

July 2005



15 July 2005

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Presidents Message

CSLS thanks Phillipa Alexander and Peta Solomon of Cost Partners for their costs seminar and Andrew Kostopoulos and Scott Mitchell, SM for the talk on family law and the interaction between State and Federal AVO's, Peter Climpson barrister for his talk on Time of the essence clauses and pitfalls for conveyancers, Lionel Rattenbury for his talk on Guideline Judgements on high range drink driving, Paul Morris for his talk on superannuation and Jenny Atkinson for her talk on Uniform Civil Procedures Bill and Courtlink.

Over 50 attended the CSLS Seminar on Cost Disclosure under the LP Act. The CSLS executive intends to hold a further seminar/discussion group on the New Costs Regime after August, when it is thought further amendments may be introduced and the Regulations available.

Concerns about running a small or sole legal practice appear to be growing. Decisions are often made by government without concern for the "little" practices and their clients. For example costs orders and recovery, witness expenses, conveyancers, advertising, CLE. CSLS executive believe we must talk straight and support small practices. One way CSLS can do this is by holding a

Small Firms Forum (free to CSLS members)

8 August, 5. 30pm

Mechanics School of Arts, Pitt Street Sydney (near Town Hall)

Register your interest in attending by email to [CSLS secretariat](#).

Victor Berger

President

Contracts for Sale of Land are available from CSLS at discounted prices.

Contact Kristan at L Rundle and Co on 9299 1828; Email kmorris@lrundle.com.au

Support your Regional Law Society

Civil Procedures Bill

The Bill was passed by the Upper House on 24th May, 2005 and was gazetted to commence in mid 2005. The Uniform Civil Procedure Rules introduce common rules and procedures in civil proceedings in the Supreme District and Local Courts. It is intended that the Court of Appeal rules and rules relating to specialists lists will be migrated into the uniform rules. Regulations are being settled.

Draft forms were available for review at <http://www.lawlink.nsw.gov> (Uniform Civil Procedure Rules) forms. Updates about the UCPR are available on subscription to uniformcivilprocedures@agd.nsw.gov.au

Legal Profession Act, 2004 - correction to Last Edition

It was anticipated that the LPA would be effective from 1. 7. 2005, however commencement has been delayed. Amendments were tabled on 7 June, 2005 of a very minor nature, and included legislative prohibition on solicitors charging for the preparation of a bill of costs. Draft Regulations are expected to be released shortly.

Federal Industrial Relations Proposed Amendments

Members are encouraged to discuss the Federal Government's proposal to amend its industrial legislation and the consequences for minimum awards and the State Industrial system.

Is a seminar appropriate at present? If you are interested in such a seminar, register your interest with CSLS secretariat.

Upper House Enquiry Into Tort Law Reform

Members are encouraged to view the "*No Fault Compensation Discussion Paper*" published in May, 2005 prepared by Talina Drabsch (Briefing Paper 6/2005) of the NSW Parliamentary Library Research Group and located at <http://www.parliament.nsw.gov.au/prod/parlment/publications.nsf/0/54B0D80E7B70>

The paper reviews overseas schemes, amendments to Workers Compensation, Victim Compensation and Tort Law generally. The Recommendation of the author is that limited common law with a NZ type no fault scheme would be the most effective method of containing costs whilst delivering compensation to the severely injured whilst avoiding a welfare mentality.

The paper also reviews the filing history in the NSW District Court for Civil Matters:

Year Filings

1998 12,500
1999 14,261
2000 15,070
2001 20,784
2002 12,686
2003 7,912
2004 6,275
2005 ?

Emeritus Professor Geoffrey Bartholomew Memorial Scholarship Fund

The UTS Alumni Trustees have established a Scholarship Fund in perpetuity to honor the former Dean of UTS Law School 1981 - 1991 aiming for donations to establish a fund of \$25,000 which would result in a scholarship of \$1,500 per annum (at 6%). The fund is a recognized charity and donations tax deductible. Your contribution no matter the size in memory of the Dean will assist in keeping alive the principles he stood for - equity, access and consideration of older students in full employment doing part time law !

If there are special memories of Dean Bartholomew that you would like recorded as a personal way of remembrance, contact George Marsh executive officer or Robert Watt, UTS Law School on 9514 3489 or lawalumni@law.uts.edu.au.

Dust Diseases Tribunal Amendment (Claims Resolution) Bill 2005

The bill was introduced into the NSW Parliament on 5 May, 2005 and sets up a new claims resolution process to apply to all asbestos related claims commenced by statement of claim filed on or after 1 July, 2005. The Scheme will also apply to asbestos related claims commenced before this date, unless the parties agree that the new process should not apply or unless a hearing date has been set. The Bill also includes amendments in respect to subpoena, offers of compromise and cost assessment which apply to all matters in the Dust Diseases Tribunal.

Under Division 5 of the Regs - apportionment of liability between defendants - if no agreement can be reached a Contributions Assessor can make a determination on the basis of the pleadings. If the decision of the Contributions Assessor is challenged by any defendant and its position is not improved by \$20,000 or 10% then that defendant is liable to pay the costs of the other defendants and costs will be assessed on an indemnity basis.

Under Division 6 of the Regs a single claims manager will be appointed (unless all defendants agree not to use one). The Attorney Generals Department and the Cabinet Office convened a meeting of defendants and insurers on 21 March, 2005 to consider the use of a Single Claims Manager (SCM).

Schedule 2 of the Bill provides for data collection as to individual claims and is designed to assist further review of the recommended reforms and common law system generally after 12 months of operation. The penalty for non compliance in respect to the information reporting is that it may be unsatisfactory professional conduct by the legal practitioner. If a party is unrepresented and the party fails to provide the reporting information, the party will be fined.

Source: Director General of NSW AG's Dept, speech to YLS 24. 5. 05. Full text see at AG's homepage on [Lawlink](#).

Law Society of NSW

The Constitution of the LS provides for NSW to be divided into "regions". The Regions "president" is entitled to attend the "regional president's meeting". By tradition the regional president's forward "notices of motion" to the regional president's meeting which are then debated and consequential resolutions passed to the LS Council to consider or to the CEO/Secretary of the LS to consider and report back to the next regional president's meeting.

The Regional president's meeting have a formal agenda, minutes, motions, in addition to addresses by for example, the general manager of Law Cover and talks on current legal topics. The regional presidents also have a short time to discuss amongst themselves matters of interest to them and their regional members. The regional presidents have no other formal role or powers. Law society directors/councillors are traditionally appointed "director pair" to regions of the Law Society.

Any future review of the Law Society constitution should include the role of regional presidents and their position *viz a viz* membership.

State of the Legal Profession in NSW

20,135 practicing certificate renewal applications were forwarded. as at 16 June, 2005 18,046 were returned of which 16,606 elected to be members of the Law Society.

The Law Council of Australia and Tort Law Reform

The Law Council of Australia hosted a Personal Injury and Compensation Forum in Sydney on Friday 3rd June. The agenda included discussion of the Insurance Industry and how it was performing lead by Richard Cumpston, of Cumpston Sargeant Truslove Pty Ltd actuaries, the No Fault Experience, Thresholds - looking at the medicine behind them, Role of the Media in the NSW experience. A Tort Law Reform package is available on the [Law Council home page](#).

Workers Compensation Commission 2004 Annual Report

The executive summary of the report reveals the following statistical information for 2004:

Disputes registered 13,142, averaging 3,300 per quarter; 11,741 were resolved thus:

- 26% settled by agreement,
- 15% determined by an Arbitrator
- 27% discontinued by the applicant.
- 3,649 Medical Assessment Certificates were issued

Source: E Bulletin No. 18 of the Workers Compensation Commission (March 2005).

Workers Compensation Commission Appointment of Acting Deputy Presidents:

The following have been appointed:

Mary Walker, Deborah Moore, Robyn Lansdowne, Michael McGrowdie, Robin Handley, Michael Sassella.

Superannuation Complaints Tribunal

Guidelines for the Holding of Conciliation Conferences, applicable from 1 May 2005 pursuant to s. 28) of the *Superannuation (Resolution of Complaints) Act, 1993* are available on the SCT homepage and are also annexed to SCT Quarterly Bulletin Issue no. 39 (1. 1. 2005-31. 3. 2005). Leave made by given by the Tribunal for legal representation, the Tribunal has no power to award costs (hence parties bear their own costs).

The CSLS gratefully acknowledges the sponsorship of the Commonwealth Bank

Focus Groups

Please register directly with the convenors for all July meetings, as the Secretariat will be closed 18-29 July 2005.

CSLS Intellectual Property, Copyright, Trade Marks and Patents Focus Group

The first meeting of the IP Focus Group is set for **Tuesday 19 July 2005 from 1pm-2pm** at the offices of Milne Berry and Berger, Ground floor, 154 Elizabeth Street, Sydney. Speakers will be **Ian McDonald** of the Australian Copyright Council and **Paul Blanket** of First Impressions. Members interested in attending should contact Victor Berger on yberger@legalmbb.com.au. Light refreshments will be served.

Immigration Focus Group

The first meeting of the Immigration Focus Group will be held on **Thursday 28 July 2005 from 12. 30pm to 1. 00pm** at the offices of Milne Berry and Berger, Ground Floor, 154 Elizabeth Street, Sydney. The speaker will be **Peter Bollard** of Peter Bollard and Associates. Members interested in attending should contact Victor Berger on yberger@legalmbb.com.au. Light refreshments will be served.

Problems of a Small Practice Forum

Proposed first meeting **8 August, 2005 at 5. 30pm**

Chaired by **Rusty Restuccia CSLS Vice President** and **Nea Goodman CSLS Treasurer**.

Email your expression of interest to CSLS secretariat on csls@optusnet.com.au.

CSLS Meetings

Meetings are generally held on the third Tuesday of the month. Members are invited to attend and raise

issues for discussion. Contact the secretariat for meeting locations.

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