

## NOTICEBOARD

### **Corporations - Winding up - Leave to intervene**

In *Lechmere Financial Corp v. Aspermont Ltd.* ([2004] FCA 36; 30.01.2004) R D Nicholson J considered when a party should be given leave to intervene in winding up proceedings to claim ownership of a sum of money paid into Court in response to an application to wind up a corporation.

### **Trade and commerce - Mutual recognition of qualifications**

In *Lawrence v. Coal Mining Qualifications Board (NSW)* ([2004] FCA 37; 30.01.2004) R D Nicholson J considered the operation of the Mutual Recognition Act 1992 (Cth) and equivalent NSW legislation.

### **Judicial review - Decision under an enactment**

In *Smith v. Oakenfull* ([2004] FCA 4; 2.02.2004) Dowsett J concluded that a decision under the Compensation for Detriment caused by defective Administration Scheme, created to provide compensation for maladministration, was not a decision "under an enactment" for the AD (JR) Act.

### **Industrial law - Award - Construction - Insurance of air traffic controllers**

In *Civil Air Operations Association of Australia v. Airservices Australia* ([2004] FCA 55; 5.02.2004) Finkelstein J concluded that the relevant award required the employer to pay insurance so air traffic controllers remained insured for loss of their licence.

### **Income tax - Income - Receipts by co-operative - Mutuality principle**

In *Coleambally Irrigation Mutual Co-Operative Ltd. v. C of T* ([2004] FCA 2; 6.02.2004) Hill J considered whether the mutuality principle rendered receipts by a co-operative conducting a privatised water management scheme other than income for the purposes of the ITAA.

### **Migration - Cancellation of business visas - Discretion**

In *Kim v. MIMIA* ([2004] FCA 31; 3.02.2004) Keifel J concluded the AAT had erred by failing to hold that the Minister had a discretion to cancel a business visa where satisfied it could be cancelled.

### **Administrative law - Res judicata - Anshan estoppel**

In *Wong v. MIMIA* ([2004] FCA 51; 6.02.2004) Lindgren J considered the role of estoppel in administrative law.

### **Australian Crime Commission - Self-incrimination**

In *A v. Boulton* ([2004] FCA 56; 6.02.2004) Weinberg J considered whether s30 of the Australian Crime Commission Act 2002 (Cth) abrogated the privilege against self-incrimination.

### **Migration - Visa - "no further stay" condition**

In *Terera v. MIMIA* ([2003] FCA 1570; 23.12.2003) Kenny J quashed a decision refusing to waive the "no further stay" condition where the delegate had failed to consider the correct question.

### **Migration - Reasons**

In *Preston v. MIMIA (No. 2)* ([2004] FCA 107; 18.02.2004) French J dismissed an application even though ministerial reasons were prepared several months after the decision.

### **Migration - Jurisdictional error**

In *WAJR v. MIMIA* ([2004] FCA 106; 18.02.2004) French J set aside a decision of the RRT which rejected documentary evidence of the Applicant on the basis it was forged without the person being given an opportunity to comment.

### **Migration - Whether delegate also an officer**

In *Luan v. MIMIA* ([2004] FCA 72; 13.02.2004) Hely J dismissed an application for review where it was contended that a decision made by a delegate who was also a departmental officer was invalid if made as a departmental officer.

## COURT LIBRARY NOTES

### SENTENCING INFORMATION

The library in Darwin has access to a database with information about sentences handed down by the Supreme Court. Access points include (but are not restricted to) file number, judge, name of defendant, legislation and charges. This information has been compiled by the associate to each judge. The earliest information appears to be about 1995. The database will be updated on a weekly basis. In future this information will be available on the Internet with the use of a password. Although this is under development now it is unlikely to be available in the near future.

Please contact the library staff at the front counter of the Darwin library or on 8999 6583 for a demonstration or a search. Users in Alice Springs can request searches via Paula on 8951 5707.

### JANE MAHONEY COLLECTION

A book has recently been added to the memorial collection. It is *Discrimination Law and Practice* by Chris Ronalds and Rachel Pepper. Second edition published by Federation Press in 2004.

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### NT LEGISLATION

Legislative changes in February 2004, notified in the *NT Government Gazette*

### New Acts

11/2004 Electoral Act 2004 (N/C)

12/2004 Electoral (Consequential Amendments) Act 2004 (N/C)

### New Regulations

3/2004 Northern Territory Treasury Corporation Inscribed Stock Regulations (3.3.04)

4/2004 Kava Management Regulations (3.3.04)

### Commencements

43/2003 Evidence Amendment Act (1.1.04)

46/2003 Menzies School of Health Research Amendment Act (1.1.04)

47/2003 Northern Territory Aboriginal Sacred Sites Amendment Act 2003 (3.3.04)

3/2004 Sentencing (Crime of Murder) and Parole Reform Act 2003 (11.2.04)

4/2004 Criminal Code Amendment Act 2003 (11.2.04)

55/2003 Evidence Regulations (1.1.04)

56/2003 Northern Territory Rail Safety Regulations (1.1.04)

57/2003 Fisheries Regulations (1.1.04)

58/2003 Legal Practitioners Admission Rules (5.2.04)

59/2003 Palmerston (Procedures for Meetings) By-Laws (7.1.04)

60/2003 Corporations Law Rules (11.2.04)

### Repealed legislation

38/1993 Legal Practitioners Rules – Repealed by 58-2003

42/1993 Amendments of Legal Practitioners Rules – Repealed by 58-2003

36/1996 Amendments of Legal Practitioners Rules –



Repealed by 58-2003

7/1999 Amendments of Legal Practitioners Rules –

Repealed by 58-2003

36-2001 Amendments of Legal Practitioners Rules –

Repealed by 58-2003

### RECENT ARTICLES

#### Aborigines, Aust - pearls

Hughes, John - Croker Seas pearl farming agreement,

Indigenous Law Bulletin, Vol 5(29) 2004, pp: 21-23

Kaaser, Colin - The emergence of arbitration in family law in Australia, Arbitrator & Mediator, Vol 22(3) 2003 pp: 47-58

Chow, Peter - Issues in international commercial arbitration court assistance for production of documents and obtaining evidence of witnesses, Arbitrator & Mediator, Vol 22(3) 2003, pp: 57-65

#### Barristers

Victorian Bar: problems with close relationships,

Australian Law Journal, Vol 78(2) 2004 pp: 83

#### Child sexual abuse

Lewis, Penney - Similar facts and similar allegations in delayed criminal prosecutions of childhood sexual abuse, Criminal Law Review, Vol January 2004 pp: 39-48

#### Child support

Pearson, Jessica - Building debt while doing time: child support and incarceration, Judges' Journal Vol 43(1) 2004 pp: 4-11

#### Civil trials

Mullins, Gerard - Preparing the plaintiff for trial, Plaintiff Vol Issue 59 2003 pp: 28-31

#### Class actions

Leng, Michael - Judge's role in settlement of representative proceedings: lessons from United States class actions, Australian Law Journal, Vol 78(1) 2004 pp: 58-72

#### Consumer law

Catlin, James - Consumers benefit from transparency, Law Institute Journal Vol 78(1-2) 2004 pp: 54-57

#### Contracts law

Peden, Elisabeth - Liability for recreational services: a contract law analysis, Plaintiff Vol Issue 59 2003 pp: 22-25

Hockley, John - Can arbitrators make sense of the duty of "good faith" contracts?, Arbitrator & Mediator Vol 22(3) 2003 pp: 15-27

#### Corporate criminal liability

Sarre, Rick - Criminal manslaughter in the workplace: what options for legislators?, Law Institute Journal, Vol 78(1-2) 2004 pp: 58-61

#### Courts

Silverii, Jason - In pursuit of excellence, Law Institute Journal, Vol 78(1-2) 2004 pp: 24-28

Phelan, Andrew - Solving human problems or deciding cases? Judicial innovation in New York and its relevance to Australia. Part II, Journal of Judicial Administration, Vol 13(3) 2004 pp: 137-181

Cannon, Andrew - Courts using their own experts, Journal of Judicial Administration, Vol 13(3) 2004 pp: 182-194

Watts, Garry - The family court's new rules, Law Society

Journal, Vol 42(1) 2004 pp: 56-60

Kelly, Denise - Section 53: one good reason for the court to refuse to stay the Litigation, Arbitrator & Mediator, Vol 22(3) 2003, pp: 29-36

#### Criminal codes

Ferguson, Pamela - Codifying Criminal Law (1): A critique of Scots Common Law, Criminal Law Review, Vol January 2004 pp: 49-59

#### Criminal defences

Partial defences to murder, Criminal Law Review, Vol January 2004, pp: 1-4

Clarkson, C - Necessary action: a new defence, Criminal Law Review, Vol February 2004, pp: 81-95

#### Criminal law

Jones, Timothy - Splendid isolation: Scottish criminal law, the Privy Council, and the Supreme Court, Criminal Law Review, Vol February 2004, pp: 96-104

Ferguson, Pamela - Codifying criminal law (2): the Scots and English draft codes compared, Criminal Law Review, Vol February 2004 pp: 105-119

Tata, Cyrus - Does mode of delivery make a difference to criminal case outcomes and clients' satisfaction? The public defence solicitor experiment, Criminal Law Review, Vol February 2004 pp: 120-135

#### Criminal trials

Harris, Wendy - Spousal competence and compellability in criminal trials in the 21st Century, Queensland University of Technology Law and Justice Journal, Vol 3(2) 2003 pp: 274-297

#### Damages

Watson, James - From contribution to apportioned contribution to proportionate liability, Australian Law Journal Vol 78(2) 2004 pp: 126-148

#### Dispute resolution

Spencer, David - The role of the national native title tribunal in mediation, Australian Dispute Resolution Journal, Vol 15(1) 2004 pp: 5-8

Spencer, David - Testing statutory privilege provisions, Australian Dispute Resolution Journal, Vol 15(1) 2004 pp: 8-13

Altobelli, Tom - Negotiation at the small end of town: some negotiating behaviours of small business, Australian Dispute Resolution Journal, Vol 15(1) 2004 pp: 14-28

Venus, Paul - Court directed compulsory mediation - attendance or participation?, Australian Dispute Resolution Journal, Vol 15(1) 2004, pp: 29-37

Yiu, Kenneth - A centralised mediation database: the views of mediators, Australian Dispute Resolution Journal, Vol 15(1) 2004 pp: 38-47

Lee, Joel - Overcoming attribution bias in mediation: an NLP perspective, Australian Dispute Resolution Journal, Vol 15(1) 2004 pp: 48-58

Elix, Jane - You can lead a horse to water ... overcoming impasse in consensus building group processes, Australian Dispute Resolution Journal, Vol 15(1) 2004, pp: 59-69

Harpur, Pau - The financial benefit for insurers: mediate in



## COURT LIBRARY NOTES

personal injuries disputes, Australian Dispute Resolution Journal, Vol 15(1) 2004 pp: 70-79

### **Domestic violence**

Easteal, Patricia - Violence against women in the home: kaleidoscopes on a collision course, Queensland University of Technology Law and Justice Journal, Vol 3(2) 2003 pp: 250-273

### **Education law**

Fong, Jade - School not liable for exclusion of student with a disability, Plaintiff, Vol Issue 61 2004 pp: 48

### **Electronic courts**

Lederer, Fredric - The courtroom 21 Project: creating the courtroom of the Twenty-first Century, Judges' Journal, Vol 43(1) 2004 pp: 39-43

### **Euthanasia**

Legemaate, Johan - The Dutch Euthanasia Act and related issues, Journal of Law and Medicine, Vol 11(3) 2004 pp: 312-323

### **Evidence**

Ormerod, David - Telephone intercepts and their admissibility, Criminal Law Review, Vol January 2004 pp: 15-38

Lewis, Penney - Similar facts and similar allegations in delayed criminal prosecutions of childhood sexual abuse, Criminal Law Review, Vol January 2004 pp: 39-48

Madden, Bill - Evidentiary burdens, multiple causes and appeal principles, Plaintiff, Vol Issue 61 2004 pp: 40-42

Endacott, Ruth - The role of the nurse as expert witness: a view from the UK, Plaintiff, Vol Issue 59 2003 pp: 36-38

Noble, Marcia - Expert evidence: a personal perspective of a practising occupational therapist, Plaintiff, Vol Issue 59 2003 pp: 39-40

Cannon, Andrew - Courts using their own experts, Journal of Judicial Administration, Vol 13(3) 2004, pp: 182-194

### **Family court**

Watts, Garry - The family court's new rules, Law Society Journal, Vol 42(1) 2004 pp: 56-60

Cooper, Donna - When Rolls Royce and Holden justice collide: an analysis of the operations of the Federal Magistrates Service in Queensland in the family law arena, Queensland University of Technology Law and Justice Journal Vol 3(2) 2003 pp: 222-249

Deutsch, George - Australian Tax Office private ruling on applicability of GST to an arbitration award, Arbitrator & Mediator, Vol 22(3) 2003 pp: 73-75

### **Judges**

Silverii, Jason - In pursuit of excellence, Law Institute Journal, Vol 78(1-2) 2004 pp: 24-28

Glazebrook, James - Judicial independence in the democratic Republic of Algeria, Judges' Journal, Vol 43(1) 2004 pp: 44-48

### **Legal ethics**

Gaden, Sarah - Professional conduct: the new rules, Law Institute Journal, Vol 78(1-2) 2004 pp: 46-49

Bagaric, Mirko - Legal ethics is (just) normal ethics: towards a coherent system of legal ethics, Queensland University of Technology Law and Justice Journal, Vol 3(2) 2003 pp: 367-396

Victorian Bar: problems with close relationships,

Australian Law Journal, Vol 78(2) 2004 pp: 83

### **Legal profession**

Haller, Linda - 'Waiting in the wings': the suspension of Queensland lawyers, Queensland University of Technology Law and Justice Journal, Vol 3(2) 2003 pp: 397-421

### **Manslaughter**

Sarre, Rick - Criminal manslaughter in the workplace: what options for legislators?, Law Institute Journal, Vol 78(1-2) 2004 pp: 58-61

### **Mediation**

Wells, Ian - Complaints about Australian intelligence organisations and the potential use of mediation, Queensland University of Technology Law and Justice Journal, Vol 3(2) 2003 pp: 349-366

Spencer, David - The role of the national native title tribunal in mediation, Australian Dispute Resolution Journal, Vol 15(1) 2004, pp: 5-8

Spencer, David - Testing statutory privilege provisions, Australian Dispute Resolution Journal, Vol 15(1) 2004 pp: 8-13

Venus, Paul - Court directed compulsory mediation - attendance or participation?, Australian Dispute Resolution Journal, Vol 15(1) 2004 pp: 29-37

Yiu, Kenneth - A centralised mediation database: the views of mediators, Australian Dispute Resolution Journal, Vol 15(1) 2004 pp: 38-47

Lee, Joel - Overcoming attribution bias in mediation: an NLP perspective, Australian Dispute Resolution Journal, Vol 15(1) 2004 pp: 48-58

Harpur, Paul - The financial benefit for insurers: mediate in personal injuries disputes, Australian Dispute Resolution Journal, Vol 15(1) 2004 pp: 70-79

Mullins, Gerard - Making the most of mediation, Plaintiff, Vol Issue 61 2004, pp: 43-44

### **Medical law**

Noble, Marcia - Expert evidence: a personal perspective of a practising occupational therapist, Plaintiff, Vol Issue 59 2003 pp: 39-40

Gray, Natalie - Reforming the relationship between medicine and the law of tort, Journal of Law and Medicine, Vol 11(3) 2004 pp: 324-330

Thomas, David - The co-regulation of medical discipline: challenging medical peer review, Journal of Law and Medicine, Vol 11(3) 2004 pp: 382-389

### **Medical negligence**

Madden, Bill - Evidentiary burdens, multiple causes and appeal principles, Plaintiff, Vol Issue 61 2004 pp: 40-42

### **Murder**

Partial defences to murder, Criminal Law Review, Vol January 2004 pp: 1-4

### **Native title**

Spencer, David - The role of the national native title tribunal in mediation, Australian Dispute Resolution Journal, Vol 15(1) 2004 pp: 5-8

Martino, David - Establishing native title - from Mabo to Daniel, Native Title News, Vol 6(7) 2003 pp: 106-110

### **Negligence**

Zipser, Ben - Tort liability of public authorities and manufacturers: the oyster case, Plaintiff, Vol Issue 59



## COURT LIBRARY NOTES

2003 pp: 32-35

Watson, Penelope - Private v public: negligence and public authorities, Plaintiff, Vol Issue 61 2004 pp: 22-29

### Power of attorney

Whitehead, Peter - Powers of attorney reformed: new safeguards against financial abuse, Law Society Journal, Vol 42(1) 2004, pp: 52-55

### Prisoners

Pearson, Jessica - Building debt while doing time: child support and incarceration, Judges' Journal, Vol 43(1) 2004 pp: 4-11

### Privacy

Dean, Robert - A right to privacy?, Australian Law Journal, Vol 78(2) 2004 pp: 114-125

### Privilege

Harris, Wendy - Spousal competence and compellability in criminal trials in the 21st Century, Queensland University of Technology Law and Justice Journal, Vol 3(2) 2003, pp: 274-297

Spencer, David - Testing statutory privilege provisions, Australian Dispute Resolution Journal, Vol 15(1) 2004 pp: 8-13

### Professional negligence

Zipser, Ben - Barristers and professional negligence, Plaintiff, Vol Issue 61 2004 pp: 8-10

### Public authorities

Zipser, Ben - Tort liability of public authorities and manufacturers: the oyster case, Plaintiff, Vol Issue 59 2003 pp: 32-35

Watson, Penelope - Private v public: negligence and public authorities, Plaintiff, Vol Issue 61 2004 pp: 22-29

Cochburn, Tina - Keeping public officers honest: an overview of misfeasance on public office, Plaintiff, Vol Issue 61 2004 pp: 30-35

### Public liability insurance

Wilks, Jeff - International tourists and recreational injuries, Plaintiff, Vol Issue 59 2003, pp: 8-14

### Real property law

Britton, Simone - Liability for dummy bidding under the Trade Practices Act 1974 (Cth), Australian Business Law Review, Vol 32(1) 2004 pp: 17-34

Main, Jim - GST and tax on property sales, Law Society Journal, Vol 42(1) 2004 pp: 33

### Sentencing

Hawkins, Scott - Caught, hook, line and sinker: summary of the AJAC Report into Aboriginal fishing rights in NSW, Indigenous Law Bulletin, Vol 5(29) 2004 pp: 8-9

### Sports law

Charrington, Brett - Foreseeability and casual links: golfing liability, Plaintiff, Vol Issue 59 2003 pp: 16-21

Wilks, Jeff - International tourists and recreational injuries, Plaintiff, Vol Issue 59 2003 pp: 8-14

Peden, Elisabeth - Liability for recreational services: a contract law analysis, Plaintiff, Vol Issue 59 2003 pp: 22-25

Freer, Andrew - A state-by-state look at recreational injuries: the legislative noose, Plaintiff, Vol Issue 59 2003 pp: 26-27

### Succession

Barton, Philip - Defeating the TFM claims, Law Institute Journal, Vol 78(1-2) 2004 pp: 36-39

### Torts law

Wilks, Jeff - International tourists and recreational injuries, Plaintiff, Vol Issue 59 2003 pp: 8-14

Zipser, Ben - Tort liability of public authorities and manufacturers: the oyster case, Plaintiff, Vol Issue 59 2003 pp: 32-35

Gray, Natalie - Reforming the relationship between medicine and the law of tort, Journal of Law and Medicine, Vol 11(3) 2004 pp: 324-330

Watson, James - From contribution to apportioned contribution to proportionate liability, Australian Law Journal, Vol 78(2) 2004 pp: 126-148

Cochburn, Tina - Keeping public officers honest: an overview of misfeasance on public office, Plaintiff, Vol Issue 61 2004 pp: 30-35

Rossetto, Mariano - Financial statements and economic loss, Plaintiff, Vol Issue 61 2004 pp: 36-39

Cochburn, Tina - Damages for unlawful detention, Plaintiff, Vol Issue 61 2004 pp: 45-46

### Whistleblowers

Trimmer, Anne - Whistleblowing: what it is and what it might mean for incorporated legal practices, Law Society Journal, Vol 42(1) 2004 pp: 66-69

### Work health

Sarre, Rick - Criminal manslaughter in the workplace: what options for legislators?, Law Institute Journal, Vol 78(1-2) 2004 pp: 58-61

## Family law and superannuation update cont...

FamCA 34: (Canberra case), Chilsholm J held that in a resolved case, where no splitting order was sought, there was no need to value a superannuation interest in accordance with the Regulations.

(b) In *Crown and Yarnold* [2003] FamCA 152 May J held, by contrast, that there was a need to adduce evidence of value even in such cases.

The conflict arose out of the different interpretations of the meaning of sections 90MS and 90MT(2),(3) 90MS(1) [Property orders may include superannuation interests].

In proceedings under section 79 with respect to the property of spouses, the court **may**, in accordance with this Division, also make orders in relation to superannuation interests of the spouses.

Note 1: Although the orders are made *in accordance with* this Division, they will be made *under* section 79. Therefore they will be generally subject to all the same provisions as other section 79 orders.