allow the delivery of prosecution briefs to defence counsel at least seven days prior to contest mention.

4. PRIORITY MATTERS

It is expected that the court will independently deal with priority listings as required by the exigency of the case such as where the defendant is in custody, or the matter is one which should be fast-tracked. In such cases much less time will be granted

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between the first mention and the contest mention. Prosecutors should forward significant statements to defence representatives as they are received from police rather than wait for the whole brief before commencing the disclosure process. In turn defence representatives should obtain instructions on these statements as early as possible.

5. MULTIPLE CHARGES

A defendant with multiple files or charges may be separately listed for contest mentions so that an appropriate time maybe allocated.

6. GENERAL PROCEDURE

The defendant will be required to appear. The unexplained absence of a defendant is likely to result in the issue of a warrant of apprehension. Every case will be dealt with on its merits however parties should expect to be ready to cover the following issues:

- 6.1 The prosecutor provide and/or read a precis appropriate to the charges;
- 6.2 Defence to outline matters not in issue;
- 6.3 Parties will be asked to make such admissions as are appropriate to shorten the ultimate hearing if it is required;
- 6.4 Solicitors or counsel should be fully briefed and where appropriate be able to make decisions on the conduct of the case;
- 6.5 Prosecutor to have authority to amend or withdraw charge subject to victims rights and reasonable process required by the particular prosecuting authority's procedures. In cases where the prosecutor does not have such authority, arrangements should be made to contact the victim or the prosecutor's office by phone from the court. The prosecutor appearing at the contest mention should be able to give an indication to the court on their likely recommendation
- 6.6 Discussion of issues to establish witnesses required and any requirements for remote facilities.
- 6.7 Details of any rehabilitation undertaken by the defendant or reconciliation between the parties;
- 6.8 Enquiry as to relevant prior convictions if it appears that the likely matter is to proceed by way of plea;
- 6.9 The views of the victim will be obtained if in attendance or a Victim of Impact Statement or Report is provided.
- 6.10 A Magistrate may give a sentence indication if appropriate.

7. FURTHER LISTINGS

Matters maybe adjourned for further contest mention where negotiations are being conducted but it will rarely extend beyond a single adjournment. Where possible the same magistrate will preside at the adjourned date.

8. BLOCK LISTINGS

Will be offered to assist practitioners with long lists.

9. THE DISCOUNT

The principles relating to discount for remorse and early pleas as expounded by the Court of Criminal Appeal in *Kelly v The Queen (2000) 113 A Crim R 263* apply to contest mentions.

The applications of this principle will depend on the particular case, however as a general rule the defendant who pleads guilty at contest mention will be regarded as having entered his plea at an early opportunity.

10. DISQUALIFICATION

The parties will be asked whether they will seek disqualification of the magistrate who conducts a contest mention from the further hearing. The notes (except as to witness arrangements or admitted facts) made by the magistrate at contest mentions will be removed from the file if the matter proceeds to hearing.

From the Chief Justice of the Supreme Court of the NT, Brian Martin Supreme Court Costs Rules – Cost Variation

I, BRIAN FRANK MARTIN, AO, MBE, the Chief Justice of the Supreme Court of the Northern Territory of Australia, pursuant to paragraph 4 of Part 1 of the Appendix to Order 63, and after considering the recommendation of the Master, direct that the rate per unit applicable under paragraph 3 of that Part will, from 1 January 2003, be as follows:

- (a) for a solicitor \$17 per unit; and
- (b) for a clerk \$9 per unit

From the Chief Justice of the Supreme Court of the NT, Brian Martin Practice Direction No 3 of 2002

RULE 48 - EXTENSION OF PRACTICE DIRECTION 5/2000
Pursuant to Rule 48.28, practice direction No 5/2000 is renewed for a period of 12 months from 1 January 2003.

From the Registrar of the Federal Court, Warwick Soden National Guide to Counsel Fees – 2003

The following guide may be applied by taxing officers of the Federal Court when making an estimate pursuant to Order 62 rule 46 of the Federal Court Rules or upon taxation of a party and party Bill of Costs.

In many cases the range of fees in this guide will bear no relationship to the amounts that members of the Bar actually charge as a fee on an hourly rate.

Where, for example, by reason of the number, difficulty and/or complexity of the questions of law or fact involved, the time required for preparation for the hearing is substantially extended beyond what might be regarded as "average", a taxing officer may determine that a fee at or above the upper end of the range may be appropriate. In particular cases, the standing and experience of the counsel concerned may also be a relevant matter for consideration. Similarly, where the matter is not complex or difficult, a fee at or towards the lower end of the range may be appropriate.

The amounts listed are not to be regarded as limiting the taxing officers' discretion to allow higher or lower fees if it is considered appropriate.

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NATIONAL GUIDE TO COUNSEL FEES – 2003 (from the Federal Court Registrar)

Applications/Appeals	Junior Counsel	Senior Counsel
Fee on Brief (including: preparation at discretion of taxing officer and appearance on the first day of a hearing) OR Appearance at hearing (daily rate including conference)	\$900-\$3600 \$650-\$3000	\$1500-\$5500 \$1500-\$4500
Interlocutory Applications		
Motion/Interlocutory hearing short (up to two hours) long (two hours plus)	\$250-\$1500 \$500-\$3000	\$300-\$2250 \$600-\$4500
Other		
Hourly rate for: * Directions hearing * Preparation time * Conferences (not occurring on day of hearing) * Settling applications, statements of claim, affidavits, defence, other documents * Opinions, advice on evidence * Written submissions (where not allowed above) * Attending to receive judgment (where appropriate) * Not otherwise provided for	\$200-\$350	\$300-\$550

From the Senior Registrar of the High Court of Australia Amendments to Second Schedule

EXPLANATORY STATEMENT – STATUTORY RULES 2002 NO. 223

The Second Schedule to the High Court Rules specifies the amount which solicitors, who are entitled to practise in the High Court, may charge and be allowed on taxation of costs by the Taxing Officer of the Court in respect of proceedings in the Court.

The amounts in the Schedule were last varied by Statutory Rule No. 243 of 2001 made on 4 September 2001 and which came into operation on 17 September 2001.

The Federal Costs Advisory Committee, in its report to the Justices dated 12 June 2002, recommended an increase of 3.2% to the solicitors' costs as set out in the Second Schedule. The Court has agreed to the recommendation of the Committee and the increase, which is to come into operation on Tuesday, 1 October 2002, will apply in respect of all work done and services performed by solicitors after Monday, 30 September 2002.

AMENDMENT OF THE HIGH COURT RULES

1. Commencement and application

1.1 These Rules shall come into operation on 1 October 2002.

1.2 Notwithstanding sub-rule (1), the Schedule omitted from the High Court Rules by rule 2 shall continue to apply in relation to all work done and services performed before 1 October 2002.

2. Amendment

2.1 The High Court Rules are amended by omitting the Second Schedule and substituting the following Schedule:

SECOND SCHEDULE

COSTS INSTRUCTIONS

Item 1: To sue or defend, or to make or oppose an application for special leave to appeal, or to appeal, or oppose an appeal or to cross appeal, or for any other originating proceedings - 197.70

Item 2: To make or oppose any interlocutory application - 87.70

Item 3: For a special case, case stated or reservation of question of law for the consideration of a Full Court, or for a statement of claim or a petition - 197.70

Item 4: For any pleading (other than a statement of claim) - 153.60

Item 5: To amend any pleading - 52.90

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Item 6: For a statement of facts or an agreed statement of facts in a matter - 153.60

Item 7: For interrogatories, answers to interrogatories, special affidavits or an affidavit (not being a formal affidavit) - 118.50

Item 8: For counsel to advise - 84.60

Item 9: For a document not otherwise provided for - 33.00

Item 10: For a brief for counsel on a hearing or application in Court or in Chambers or brief notes for solicitor - 109.90

NOTE: Instructions are not to be allowed where the work intended to be included therein is charged for and allowed in detail. Instead of the above costs for instructions, such larger sum may be claimed as is reasonable in all the circumstances of the case, and is allowed on taxation at the discretion of the Taxing Officer.

WRITS

Item 11: Writ of Summons for the commencement of an action or other writ not specifically provided for - 91.40

Item 12: Concurrent Writ of Summons - 32.80

Item 13: Writ of Subpoena - 47.80

Item 14: If any of the above writs exceeds 3 folios, for each extra folio - 6.60

NOTE: These costs include all endorsements, and copies (for the officers sealing them) and attendances to issue or seal, but not the Court fees.

SUMMONSES AND MOTIONS

Item 15: Any Chamber Summons or motion, including preparation, copies and attendance to issue, including attendance to fix return date - 56.10
- if more than 3 folios, for each extra folio - 6.60

APPEARANCES AND NOTICES

Item 16: Preparing and entering an appearance including duplicate memorandum and Notice of Appearance for service - 92.50

Item 17: Any necessary or proper notice or memorandum not otherwise provided for, or any demand - 30.90
- if more than 3 folios, for each extra folio - 6.60

NOTE: This provision shall not apply to short notices or memoranda endorsed on other documents but the words or folios therein may be allowed as part of the documents so endorsed.

DRAWING

Item 18: Drawing any pleading or affidavit not exceeding 5 folios - 87.70

- or, per folio - 12.30

Item 19: Drawing any other document where no other provision is made per folio - 12.10

ENGROSSING

Item 20: Marking each exhibit to an affidavit - 2.20

Item 21: Engrossing any document - per folio - 4.50

COPIES

Item 22: Of any document including carbon, photographic or machine made copy per page - 2.20
Except that where the allowance for 10 or more pages is claimed, in respect of any document, the sum allowed for such copies shall be at the discretion of the Taxing Officer.

PERUSAL AND EXAMINATION

Item 23: Perusal of any document including special letter, telegram, telex or similar document - 32.70
- or, per folio - 4.50

Except that where an allowance for 30 or more folios is claimed, in respect of any document, the sum allowed for perusal shall be at the discretion of the Taxing Officer.

Item 24: Where it is not necessary to peruse a document, such as, checking a proof print of, or examining an application or appeal book per quarter hour: solicitor - 32.80; clerk - 10.70

Item 25: Short letter including a formal acknowledgment, making appointments, forwarding documents...Without comment - 15.60

Item 26: Ordinary letter (including letters between principal and agent) - 26.50

Item 27: Circular letter (after the first) each - 8.80

Item 28: Special letter or letter containing opinion and including letters of substance between principal and agent or such sum as the Taxing Officer thinks reasonable in the circumstances - 43.80

Item 29: Telegram, facsimile copy, telex or other document by similar transmitting process including attendance to dispatch (where necessary) or such sum as the Taxing Officer thinks reasonable in the circumstances - 43.80

Item 30: Receiving and filing any incoming special letter, facsimile, telegram or telex - 2.20

NOTE: Postage and transmission fees may be claimed as a disbursement properly incurred.

SERVICE

Item 31: Personal service of any process or proceeding where necessary or such sum may be allowed as is reasonable having regard to time occupied, distance travelled and other relevant circumstances - 54.50

Item 32: When, in consequence of the distance of the party to be served, it is proper to effect service through an agent, instead of the allowance for service for:

(a) Correspondence - 48.50

(b) Agent's charges - 92.60

and such disbursements as may reasonably be incurred.

Item 33: Service of any document at the office of the address for service either by delivery or by post - 18.70

ATTENDANCES

Item 34: An attendance which requires the attendance of a solicitor (per quarter hour) - 52.40

Item 35: An attendance which is capable of being made by a clerk - 32.70

- or, per quarter hour - 8.60

Item 36: Making an appointment or similar attendance by telephone - 15.60

Item 37: An attendance on counsel: - 33.30

- with brief or other papers

- to appoint a conference or consultation - 14.60

Item 38: A conference or consultation with counsel - 87.70

- or, per half hour - 66.20

Item 39: On a summons or other application in Chambers - 49.40; or per half hour - 87.70

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Item 40: In Court or in Chambers instructing counsel on any hearing or application

- If a solicitor attends, per hour - 210.90 or
- If a clerk attends, per hour - 87.80

Item 41: On an application or appearance before a Registrar or a Taxing Officer - 109.90 or
- per hour - 131.70

NOTE: Instead of the above costs for attendances, such larger sum may be claimed as is reasonable in all the circumstances of the case, and is allowed on taxation at the discretion of the Taxing Officer.

Item 42: To hear judgment - 57.50

Item 43: When in the opinion of the Taxing Officer it is necessary for two solicitors, or a solicitor and a clerk to attend on a hearing, such additional allowance as the Taxing Officer thinks reasonable shall be made not exceeding per day - 440.80

Item 44: Where the Taxing Officer is satisfied that a solicitor's principal place of practice in a place other than that in which the Court is sitting, and it is necessary for the solicitor to leave that place to attend in Court or in Chambers at the hearing of an appeal, application, or cause, an allowance (in addition to reasonable travelling expenses) may be made for each day that the solicitor is necessarily absent from the principal place of practice of such amount that the Taxing Officer thinks reasonable having regard to such other charges as the solicitor may be entitled

to make in the matter.

- not exceeding per day - 984.70

Item 45: An attendance for which no other provision is made - 43.80

Item 46: Preparation of appeal and application books including collating all necessary material, all necessary attendances and general oversight of their preparation in cases where the Registrar is satisfied it has been done efficiently.

Per hour:

- solicitor - 142.50
- clerk - 47.50

Item 47: Where appeal or application books are prepared in a solicitor's office, the Taxing Officer may in his or her discretion allow such sum as the Taxing Officer thinks just and reasonable having regard to work and labour properly performed and charged for material used. In exercising his or her discretion the Taxing Officer shall have regard to commercial rates for copying and binding and is not obliged to apply the photographic or machine made copy costs otherwise allowable in this scale.

GENERAL CARE AND CONDUCT

Item 48: The Taxing Officer may, where the case or circumstances warrant it, allow an amount to be claimed under this item, in addition to any item which appears in this scale, for general care and conduct. In exercising his or her discretion the Taxing Officer may have regard to any matters which the Taxing Officer considers relevant including:

- (a) the complexity of the matter and the difficulty and novelty of the questions raised or any of them;
- (b) the importance of the matter to the party and the amount involved;
- (c) the skill, labour, specialised knowledge and responsibility

involved therein on the part of the solicitor;

(d) the number and importance of the documents prepared or perused without regard to length;

(e) the time expended by the solicitor;

(f) research and consideration of questions of law and fact.

WITNESSES EXPENSES

Item 49: Witnesses called because of their professional, scientific or other special skill or knowledge. Per day - 802.10

Item 50: Witnesses called, other than those covered in item 49. Per day - 84.60

Item 51: Witnesses remunerated in their occupation by wages, salary or fees, the amount lost by attendance at Court.

Item 52: Where the witness resides more than 50 kilometres from the Court, such sum as the Taxing Officer thinks reasonable for the actual cost of conveyance, together with a reasonable amount for sustenance or maintenance.

Item 53: The Taxing Officer may also allow such amount as he or she thinks reasonable and properly incurred and paid to witnesses for qualifying to give skilled evidence.

Item 54: Notwithstanding anything in the scale, the Taxing Officer may allow to an expert witness a special fee for attendance at Court not covered by the foregoing paragraphs of this item when the witness is acting as an expert in assisting counsel or a solicitor for a period during the trial or hearing. The scale in this item does not affect the existing practice of allowing qualifying fees to witnesses.

DISBURSEMENTS

Item 55: All Court fees, counsel's fees and other fees and payments to, the extent to which they have been properly and reasonably incurred and paid, shall be allowed.

Item 56: The remuneration allowed to a solicitor shall be governed by the foregoing scale but in special cases the Taxing Officer may in his or her discretion allow such additional charges or disbursements as the Taxing Officer considers reasonable.

From the Deputy Registrar of the Federal Court Federal Court Amendment Rules 2002 (No 3)

Please find enclosed an unofficial copy of the *Federal Court Amendment Rules 2002 (No. 3)* which will be published in the Commonwealth Government Gazette on 26 November 2002 as Statutory Rule No. 281 of 2002. The Amendment Rules commence on 26 November 2002.

An official copy of the Amendment Rules will be available on the Internet from the ScalePlus site at <http://scaleplus.law.gov.au/home.htm>

The Amendment Rules:

- amend Order 10 rule 8 so that a default judgment may include, if the Court considers it appropriate, costs and interest (see Schedule 1 item [1] of the Amendment Rules);
- amend Order 15 rule 1 to make it clear that a party must have leave of the Court before filing and serving a notice for discovery (see Schedule 1 item [2]);
- omit Order 52 subrule 1 4AA(4) on the basis that it is inappropriate in an appeal for a person seeking to intervene to be invited to suggest that witnesses be called (see Schedule 1 item [3]);

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- amend Order 54B and forms 56 and 57, and insert a new form 56A, to provide for applications under the *Judiciary Act 1903* for the review of a privative clause decision under the *Migration Act 1958* (see Schedule 1 items [4], [5] and [7]); and
- increase the scale of costs in Schedule 2 by 3.2% in accordance with recommendation by the Federal Costs Advisory Committee in its 18th Report into Solicitors' Costs (see Schedule 1 item [8]).
- rename the First Schedule to the Rules so that it is now "Schedule 1", and make consequential amendments to replace each reference in the Rules to the "First Schedule" with a reference to "Schedule 1" (see Schedule 1 items [6] and [9]).

From the Reporting Assessor, AUSTRAC Changes to AIJSTRAC Reporting Requirements - AUSTRAC Policy Declaration

The Director of AUSTRAC, Mr Neil Jensen, has recently approved changes to the way in which solicitors must report Significant Cash Transactions (SCTRs) to AUSTRAC. The approval is made under sections 15A(2) and 15A(3) of the *Financial Transaction Reports Act 1988* (FTR Act). Solicitors whose reporting volumes exceed 250 forms per year will now be required to report electronically rather than on paper (providing the appropriate technology is available).

The new reporting requirements are intended to minimise both the cost of processing paper for AUSTRAC and the cost and time of compliance with the FTR Act for solicitors. The system AUSTRAC has developed is EDDS Web, the Electronic Data Delivery System on the web. EDDS Web is a secure web site with 128 bit SSL encryption. To access this web site you need to register, allow cookies and have Internet Explorer v5.5 (1E5.5) or above (or the latest version of a similar browser). The required report information can then be data entered online.

AUSTRAC requires all solicitors who meet the technical provisions described above to be reporting electronically by 31 December 2002. If you feel this is an unrealistic timeframe for your business, or if you wish to register, or discuss any aspects of electronic reporting, please contact the AUSTRAC Help Desk.

Help Desk Contact Details:

Mail: POBox5516, West Chatswood NSW 1515
Ph: 1800 021 037 or 02 9950 0827
Fax: 02 9950 0071
E-mail: help_desk@austrac.gov.au

From the Commonwealth Lawyers Association Legal Writing Competition

The Commonwealth Lawyers' Association (CLA) announces the launch of the triennial Commonwealth Young Lawyers' Legal Writing Competition. The title of the 2003 paper is: **Judicial Accountability and the Legal Profession - does the legal profession have a role?**

Papers are welcome from young lawyers (those called to the bar or admitted to practise after 1 September 1998 and who

are under the age of 35) qualified to practice in any Commonwealth jurisdiction and in Hong Kong. The winning author will receive full sponsorship to attend the 13th Commonwealth Law Conference in Australia in April 2003. The top five papers will be published in the CLA's journal *The Commonwealth Lawyer*.

The winning essay will be chosen from the entrants by a distinguished panel, each of whom has some interest in and experience of the issues associated with judicial accountability from a practising, academic or campaigning perspective.

Entries, which must be typed, of no more than 2000 words and unpublished, original work should reach the Commonwealth Lawyers' Association by 15 February 2003 with a proof of eligibility. The judges' decision is final and no correspondence will be entered into.

Please mark your entry for the attention of:
Commonwealth Lawyers' Association
C/O The Law Society, 113 Chancery Lane, London WC2A 1PL,
United Kingdom
Fax: +44 207 831 0057
email: cla@lawsociety.org.uk

From Royal & SunAlliance Financial Services Family Law Act Superannuation

Your members will be aware of amendments to the Family Law Act which will become effective on 28 December 2002, granting certain rights in respect of superannuation entitlements of that person's spouse upon divorce. These rights include access to certain information concerning superannuation entitlements.

Royal & SunAlliance has developed certain standard form documentation for superannuation funds marketed under the Royal & SunAlliance, Tyndall and Connelly Temple brands and that documentation is available for download on the following websites: www.royalsun.com.au, www.contemp.com.au

From the Law Council of Australia Australian Lawyer ceases production

Australian Lawyer will no longer be produced in its current format. The future of *Australian Lawyer* received careful consideration following a readership survey conducted in August 2002. In addition to evaluating the publication, the survey findings provided valuable insight to the information needs of the readership.

After analysing the findings, a decision was taken by the Executive and reported to the Council to cease production with the December 2002 issue. While improved means of communicating with the profession are currently being considered, we will not be replacing *Australian Lawyer* with another publication at this stage.