

The dry season brings a hectic schedule

I must say that it is nice to finally have some cooler weather, for a while there I thought we were going to have the wet season all year round. As you all know, June/July is a fantastic time to spend as much time outdoors as possible. I started the month with an invite to the Northern Territory Women's Lawyers Patron's Drinks on the balcony at the Supreme Court which is always a wonderful venue. On the same night Nikolai Christrup celebrated his move to the Independent Bar joining Myilly Point Chambers.

Earlier this month, along with John Reeves QC, I met with the Chief Justice and Judges of the Supreme Court to discuss civil listing procedure. In particular Order 48. The aim is to refine and improve civil listing procedures.

On Friday 11 June 2004 I was invited to Government House for a reception to celebrate the Queen's birthday. Certainly June puts on the great weather for those outdoor functions.

The Queen's birthday weekend seemed to be the weekend for marriages and I would like to congratulate Sylvia Tomazos from De Silva Hebron who married Marco Cecchin and Therese Austin from the DPP who married Matthew Grant.

I spoke last month about the masses of new legislation that has been introduced over the last 12 months. One of those pieces of legislation is the amendments to the *Legal*

Practitioners Act to deal with Incorporated Legal Practices and Multi Disciplinary Partnerships. The CLE planned for the 15 June did not go ahead, but information has been circulated to all firms.

On 16 June 2004 I attended an art opening at the Supreme Court opened by Justice David Angel. The exhibition was a photographic exhibition "Leadership at Warrego" and the artist Josephine Kuperholz together with the Punttu exhibition. As we all know the art collection in the Supreme Court is most impressive and attributable largely due to the work of Justice David Angel and his wife Anita Angel. Certainly it is a collection of which we should be very proud and I commend the Supreme Court's continued support of artists and exhibitions. Not only are they enjoyable but they give the general public an opportunity to visit the Supreme Court and take



Merran Short, President

advantage of what is after all a public building.

In the weekend of 25 June 2004 Barbara Bradshaw and I attended a Law Council meeting in Adelaide, rather than usual Canberra. Whilst it was cold it was nice to have a change of scenery. The LCA meeting was held in Adelaide because the South Australian Law Society is celebrating its 125th anniversary. Apart from the usual LCA business, which always keeps us busy, we attended a SA Law Society Dinner Dance at the Governor's Mansion. All in all it was a very enjoyable weekend.

Pressure to work at a 'healthy legal culture'

Recently the Australian Law Reform Commission (ALRC) warned that the legal profession could lose its distinct identity, unless it reassesses its focus on professional ethics and social responsibility.

According to the ALRC a healthy legal culture will ultimately help in determining whether the entire justice system operates efficiently and in the public interest.

ALRC President Professor David Weisbrot said the key to ensuring a healthy legal culture begins with improved legal education, emphasising 'soft skills' such as communication, negotiation and dispute resolution.

According to Professor Weisbrot

public cynicism about the legal profession is at an all-time high, as evidenced by the management and reporting of the public liability 'crisis', despite the enormous amount of pro bono work provided for disadvantaged persons by Australian lawyers.

"The profession is under enormous pressure these days: the legal services market is vastly more competitive; the number of lawyers has grown rapidly; non-lawyers are

moving into areas once reserved for lawyers; many areas of personal injury work have been 'de-lawyered'; law firms have developed more 'business-like' structures; and the globalisation of legal services is now a reality.

"This growth and fragmentation brings serious challenges.

"Without a focal point for reflection and reform - such as an Academy

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Liability for obvious risks **cont...**

The reference to *Wood* is to *Woods V Multi-Sport Holdings P/L*,¹⁰ an interesting case which both McHugh and Kirby JJ dissented and would have allowed an appeal by a competent outdoor cricketer who lost the sight of one eye playing an expansive shot in his first game of indoor cricket. McHugh J found the venue providers to be negligent in not supplying helmets with masks and would not have permitted the plaintiff to play if he wore one. Both their Honours found it negligent not to have erected a sign warning, *inter alia*, that indoor cricket is played in a confined space with a soft ball that can enter the eye-socket. Kirby J's recantation is at [127].

I leave the last word on the "comment" to Gleeson CJ¹¹ who having referred to the criticism of the Full Court of WA for adopting it said:

"It is right to describe that observation as a comment. It is not a proposition of law. What reasonableness requires by way of warning for an occupier to an entrant is a question of fact, not law, and depends on all the circumstances, of which the obviousness of a risk may be only one. And, as proposition

of fact, it is not of universal validity. Further more, the description of a risk as obvious may require closer analysis in a given case. Reasonableness would not ordinarily require the proprietor of an ice skating rink to warn adults that there is a danger of falling; but there may be some skater to whom such a warning ought to be given. Nevertheless, as a generalisation, what Kirby J said is, with respect, fair comment. That is how Judge French and the Full Court understood it, and they did no more than indicate that they regarded it as apposite to the present case. There is no error in that."

Assessing liability for obvious risks is a factual assessment to be made bearing in mind many factors not least the wonderful benefit of hindsight. It never was simple. For a brief moment it looked like it might be.

Endnotes

- ¹ (1998) 192 CLR 431. The author appeared with Raelene Webb and Rosalie Balkin for the Commission.
- ² At 478 [123].
- ³ See Balkin and Davis *Law of Torts* 3rd Edition [7.11]. Kirby J discarded

that line in *Graham Barclay Oysters Pty Ltd v Ryan*, (2002) 211 CLR 540 at 628-629.

- ⁴ (1993) 177 CLR 423.
- ⁵ (1939) 62 CLR 179 at 210.
- ⁶ (1957) 97 CLR 337 at 342.
- ⁷ *The Merchant of Venice*, Act 4 Sc 1, | 218
- ⁸ [2004] HCA Trans 170 (27 May 2004).
- ⁹ Archbishop Cranmer was the first Archbishop of Canterbury of the Reformed Church of England who found in canon law a justification for Henry VIII to invalidate his marriage to Catherine of Aragon. Following Henry's death his involvement in politics was disastrous. He backed the wrong side (Lady Jane Gray who had nine days on the throne before being beheaded) and was forced to recant his beliefs. Later at the stake he recanted his recantation and held his hands in the flames until it was consumed. He died soon after minus the hand that "had offended".
- ¹⁰ (2002) 208 CLR 460 at 499-500
- ¹¹ *Woods* at 474. appeared with Raelene Webb and Rosalie Balkin for the Commission.①

Pressure to work at a 'healthy legal culture' **cont...**

of Law - the single 'legal profession' could dissolve into a multiplicity of 'legal occupations', with no-one taking responsibility for the whole."

Professor Weisbrot has called for the establishment of an Australian Academy of Law "as a high priority, to bring together the various strands of an increasingly fragmented profession".

The Australian Academy of Law would bring together judges, barristers, large firm solicitors, small firm solicitors, professional associations, students and academics to focus attention on issues of professional identity, ethics and public service, he said.

"Law Deans have responded enthusiastically to the proposed Australian Academy of Law, but it will need the support of the entire profession to become a real unifying force".

Prof Weisbrot said the ALRC spent four years investigating the federal civil justice system, and paid significant attention to legal education, training and accountability in its landmark report, *Managing Justice: A Review of the Federal Civil Justice System* (ALRC 89).

"Since the release of that report there have been some very positive developments. Courts, tribunals and

professional organisations have moved quickly to pick up many of the ALRC's key recommendations. The Australian Government has facilitated the establishment of a National Pro Bono Resource Centre and a National Judicial College, and is currently refining its civil justice strategy.

"But with some notable exceptions, university legal education has been left behind—there's still far too much 'talk and chalk', and too little focus on practical skills and professional responsibility", Prof Weisbrot said.①