



City of Sydney Law Society



A Regional Society of the Law Society of NSW

May-June 2007

Very Important Legal Seminars for the busy Practitioner

Join us!

Our coming seminars

- 23 May '07: Save Time; Save Money
- 30 May '07: Unlocking the Secrets of AUSTLII and GOOGLE
- 6 June '07: A State Coroner Recalls
- 13 June '07: Costs - More Problems
- 18 June '07: Small Firms Practice Forum

All seminars are free to CSLS Members. Non-members can also attend our sunset seminars at a cost of \$25 if a Law Society member and \$35 for non-members. (unless otherwise specified). The Forums are free to all legal practitioners. Refreshments provided and opportunities to meet like-minded practitioners.

Inquire about Membership

Registration form is at the end of the Seminar Notices.

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www.corporateexpress.com.au

SAVE AUSTLII CAMPAIGN
See page 5 and Presidents Message

MAY '07

Save Time; Save Money

When: Wednesday 23 May 2007, 5:30pm to 6:30pm

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

Speaker: PAUL MORGAN, Deputy Registrar, Local Court Downing Centre

Following the NEW practice arrangements, PAUL MORGAN is now the Registrar for most Directions hearings in the criminal lists for BOTH the Local Court and the District Court. To understand the new system saves time and money. Join us.

Chair: Anthony Restuccia, CSLS President
1 MCLE point.

Unlocking the Secrets of AUSTLii and GOOGLE

When: Wednesday 30 May 2007, 5:30pm to 6:30pm

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

Speaker: DAVID VAILE

David Vaile is the UNSW cyberspace Law & Policy Centre Executive Director. He Co-ordinates the Centre's support for ARC Research and teaches Advanced Legal Reserach, Cyberspace law and Law in the Information Age. He is E.A. Manager for AUSTLii.

In an updated visual demonstration session, David Vaile will show how to get the BEST results from the data on both systems and from other sources of free access online legal resources.

Chair: Anthony Restuccia, CSLS President
1 MCLE point.

JUNE '07

A State Coroner Recalls

When: Wednesday 6 June 2007, 5:30pm to 6:30pm

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

Speaker: JOHN ABERNETHY.

Until this year, John Abernethy was the very experienced and respected State Coroner of NSW. Before that a Magistrate. He will share his experiences from the Bench and offer suggestions of a way for best results.

Chair: Anthony Restuccia, CSLS President
1 MCLE point.

Costs - More Problems

When: Wednesday 13 June 2007, 5:30pm to 7:00pm

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

Speaker: PETA SOLOMON of Costs Partners with
PETER ROSIER, Costs Assessor/Solicitor in private practice.

The final provisions of Legal Profession Further Amendment Act 2006 is to commence on 1 July 2007. New Costs provisions will apply. There have also been new Supreme Court decisions on Cost issues which are expected to have serious consequences for practitioners.

A must go seminar.

Chair: Anthony Restuccia, CSLS President
1 1/2 MCLE points.

Small Firms Practice Forum - what concerns You?

When: Monday 18 June 2007, 5:30pm to 7:15pm

Where: Sydney Mechanics School of Arts, Lvl 1, 280 Pitt St, Sydney.

The Forum has discussed contract and lease clauses, however, Best Practice Certification, Time Costing, Incorporation, 5 Stars excellence, LEAP, AUSTLii, effectiveness, etc. What concerns you? Have we got it right with smoke alarms? The NEW Tort Law Reform Bill is in the Upper House of NSW

Parliament. How far will it help us?

Join us. Tell us.

Chair: Anthony Restuccia, CSLS President

2 MCLE points.

OTHER SEMINARS TO NOTE

Church Law Forum: Administrative Law

When: Thursday 17 May 2007, 5:30pm

Where: Wesley Mission Centre, 220 Pitt St, Sydney.

How do we apply the principles of Natural Justice to Church issues?

Register directly with Bryce Bridges: ph 9263 5373.

The Anglo-Australasian Lawyers Society presents: The influence of the Privy Council in Australia

When: Thursday 31 May 2007, 6:00pm

Where: The Banco Court, Lvl 13, Law Courts Building, 184 Phillip Street, Sydney.

Speaker: The Hon A M Gleeson AC, Chief Justice of Australia

Cost: \$50 per head.

Refreshments will be serviced in the foyer of teh Banco Court after the Address.

Registration and enquiries: Malcolm Longstaff - tel 02-9988 3563.

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 address at the end of the registration form. A tax invoice will be sent to you.

REGISTRATION FORM

[] Save Time, Save Money - Wed 23 May '07.

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

[] Unlocking the Secrets of AUSTLII & GOOGLE - Wed 30 May '07.

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

[] A State Coroner Recalls - Wed 6 Jun '07.

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

[] Costs - More Problems - Wed 13 Jun '07.

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

[] Small Firms Forum - Mon 18 Jun '07.

Free to members & non-members.

[] NEW MEMBER. I wish to take up immediate membership of CSLS and include my completed application form and the membership fee of \$80.00 (Group discounts available, contact us for

details). My membership will be valid until 30 June 2007, when a renewal notice will be sent to all members.

I ATTACH A LIST OF NAMES IF APPROPRIATE 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/RENEWAL OF MEMBERSHIP, add details below:

New Renewal

Full name: _____

Practising Non-practising

Law Society of NSW member? Yes No

Date of admission as Legal Practitioner: _____

Practising as: Solicitor Barrister Judicial officer

Private address: _____

Telephone: _____ Mobile: _____

Signature: _____

Email: _____

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

Cheque herewith OR Credit card details completed above

***SPECIAL MEMBERSHIP RATES FOR JUNE 2007
- Ring to enquire -***

REGISTER NOW

**Please return this form with payment to :
City of Sydney Law Society,
GPO Box 1907 Sydney 2001. Phone 9453 3511.
Fax 9453 3522 Email csls@optusnet.com.au**

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

SAVE AUSTLii CAMPAIGN

The availability of this outstanding service online is essential to law firms, COurts, law/HSC students, the public etc.

NOW IS ACTION TIME

Contact:

Law Society of NSW, 170 Phillip Street, Sydney NSW 2000
E: lawsociety@lawsocietynsw.asn.au

The Premier, NSW Parliament, Macquarie Street, Sydney NSW 2000

Bar Association, 176 Phillip Street, Sydney NSW 2000
Web: <http://www.nswbar.asn.au>

or Regional Law Society Presidents (list in Law Society Journal)

AUSTLii enquiries David Vaile ph 9385 3589

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Newsletter

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

Secretary: Ken Harkness k.harkness@kmhc.com.au

Secretariat: GPO Box 1907, Sydney 2001 Ph 9453 3511
Fax 9453 3522 Email cls@optusnet.com.au

Presidents Message

AUSTRALIA is in trouble

This essential tool to the practice of legal firms (private and government) and Courts has lost financial support. A research grant of \$400,000 has been completed. To maintain its present level of services,

this gap must be filled.

AUSTLii is unique. In March 2007, it received an average of **637,000** pages accessed ("hits") PER DAY - far greater than any other commercial or government provided services. Its 252 databases provide it with a broader range of primary legal materials than any other online service. And uniquely, it provides free access.

New South Wales represents the greatest usage - 36%, but the State Government, the Law Society and Bar Council offer nothing to maintain this crucial service, except Legal Aid. It is an embarrassment to read that our Law Society has refused to provide any funding assistance to AUSTLII this year and its budget next year is also finalised.

NSW lawyers are the largest group of AUSTLII users in Australia. We are the largest "black hole" in AUSTLII's funding. Certainly some individual larger firms in NSW provide assistance generally from \$10,000 down except for Baker & McKenzie (\$35,000). The Law Society had a large surplus last year and large financial reserves, substantial membership income (increased by income from the returning large firms) and revenue from other sources. This Regional Society and especially our many battling small firms, hope that the Law Society will review its decision promptly and provide a substantial contribution to AUSTLii and make representations to the Attorney General of NSW and Premier for a substantial contribution recurring. Join our action.

Ball's Injustice

For those concerned with the unexpected consequences of the tort law changes, read State of NSW v Ball (2007) NSWCA 71 (28-3-2007) McColl & Young J.J. which considered Sect 3B(!)(f) Civil Liability Act 2002 (NSW) - particulars of negligence in a Statement of Claim concerning allocation of resources by a public authority (police).

Join us in our quality Seminars - best value in town.

Best wishes to all,
Anthony Restuccia
President

For Your Information

Metamorphosis of Slip and Fall,

NSW Court of Appeal Judge David Ipp author of report recommending restriction on insurance claims, has now criticized the restrictions on damages as having gone too far, leading to anomalies and unfairness,

www.lawlink.nsw.gov.au/lawlink/supreme_court/11.sc.nsf/pages/SCO_ipp30030307

. He said:

"Certain of the statutory barriers that plaintiffs now face are inordinately high...small claims for personal injuries are a thing of the past. Establishing liability in connection with reactional activities has become difficult. Stringent caps on damages and costs penalties make most plaintiff's think twice before suing. Public authorities are given a host of novel and powerful defences that are in conflict with the notion that the Crown and government authorities should be treated before the law in the same way as an ordinary citizen. It is difficult to accept that public sentiment will allow all these changes to remain long term features of the law"

Australian Lawyers Alliance President, Mr. Morrison said at the NSW State Conference of ALA that he would be meeting with insurers to discuss a proposal for winding back some reforms. Justice said at the conference: *"I am going to tell the insurance*

companies it has gone too far and they need to get together with lawyers and compromise. If insurers did not act, reforms could go against them. There has to be balance, to get reform on the reform which went too far”.

There is also some evidence that the reforms are placing pressure on Medicare and Centrelink.

The Lawyers Tort Law Reform Campaign is to continue.

Workers Compensation Amendment (Transitional) Regulation, 2007 Reviving struck out – discontinued common law claims

Members should be aware of the above Regulation which allows workers whose proceedings for common law damages which were discontinued to struck out because the proceedings were commenced in the six months immediately prior to the commencement of amendments to the workers compensation legislation in 2001 to claim lump sum compensation and in certain cases, work injury damages as if the workers had been injured after the commencement of the 2001 amendments.

The commencement of a discontinued or struck out claim would otherwise constitute an irrevocable election under s.151A *Workers Compensation Act, 1987* (as in force prior to commencement of the 2001 amendments) with the effect of preventing an affected worker from claiming lump sum compensation in respect of the injuries. This in turn would prevent the worker from lodging a further claim for work injury damages because of s.280A *Workplace Injury Management and Workers Compensation Act 1998*.

Calling all UTS: LAW Graduates

the UTS Faculty of law has recently established the **UTS:Law Alumni Network** (<http://www.law.uts.edu.au/careers/aumni.html>) and invite you to join and reconnect with your Faculty and fellow students. Officially launched in March, the **UTS:LAW Alumni Network** will you to build relationships with fellow alumni gain support for your career aspirations, utilize Networking and Professional Development opportunities and continue your involvement with, and influence upon, your University.

Be a part of the **30th Anniversary UTS Law celebrations**, find yourself on the Graduate Honor Roll and Register online for Free. Further enquiries :
Anna.Munro@uts.edu.au

Industrial Relations and Employment – Work Choices employee Record Keeping Obligations – Penalties apply from 27 March, 2007

Compliance with employee record keeping under the *Workplace Relations Regulations 2006* (C'th), Part 19: employers are required to make or cause to be made and retain employee records and to issue pay slips. Records must be legible, in English, be readily accessible to a workplace inspect and be kept for a continuous period of seven years after each entry is made. The Records must include general employee information, hours worked (including overtime and reasonable additional hours), pay, annual leave, personal leave, super contributions, and termination of employment and transmission of business issues.

A contravention of the regulations may result in a Court penalty of up to 50 penalty

units (\$5,500 per breach). Failure to comply is a strict liability offence that is liability irrespective of whether the employer intended to comply or was not aware of its failure to comply.

Spiking Drinks

On 14 April 2007, the Daily Telegraph reported that the NSW Law Society had attacked plans for tough new drink spiking laws because they would criminalise otherwise "innocent behaviour" such as the bartender who adds a little extra to a valued customer's drink. Society President Geoff Dunlevy said jailing someone who spiked a drink without malicious intent was going too far. "There are circumstances of prankish behaviour which we would not endorse, but should not become a crime," he said.

Compensation Kit Booklet – Centrelink

Booklet provides information for solicitors about compensation and how it affects payments from Centrelink (or entitlements to payments) as well as specialist services Centrelink offers people claiming compensation.

Download at www.centrelink.gov.au/internet/internet.nsf/publications/co297.htm

Cases of Interest

CGU Insurance Ltd v Pothouse [2007] NSWCA 80 (11.4.2007. Hodgson, Young & Hunt)

Barrister retained by plaintiff to advise on commencement of proceedings unaware of effect of *Workers Compensation Legislation Further Amendment Act, 2001*, re *Community Service Orders Act 1979*. Proceedings commenced 14 days after legislation commenced, plaintiff's claim dismissed, barrister found to be negligent, professional indemnity policy, known circumstances excluded from policy included any fact, situation which a reasonable person in insured professional position would have thought before the policy began might result in allegation against insured in respect of liability covered by policy. The Court of Appeal dismissed barrister's insurers appeal against indemnification of barrister on the basis of *contra proferentem* against the insurer.

Iannello & Anor v Sharpe [2007] NSWCA 61

A deposit of 5% was paid on exchange. Special condition 14 read:

"14. Reduced Deposit:

Notwithstanding anything else herein contained, the vendor shall accept on exchange of this agreement, payment of \$225,000 being part deposit. The parties expressly agree that if the purchaser defaults in observance or performance of any obligation which is or has become essential the balance of the deposit namely \$225,000 shall become immediately due and payable and the purchaser shall forfeit the whole of the sum of \$450,000 pursuant to clause 9..."

The Court of Appeal held the obligation to pay the second \$225,000 is inconsistent with the character of deposit. This was so, irrespective of whether the front page of the contract specified the deposit was 10% of the price \$450,000 or not. The Court held the nature of the obligation to make the payment is more important in determining its character than the name chosen by the parties.

Work Cover

Finances continue to improve from a \$3.2 billion deficit to a current \$416 million surplus. As result the government announced on 21 March, 2007 a further 5% fall in workers compensation premiums. In addition a \$250 million one office grant will be used by Workcover to improve programs for injured workers: injury management, recovery and prevention.

www.smh.com.au/news/National/NSW-workers-comp-premiums-set-to-fall/2

Australian Publications of Interest

Review of Medical Indemnity Policy – Achieving stability and premium affordability in the Australian Medical Indemnity Marketplace see at www.health.gov.au/internet/wcms/publishing.nsf/Content/health-medicalindem..

Published by the Australian Government Department of Health & Ageing for the Medical Indemnity Policy Review Panel. Twelve recommendations including:

- . States/Territories be encouraged to advance the tort law reform process and achieve a greater level of consistency in tort law
- . States/Territories examine the feasibility and appropriateness of introducing mandatory structured settlements in cases involving very large sums
- . States/Territories develop long term care models for the catastrophically injured in their respective jurisdiction if they deem such schemes are appropriate and reasonable
- . tort law reform in States/Territories be monitored on an ongoing basis with particular reference to the impact of the reforms on the cost of medical indemnity insurance

Update on Anti Money Laundering & Counter Terrorism Financing Reforms for Legal Practitioners

Published by Law Council of Australia, 22 December, 2006, download at www.lawcouncil.asn.au In the first week of December, 2006 the Federal Parliament passed the Anti Money Laundering and Counter Terrorism Financing Act 2006 (C'th) (AML/CFT Act). The regulatory regime will be phased in over two years from December, 2006. The Act primarily regulates the financial sector, but may impact on legal practices which provide certain listed financial services. AUSTRAC (Australian Transaction Reports & Analysis Centre) is the agency employed to make Rules Under the Act. The Law Council paper addressed: Are legal practitioners covered by the AML/CFT Act, what obligations are imposed, how will the Act be enforced, does it affect Legal Professional Privilege etc?

News From UK

New Solicitors Code of Conduct

The Solicitors Regulation Authority has produced a simplified structure of 25 rules with non mandatory guidance. The "*New Solicitors Code of Conduct*" will come into force on 1 July, 2007. The code is available at www.rules.sra.org.uk The new Code places a high level of responsibility on principals for the effective management of their firms.

The Solicitors Regulation Authority (SRA) sets and maintain standards for solicitor, set standards for qualifying as a lawyer, monitor the performance of organizations that provide legal training, draft rules of professional conduct, provide guidance and rules to solicitors on ethical issues, laws and regulations that affect solicitors work, administers the roll (register) of solicitors, provide information to the public about solicitors their work and standards, set requirements for CLE, monitor solicitors/firm to ensure compliance with the rules, investigate concerns about solicitors standards of

practice and compliance with the rules and take regulatory action, close down solicitors firms to protect clients and the public and return papers and monies to their owners, run a compensation fund to help those who have lost money as a result of solicitors dishonest or failure to account for money.

The LS of England and Wales advertised amongst solicitor members on 23 April, 2007 vacancies for the Remuneration Committee, which oversees remuneration arrangements for the chief executives and senior managers of the Law Society, Legal Complaints Service and Solicitors Regulation authority. The Remuneration committee meetings six times a year and terms are for three years.

A Special General Meeting of the LS of England & Wales was held on 17 January, 2007 following a requisition for a SGM by 110 members to consider negotiation of new terms for the supply of a Criminal Defence Service and remuneration, and rejection of the principle of Price Competitive Tendering. The Minutes of the SGP are available on the Law Society of England & Wales homepage.

New Publications:

UK:

Solicitors and Money Laundering – a Compliance Handbook 2nd Edition)

by Peter Camp

Forward by Sir Stephen Lander, Chair Serious Organized Crime Agency. Practical text provides detailed commentary on the amendments made that came into effect in 2006 addresses The UK Court of Appeal in *Bowman v Fels*, particularly affecting solicitors. Forms, precedents.

Available from Law Society Publishing: fax 01787 313 995, lawsociety@prolog.uk.com cost \$54.95 (pounds) published 27 February, 2007

UK Law Management Section:

UK Law Management Section launched two tool kits on 19 April, 2007 on **Merger**

Tool Kit: chapters include:

Background, why merge, business planning, getting started, cultural issues, putting it together, due diligence, integration

And

Risk Management Tool Kit, chapters include

Background, strategy structure and systems, regulatory risks, operational risks, people, insfracture offices and IT, clients and suppliers, risk management checklists

Both are available at \$75 pounds + VAT each from

lawmanagementsection@lawsociety.org.uk, 020 7316 5707

URGENT:

Downing Centre Local Court. Pro Bono Duty Solicitor Roster
Solicitors invited to join the Roster and attend once a month.

Inquiries: Anthony Restuccia Tel 0419 698 753

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

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