

Recent Australian Tort Law Reform: was it necessary and did it go too far? cont...

for people to accept responsibility for their own actions. That must however work both ways. A difficulty about these provisions, arguably, is that they suggest the wrongdoer is to a degree being protected.

Conclusion

When these reforms were very fresh, I suggested on another occasion that they were an example "of the governmental system working well, with the parliament intervening to meet perceived public concern as to the level of recovery which to that point had been ordained by the courts". I said that in the context of observations about the process, reproduced earlier in this paper, from Justices of the High Court.

Time having progressed, we are now in a better position to assess the social justification for what has occurred. The theory, that insurance premiums would reduce, has apparently not been borne out. What, then, has been the beneficial consequence of this initiative which almost erupted from the cauldron of September 11 and the collapse of HIH, stirred by insurers beset by inadequate financial forecasting and a medical profession generally in turmoil over the imminent collapse of UMP? Ultimately, there seems to have been no substantial benefit, rather prejudice, to those to whom the courts had given reasonable accommodation by the application of the independent judicial wisdom borne of decades.

I conclude with the observations of two Justices of the High Court. In an article published in (2002) 25 UNSWLJ 859, 864 Callinan J said this:

"Both the common law and insurance business and practice are the products of hundreds of years of evolutionary development. It seems rather unlikely that everything that has so evolved is wrong and should be discarded.

When loud voices clamour for radical change is usually time for patience and caution."

Finally, in *Cattnach v Mechior* (2003) 215 CLR 1, 53 Kirby J said:

"Subject to any constitutional restrictions, parliaments motivated by political considerations and sometimes responding to the 'echo-chamber inhabited by journalists and public moralists', may impose exclusions, abolish common law rule, adopt 'caps' on recovery and otherwise act in a decisive and semi-arbitrary way... Judges, on the other hand, have the responsibility of expressing, refining and applying the common law in new circumstances in ways that are logically reasoned and shown to be a consistent development of past decisional law. Of course, in a general way, judges should take the economic outcomes of their decisions into account. But they have no authority to adopt arbitrary departures from basic doctrine."

Endnotes

- ¹ "Negligence - where lies the future?" (2003) 23 *Australian Bar Review* 1, 5
- ² eg *Agar v Hyde* (2000) 201 CLR 552; *Woods v Multi-Sport Holdings Pty Ltd* (2002) 208 CLR 460
- ³ cf. *Graham Carclay Oysters Pty Ltd v Ryan* (2003) 211 CLR 540.
- ⁴ See, eg, Justice P Underwood: "Is Ms Donohue's snail in mortal peril?" (2004) 12 *Torts Law Journal* 1.
- ⁵ See R Davis: "Exploring the Litigation Explosion Myth", *APLA position paper*, 8 January 2002; R Davis: "The Tort Reform Crisis", *UNSWLJ* Vol 25, no 3, 2003, p 865.

CDU produces award-winning students

Attorney-General and Minister for Justice Dr Peter Toyne has congratulated the winner of the 2005 Attorney-General's Medal, Colleen Elizabeth Atkinson.

The complaints officer and mediator with the Office of the Information Commissioner was awarded the medal which recognises the most outstanding graduate of the Charles Darwin University's School of Law and Business.

"Last year Colleen received a Bachelor of Laws with First Class Honours, and the CDU's School of Law and Business has named her as the top law student, a great accomplishment," Dr Toyne said.

"She attained 13 high distinctions and 10 distinctions in her degree and her Honours thesis – 'We don't want your kind here. Or here. Try the other place.' - dealt with the unlawful termination of employment and discrimination.

"It combined Colleen's social work background with industrial relations and legal studies expertise.

"She is currently doing her post graduate diploma in legal practice and is working hard for the Information Commissioner – it's a fantastic coup for the Northern Territory that such talent remains in the NT."

Previous winners of the Medal have been Pippa Rudd, Heather Ross, Craig Smyth, Tanya Ling and Amy Williamson.

The other major award, the Supreme Court Medal, was awarded to Kathleen Clark.

The Supreme Court Medal is awarded to the student who has

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Pro Bono in the NT: what is the way forward?

In early May 2005 a Territory legal aid service providers and pro bono conference was held in Darwin. The conference was organised by the NT Legal Aid Commission and the Law Society NT and funded by the Law Society Public Purposes Trust.

The conference aimed to discuss unmet legal needs and potential solutions to those needs. Attendees included the NT Legal Aid Commission's regional offices, Community Legal Centres, Aboriginal and Torres Strait Islander legal services and Family Violence Prevention Units, the Law Society Northern Territory (LSNT), the National Pro Bono Resource Centre, several local firms and national pro bono providers Clayton Utz, Gilbert & Tobin and Blake Dawson Waldron.

The first day of the meeting involved all of the legal aid service providers identifying unmet legal needs, challenges and any overlaps in services throughout the NT and then identifying a wide range of solutions which would go some way to meeting those needs through better cooperative arrangements between service providers and through an expansion of the services provided by particular agencies. However, there remained many unmet legal needs which could not be provided through existing resources.

The second day of the meeting was devoted to whether pro bono arrangements may provide a solution to some of the identified unmet needs. There was discussion about how to get greater involvement of NT law firms in a more systemic approach to the provision of pro bono services and recognition that many local firms are already providing as

much pro bono assistance as they can manage so pro bono solutions to many of the unmet needs could only be provided by national firms with established pro bono programs.

Unmet legal needs

The following unmet legal needs were identified:

Community Legal Education
Outside of the Darwin region, there is almost no community legal education being conducted, although some services have now received funding to provide some community legal education in regional areas.

Law Reform & Policy

There is a limited response or proactive position taken by legal aid service providers to law reform and policy issues. There is limited cooperation between services in this area.

Civil matters

While advice is available in the major centres regarding civil legal rights, there is limited availability for representation in civil matters across the NT, particularly in cases where the likely damages will be less than \$50,000 and private lawyers are unlikely to be prepared to do these matters on a speculative basis. There is also very limited civil legal advice being provided in regional areas. Also, where there may be no or limited damages provided at the end of a matter, there is almost no representation assistance available,

for example, human rights issues, tenancy, employment law, some civil litigation matters etc.

Crime Victims Assistance matters
There has been a reduction in the number of firms prepared to do this work across the NT and there is limited assistance available in regional areas in these matters. Legal aid agencies are struggling to provide assistance in this area.

Family law

Apart from legal assistance in domestic violence matters, there is almost no family law advice and assistance provided in regional areas in the NT where requests for assistance in this area from indigenous people are increasing. In Alice Springs and Katherine, the limited number of private practitioners means that it is difficult to provide services where existing service providers have conflicts.

Criminal law

This is an ever-expanding area of need. There are difficulties providing representation and assistance in regional areas for non-indigenous people or indigenous people where the ATSILS are conflicted. In Katherine and Alice Springs there are limited numbers of practitioners with relevant expertise to take referrals. Brief-out budgets of ATSILS are limited and in cases involving multiple accused, briefing matters is very costly. In the Miwatj region, there is

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demonstrated outstanding professional promise through scholarship, character and leadership.

Kathleen was also awarded prizes for professional responsibility, corporations law, and intellectual property law.

Other prizes were awarded in 23

subject areas.

"I congratulate all who achieved these high standards, as well as the lecturers and tutors at CDU for nurturing such talent," Dr Toyne said.

The awards were announced at a CDU prize ceremony held at the Supreme Court in May.

Other prize winners were Ivana Biorci (three), Ian McMinn (two), Victoria Hirst (two), Annette Tabke (two), Damien Jones (two), David Thomas, Karl Hell, Ann Holland, Simon Wiese, Rachael Schaefer, Philip Storey, Melanie Warbrooke, Travis Wurst, Gregory Betts, Deborah Hewitt and Iain Summers.①