



City of Sydney Law Society



A Regional Society of the Law Society of NSW

August-September 2006

Seminars

The CSLS presents quality seminars and talks on subjects relevant to your practice at modest (sometimes free) prices. Refreshments provided and opportunities to meet like minded professionals.

MEMBERSHIP GIVES INSTANT SAVINGS. JOIN NOW.

Our Coming Seminars

23 August '06: Charles Cawley-Surviving the new L.P. Act
30 August '06: Off the plan purchases-Bricks & Mortar Issues
6 September '06: Costs Assessments & the new Costs Act
11 September '06: Small Firms Practice Forum

The meetings on 23 & 30 August and 6 September are SPOT TALKS and FREE to members. These are generally held on Wednesdays at 5.30pm for an hour.

Now is the best time for maximum savings - \$80 for 11 months membership with free CLE talks and other benefits.

Fill in the enclosed form, join now to 30 June next year and SAVE. Non-members of CSLS can also attend our Spot Talks and seminars. The Small Firms Practice Forum (2nd Monday of each month at 5.30pm) is FREE to all legal practitioners and always worth attending. **Registration form and any costs can be found following the seminar notices.**

AUGUST '06

SPECIAL ANNOUNCEMENT

CHARLES CAWLEY ON "SURVIVING THE NEW LEGAL PROFESSION ACT - THINGS TO WATCH FOR"

When: Wednesday 23 August 2006, 5.30pm to 6:30pm - Spot talk

Where: Sydney Mechanics School of Arts, Lvl 1, 280 Pitt Street, Sydney (b/w Park & Bathurst)

Speaker: CHARLES CAWLEY, Secretary of Law Society of NSW

Our speaker is the Secretary of the Law Society of NSW and our representative on key government working bodies which affect you. **No one has a better understanding of the new, voluminous Legal Profession Act.** Time for questions. Book today and attend.

Chair: Anthony Restuccia, CSLS President

1 MCLE point earned

OFF THE PLAN PURCHASES - BRICKS & MORTAR ISSUES

When: Wednesday 30 August 2006, 5:30pm to 6:30 pm - Spot talk

Where: Sydney Mechanics School of Arts, Lvl 1, 280 Pitt Street, Sydney (b/w Park & Bathurst)

Speaker: JERRY TYRRELL, Building Consultant

Jerry Tyrrell, co-founder of Tyrrells Property Inspections, a multi-talented expert in the Building and architectural field with science and journalist degrees. First President of the Institute of Building Consultants. An excellent speaker.

Chair: Ken Harkness, CSLS Committee

1 MCLE point earned

COSTS ASSESSMENTS AND THE NEW L.P. COSTS ACT 2006

When: Wednesday 6 September 2006, 5:30pm to 6:30pm - Spot talk

Where: Sydney Mechanics School of Arts, Lvl 1, 280 Pitt Street, Sydney (b/w Park & Bathurst)

Speaker: PETER ROSIER, Experienced Cost Assessor

A very experienced Solicitor and Arbitrator, Accredited Property Specialist and Costs Assessor with wide experience. Get to know the costs trends - the likely future.

Chair: Ken Harkness, CSLS Committee

1 MCLE point earned

SMALL FIRMS PRACTICE FORUM

When: Monday 11 September 2006, 5:30pm to 7:15 pm

Where: Sydney Mechanics School of Arts, Lvl 1, 280 Pitt Street, Sydney (b/w Park & Bathurst)

These meetings have proved very successful. Last months' meeting focused on LawCover. This meeting is on Judicial Arrogance. There should still be an issues workshop to help deal with your issues of concern.

Chair: Anthony Restuccia, CSLS President

OTHER EVENTS TO NOTE

BREAKFAST SEMINAR:

THE EFFECT OF EUROPEAN LAW ON THE COMMON LAW OF ENGLAND

When: Thursday 17 August 2006, 7:30am

Where: Union Club, 25 Bent Street, Sydney

Cost: \$60

Speaker: Rt Hon Lord Mance, Lord of Appeal

Please register directly to Malcolm Longstaff, Executive Officer, Anglo Australian Lawyers Society, ph. 9988 3563

CHURCH LAW FORUM: THE CHURCH'S RESPONSIBILITIES TO THE AGED

When: Thursday 17 August 2006, 5:30pm

Where: Wesley Mission, 220 Pitt Street, Sydney

- Decision making capacity - Wills, Powers of Attorney and Guardianship
- Functions of Guardianship Tribunal
- Elder abuse

Attendance is free.

Please register directly to Mr Bryce Bridges bryce.bridges@wesleymission.org.au

DIRECTORS DUTIES & CORPORATE SOCIAL RESPONSIBILITY SEMINAR

A joint seminar between the Law Society and Supreme Court with guest speaker Rt Hon Lady Justice Arden, member of Court of Appeal of England & Wales

When: 21 August 2006, 2:30pm

Where: Banco Court, Queens Square, Sydney

Enquiries: Robyn Davies, Tel 9926 0276

REGISTER HERE

Send an email to Marianne Atherton on csls@optusnet.com.au or print this page, complete the form and post or fax to the below address.
A tax invoice will be sent to you.

REGISTRATION FORM - Book early: helping catering

Charles Cawley-Legal Prof Act - Wed 23 Aug '06.

CSLS Memb: Free; Law Soc Memb: \$25; Non-Memb: \$35.

Off the Plan Purchases - Wed 30 Aug '06.

CSLS Memb: Free; Law Soc Memb: \$25; Non-Memb: \$35.

Costs Assessments - Wed 6 Sept '06

CSLS Memb: Free; Law Soc Memb: \$25; Non-Memb: \$35.

Small Firms Practice Forum - Mon 11 Sept '06.

CSLS Memb & Non-members: FREE.

MEMBERSHIP for year to 30 June 2007* (See membership form below)

I ATTACH A LIST OF NAMES OF ALL THOSE INCLUDED ON THIS REGISTRATION FORM

Prices are inclusive of GST. A tax invoice/receipt will be sent to you.

Payment method: Visa Mastercard Bankcard

Cheque (payable to City of Sydney Law Society)

I enclose payment of \$_____

Credit card No: _____

Expires: ____ / ____

Cardholder name: _____

Cardholder signature: _____

Name: _____

Firm: _____

Address: _____

Phone: _____ Fax: _____

Email: _____

**NEW MEMBERSHIP APPLICATION / MEMBERSHIP RENEWAL
add details below:**

Full name: _____

Firm: _____

Practicing[] Non-practicing[]

Law Society of NSW member? Yes[] No[]

Date of admission as Legal Practitioner: _____

Practicing as: Solicitor[] Barrister[] Judicial officer[]

Private address: _____

Telephone: _____ Fax: _____

Email: _____ Mobile: _____

Signature: _____

*Membership subscription City of Sydney Law Society for year to 1/7/07:

[] Individual Membership \$80

[] Group discount 10% (applicable when 3 or more solicitors from the same firm join together)

[] Newly admitted Solicitor (1-2 years) \$40

[] Newly admitted Solicitor (3-4 years) \$60

Please return this form with payment to :
City of Sydney Law Society,
PO Box 268 Belrose West 2085. Phone 9453 3511. Fax 9453 3522 Email
csls@optusnet.com.au

Register early, seating limited. Did you include a membership application?

Newsletter

President: Anthony (Rusty) Restuccia a_j_restuccia@yahoo.com.au

Mob. 0419 698 753, Fax 9438 5143

Vice President: John Newton johnnewton@tars.com.au

Treasurer & CLE Convener: Nea Goodman nea.goodman@community.nsw.gov.au

Secretary: Vonette Cornu vonette.cornu@sbs.com.au

Secretariat: PO Box 268, Belrose West NSW 2085 Ph 9453 3511 Fax 9453 3522 Email csls@optusnet.com.au

Presidents Message

Into Your Future

The day after our Spot Talk by Des Sibraa last month on Food Law - food poisoning and negligence, the newspapers reported a damages verdict of \$30,391 on a Chinese food poisoning case before the Consumers, Trader and Tenancy Tribunal. Our Talks are practical. This month we offer Talks by **Charles Cawley**, the Secretary of the Law Society of NSW and the preeminent expert on the Legal Profession Act - its demands, requirements and what to watch for. **This is a must go talk.** Note: UK Legal Services Bill 2006 (Information Section below).

Jerry Tyrrell, a former President of the Institute of Building Contractors has degrees in science, architecture, journalism, building and is co-founder of Tyrrell Property Inspectors. He **knows** property. **Peter Rosier**, a very experienced practitioner and arbitrator, an accredited property specialist and **Costs Assessor** will discuss the recent government changes proposed on costs. All practical Talks for busy practitioners.

Last month the Regional Presidents of the Regional Law Societies met and adopted a motion from the City of Sydney Law Society for a review of the operations and functions of these Societies. They are crucial, I believe, to the future of our profession. They provide excellent access for the local members to the Law Society and the government. (They are guaranteed by the Law Society of NSW Constitution). The review will ensure they continue to be a group of effective voices supporting the public's and the professions real concerns for fairness for the individual in dealing with eg. strict liability offences, with pseudo lawyers, with police power, with genuine civil claims unfairly capped, with freedom of information, access (and subpoenas) with police acting as non-independent court prosecutors, with insurance claims delays, with the non or late disclosure of police evidence to the defence, with non-factual talkback radio broadcasters, with shifting the onus of proof, and the maintenance of the jury system, etc.

Our Common Law System, enshrined in early 19th century Australia was born and built up in England on the **concept of the free and lawful man so that a citizen** was conceived to be a reasonable man, innocent of crime and wrong doing, honest in his dealings, efficient in his work, of good repute among the neighbours, a man of fairness and courage, animated by a spirit of friendship for his others - a far cry from a smart card society, or our breathless community. What has gone wrong? Can you as a lawyer suggest what is needed, a correction on the road map for a better, fairer Australia. Write to me, to your local Regional Council, to the Law Society, to your M.P. Doing nothing is promoting something - into your future.

We have many members who do good for others, few are recognised. Write to me.

Queens Birthday Honours

CSLS congratulates city practitioners honoured in the Queens Birthday List: Professor Ronald McCallum, University of Sydney Law School (Appointed as an Officer of the Order of Australia); Professor David Barker (Appointed as a Member of the Order of Australia), former dean of the Faculty of Law UTS; Bill Grant CEO Legal Aid Commission (awarded Medal of the Order of Australia).

I thank our recent speakers for offering their time and expertise to provide excellent discussions with CSLS and its members - to Des Sibraa, our food law expert, Suzie Broome of Suzie Broome & Company, Strata Solutions, and CSLS member Doran Cook, commercial law barrister. Much appreciated.

Join us in CSLS activities. Suggest improvements. Its your Local Law Society.

Best wishes,
Anthony Restuccia
President

P.S. We have just formed a **LawCover Working Group** to consider suggestions for improvements. Contact Kerry Donohoe on mail@donohoes.com.au or myself.

FOR YOUR INFORMATION

Incorporated Legal Practices

The Legal Services Commissioner has oversight of incorporated legal practices. Incorporated practices will be required to demonstrate management systems are in place. The LSO distributed at the June 2006 Quality in Law meeting spread sheets of questions for such practices. Close examination of the response is expected. Issues as to the time and cost of compliance with oversight measures has been raised.

CSLS executive would like to hear from members with views as to the burden imposed by the regulatory oversight: direct to Victor Berger on vberger@legalmdbb.com.au or to the CSLS President on a_j_restuccia@yahoo.com.au.

Electronic Conveyancing Forum

The Department of Lands invites practitioners to register and participate in forums through online NECS website. Each forum will be given a number of discussion topics and participants asked to provide the views and to comment on the views provided by others. Discussion topics will be open for several weeks and participants will be expected to observe simple etiquette rules in providing their comments. NECO will summarise the views expressed towards consensus for final comments. To commence with four forums will run focused on:

- user identification, accreditation and training
- system access and usage
- lodgement process and security
- settlement process and payment

Register to participate at www.necs.gov.au

UK: Compensation Bill July, 2006

The Compensation Bill was further debated in the House of Commons on 17 July, 2006. Marshallled list of amendments to be moved on consideration of Commons amendments can be found at www.publications.parliament.uk/pa/ld200506/ldbills/144/amend/ml144-i.1-6.html - also includes amendment re *Mesothelioma: damages*

Family Law Amendment (Shared Responsibility) Act, 2006

The Act came into effect on 1st July, 2006 and implements recommendations of the House of Representatives Standing Committee on Family and Community Affairs Inquiry into child custody arrangements in the event of family separation. Consequential amendments are made to the Federal Magistrates Act, and Family Law Regulations 1984. Of particular significant are amendments to children's proceedings in the Federal Magistrate's Court

Disputes about matters that may be dealt with by a parenting order must comply with pre action procedures set out in Part 2 of Schedule 1 of the Family Law Act Rules 2004, is dispute resolution methods.

Schedule 3 amendments include a new Division 12A - introduce changes to the law of evidence re family law matters. New s.69ZT provide that courts must not apply the rules of evidence per s.190(l) of the Evidence Act in child related matters there are exceptional circumstances.

Removal of property limit of \$700,000 on proceedings in Federal Magistrates Court - there is now unlimited jurisdiction.

Recent Cases of Interest

Smits v Roach [2006] HCA (20 July, 2006)

Legal practitioners barrister and client, relationship of agency, imputation to litigant of knowledge possessed by counsel. Meaning of "apprehended bias". Facts arise out of solicitor's retainer agreement, champertous arrangement. Interestingly in the hearing before McClellan J it was observed that Smits Leslie had failed to discharge their obligation to devise an effective litigation strategy and prepare (the case against Freehills) in a timely fashion. The Freehills litigation he held was beyond the skill and capacity of the appellant's firm as well as their financial resources (para 21)

Lomsargis v National Mutual Life Association of Australasia Ltd

[2005] OSC 199 (19 July 2005)

Summary: plaintiff claimed breach of contract and entitlement to weekly payments and breach of implied contractual term to act in good faith under s.13 Insurance Contracts Act, 1984 QLD and damages for breach of "tortious duty of good faith"

Held: a contractual liability for breach of duty of good faith imposed by statute. No reason of principle or policy warrants recognition of a tort. Tort claim for breach of duty of good faith struck out as disclosing no reasonable cause of action.

Attorney General for State of Victoria v Andrews & Ors

[2006] HCA Transcript 355 (1 August, 2006) and Transcript 377 (2 August, 2006)

All States appearing on the issue of the meaning and scope of the express restriction on the Commonwealth legislative power to be found in section 51(xiv) of the Constitution. Whether Optus and others can escape Victorian Workcover Authority and move to Comcare.

UK: Legal Services Bill 2006 (172pages) - IMPORTANT -

Lord Falconer of Thoroton (Secretary of State for Constitutional Affairs & Lord Chancellor) published on 24 May, 2006 the draft Legal Services Bill to deliver the proposals recommended by the "Future of Legal Services: Putting Consumers First" White Paper published on 17 October, 2005.

The draft Bills sets out detailed plans for a strong independent oversight regulator of the Legal Services Board. The LSB will have powers to authorise/de authorise regulators. An Office for Legal Complaints will be created which for the first time will remove handling of legal complaints from the legal professions. It is said the OLC will foster greater consumer confidence and result in quick/fair redress. It will facilitate alternative business structures to enable lawyers and non lawyers to work together on an equal footing, and allow legal service delivery in new ways, hence promoting competition, innovation and better response to consumer demands (see statement at www.deca.gov.uk/pubs/statments/2006/st060524.htm) The UK Government commissioned Price Water House Coopers to produce financial analysis of the costs of the proposals:

- Financial Analysis of Compensation Fund Options for the Legal Services Bill (83 pages)

- Financial analysis to support draft Legal Services Bill (140 pages)

both downloadable at www.dca.gov.uk/legis/legalservices.htm

The UK Law Society is critical of the Legal Services Bill, 2006. The Bill invests powers to the Legal services Board to micro manage the activities of the regulatory functions of the Law Society and the Bar Council. It has been described as "driving a coach and horses through the principle of an independent profession" see

at www.lawgazette.co.uk/news/breakingnews 15 June, 2006. The Department of Constitutional Affairs, published Draft Legal Services Bill, Explanatory Notes & Regulatory Impact Assessment in May, 2006. Interestingly, s.9 defines "reserved legal activity" as: -exercise of a right of audience

- the conduct of litigation
- reserved instrument activities
- probate activities
- notarial activities
- administration of oaths

Births Deaths & Marriages Registration Regulation 2006

The Regulatory Impact Statement was published in June, 2006. Submissions on the proposed Regulations to come into force on 1 September, 2006 provide *inter alia* for an **increase in fees payable** for services provided by the Registrar BDM. Submissions on the proposed regulation are called for: submit to: lpd_inquiries@agd.nsw.gov.au.

UK: criminal records check on all new solicitors!

The UK Law Society Regulation Board approved new measures emphasising consumer protection by enabling criminal records checks on all would-be solicitors prior to admission. The new requirement comes into effect in 2006. There will also be checks on bankruptcy, dishonesty in financial dealings as well as consideration of risk where would-be solicitors are alcohol or drug dependent. **The new guidelines will apply to foreign lawyers who wish to qualify as solicitors in England and Wales.** The checking fee is 47 pounds.

Aboriginal Legal Services (ALS)

On 28 April, 2006 the newly formed ALS was successful in its tender for provision of legal aid to Aboriginal persons in NSW and the ACT. The contract with the Commonwealth specifically provides for the removal of the "black on black" policy of the ATSILS.

New Publications

Contentious Costs

The UK LS published Contentious Costs – Practice Advice Service Booklet on 3 July, 2006. Downloadable at www.costs.lawsociety.org.uk - covers cost information and client care, methods of charging, billing client, recovering costs from client, etc 31 pages

Australian Taxation Office – Lawyers 2006

Booklet to assist solicitors, articulated clerks and paralegals employed in public/private practice complete their tax return from 2005/2006. Covers income required to be included and claimable deductions. Downloadable at www.ato.gov.au. 12 pages or at NSW Bar Association homepage: www.nswbar.asn.au

DISCOUNTED CONTRACTS FOR SALE OF LAND

are available from CSLS at discounted prices.

Contact Marianne Atherton on 9453 3511 or the President Anthony Restuccia.

Email: csls@optusnet.com.au

Your Regional Law Society serves you, Support your Regional Law Society

Email us your ideas and opinions

Attend our functions

Invite others to join

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