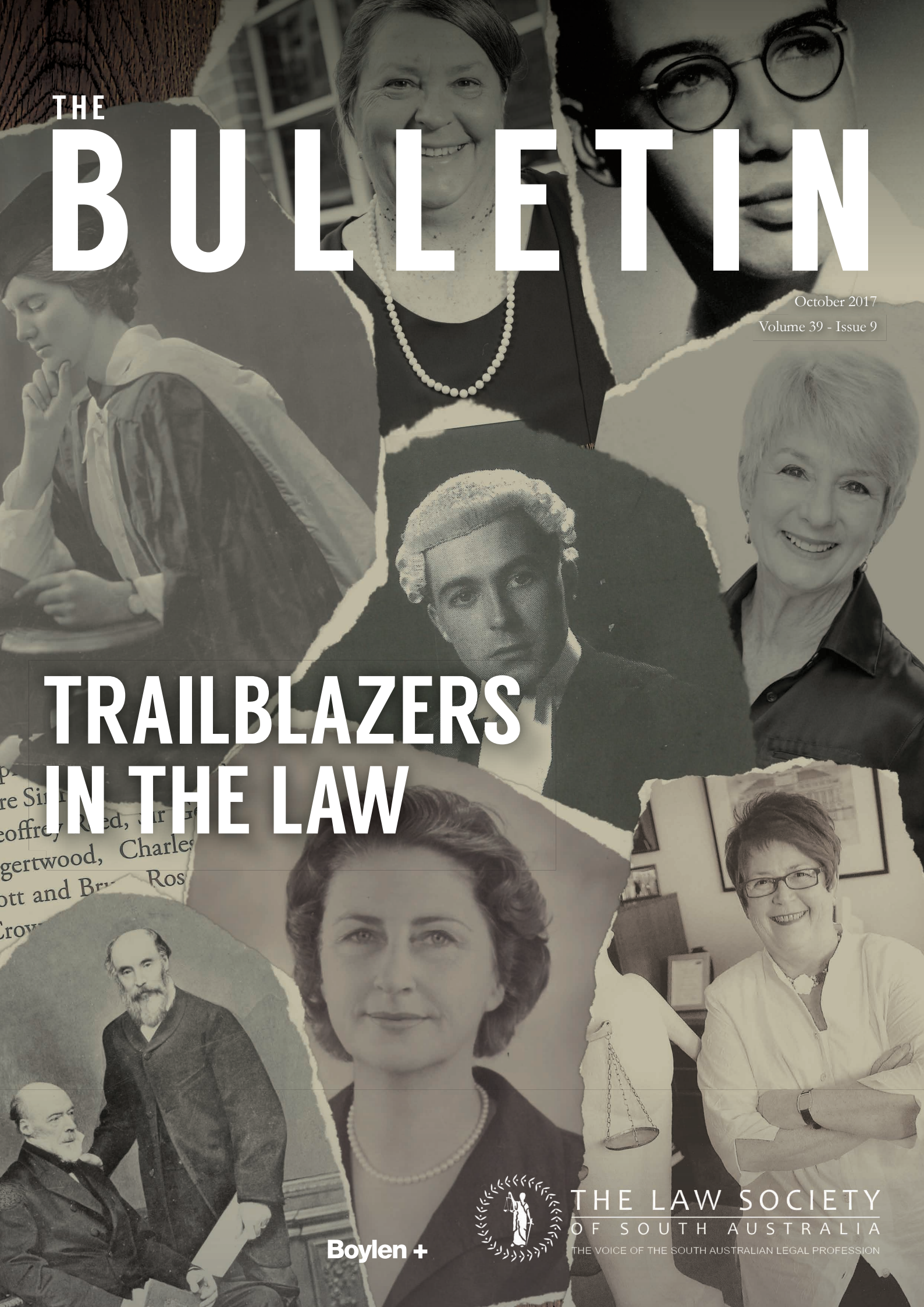

THE BULLETIN

October 2017
Volume 39 - Issue 9

TRAILBLAZERS IN THE LAW

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REGULAR COLUMNS

KEY LAW SOCIETY CONTACTS

Chief Executive
Stephen Hodder - stephen.hodder@lawsocietysa.asn.au

Executive Officer
Rosemary Pridmore - rosemary.pridmore@lawsocietysa.asn.au

Member Services Manager
Michelle King - michelle.king@lawsocietysa.asn.au

Director (Ethics and Practice)
Rosalind Burke – rosalind.burke@lawsocietysa.asn.au

Director (Law Claims)
Geoff Thomas – gthomas@lawguard.com.au

Manager (Education)
Sally Browne – sally.browne@lawsocietysa.asn.au

Manager (LAF)
Annie MacRae - annie.macrae@lawsocietysa.asn.au

Manager (Finance and Administration)
Ciro Pipolo - ciro.pipolo@lawsocietysa.asn.au

THE BULLETIN

Editor
Michael Esposito - bulletin@lawsocietysa.asn.au

Editorial Committee
D Barnfield, E Olsson, S Kljun, S Hodder, R Earles, P Wilkinson, S Errington, E Belperio, A Siow, B Grant, A Bradshaw, R Hasda, E Moran, J Napier

The Law Society Bulletin is published monthly (except January) by:
The Law Society of South Australia, Level 10-11, 178 North Tce, Adelaide
Ph: (08) 8229 0200
Fax: (08) 8231 1929
Email: bulletin@lawsocietysa.asn.au
All contributions letters and enquiries should be directed to The Editor, The Law Society Bulletin, GPO Box 2066, Adelaide 5001.

PUBLISHER/ADVERTISER

Boylen
Level 3, 47 South Terrace, Adelaide SA 5000.
Ph: (08) 8233 9433 Fax: (08) 8212 6484
Email: admin@boylen.com.au
Studio Manager: Cindy Ridgwell
Layout: Henry Rivera

Advertising
Email: sales@boylen.com.au

Printer
Lane Print Group
101 Mooringe Ave,
Camden Park SA 5038.
Ph: (08) 8376 1188

Attacks on pro bono lawyers undermine rule of law

TONY ROSSI, PRESIDENT

Immigration Minister Peter Dutton recently labelled lawyers representing asylum seekers who are trying to remain in this country as "un-Australian".

He went further and suggested that constitutional responsibilities to asylum seekers created a situation where "these lawyers have been playing the game…but we're not going to be taken for a ride".

Many of the lawyers involved have been acting pro bono and because they believe that it is very much part of the Australian way of life to assist someone in need.

Further, they, and all of us who practice the law, believe that the rule of law applies to everyone equally.

Anyone claiming refugee status has as much a right to access justice, having regard to the particular circumstances, as a citizen of this country accessing its courts.

The genuine refugee should not be sent back to the country of origin if that person is liable to persecution and harm.

To the extent that our Constitution and the laws passed under it allow asylum seekers and refugees to access our courts then the community would be better served by the government acknowledging that responsibility and allow justice to take its course through our independent courts.

The community would also be better served if the government did not denigrate, without justification, members of the legal profession who selflessly devote their time, without fee, for the good not only of the community but also out of respect for the rights of the individual.

With the erosion of legal aid funding and funding for community legal centres, there has been an increasing burden upon the private legal profession to provide pro bono services.

In March this year Adelaide proudly hosted the National Access to Justice and Pro Bono Conference.

In the speech that I delivered at the Conference I referred to the unfortunate reality of the terms "access to justice" and "pro bono" being associated.

Despite the increasing complexity of the law, regulatory burden and increased overheads, practitioners remain compelled to continue to provide pro bono services.

I have also addressed, earlier this year, concerns in relation to the independence of the judiciary and particularly by reference to security of tenure.

A few months ago Commonwealth Attorney General George Brandis acted to address concerns within the Liberal Party about the number of decisions of the Administrative Appeals Tribunal that was allowing applications to review decisions by Commonwealth Departments and particularly in the area of immigration and visa matters. At the same time, some 30 existing members were axed and some 60 new members were appointed including some with clear ties to the Liberal Party.

This followed Mr Dutton describing some of the AAT's decisions as "infuriating" and as being out of line with community expectations.

In this way Mr Dutton again demonstrated an erroneous approach. Courts and tribunals exist to apply the law impartially, on the evidence and not by reference to an idiosyncratic view of what the community may expect that the outcome should be.

The actions of Mr Brandis, on behalf of his government, provide a striking illustration of why any court or tribunal which exercises a judicial function should have security of tenure to ensure an outcome independent of the executive arm of government.

There is now concern that, at least on a subconscious level, it may be difficult for members of the Administrative Appeals Tribunal to review and overturn a decision of government and particularly in the area of immigration and visas, at least without the risk of personal consequences.

The community would be better served if the government did not denigrate, without justification, members of the legal profession who selflessly devote their time, without fee, for the good not only of the community but also out of respect for the rights of the individual.

Best Bulletin articles announced

MICHAEL ESPOSITO

The 2016-17 Bulletin Article of the Year awards were announced at the Law Society annual dinner on 5 October.

In a field of exceptional nominations, Jonathan Wells QC took out the Article of the Year award for his submission: *"Duty to follow 'proper' instructions: What interests of the client do we represent?"*

Mr Wells' article examined the duties of a solicitor to his or her client and unpacked the meaning of the provision in the Australian Solicitors' Conduct Rules that a solicitor must follow a client's "proper" instructions.

Runner-up in this category was *"Duties and functions of counsel assisting"*, by Chad Jacobi, and third vote getter was *"When does work experience become employment"*, by Elbert Brooks.

In the Special interest category, law student Lawrence Ben was awarded best article for his meticulously researched piece "*How royal commissions have shaped SA: a history*", which was also accompanied by a list of every Royal Commission to take place in SA. Mr Ben's history of South Australian royal commissions is an important historical document that will be of great value to legal practitioners and recorders of history.

On behalf of the Bulletin Committee, I would like to sincerely thank everyone who contributes articles to the bulletin. Our authors, who generously submit articles for no payment, are the reason the Bulletin is held in such high regard.

Below is a shortlist of all articles nominated for the Bulletin awards.

Bulletin Article of the Year

- *Duty to follow proper instructions,* by Jonathan Wells QC
- *Navigating the Small Claims Jurisdiction,* by Steven Thomas
- *Legal limits on the display of election posters,* by Dr Matthew Stubbs
- *The Abolition of Duplicate Certificates,* by Elias Farah
- *A new framework for property transactions,* by Philip Page
- *Sweeping changes to planning laws,* by Anthony Kelly
- *Navigating the land of the lost Trust Deed,* by Karin Harris
- *Security of intellectual assets in the digital age,* by Paul Gordon & Henry Materne-Smith
- *Obtaining inheritance from overseas,* by Roy Hasda
- *When does work experience become employment?* By Elbert Brooks
- *Are lawyers exposing themselves to risk by accepting Government website terms?*, by John MacPhail & Bea Stathy
- *When can an adult child receive maintenance?,* by Narelle Egan
- *Migration law & the art of specialising,* by Jane McGrath
- *The duties & functions of counsel assisting,* by Chad Jacobi
- *Royal Commission recommendations & the development of public policy*, by Emily Telfer SC
- *Deaths in Custody Royal Commission: 26 years on,* by Chris Charles
- *How court kiosks help lawyers and clients*, by Rene Earles
- *Does technology help or hinder access to justice for vulnerable people?*, by Marja Elizabeth
- *Making a complaint about another lawyer*, by Greg May
- *Disclaiming an interest in a trust – can you do it?,* By Greg Arthur

Special Interest article of the Year

- *Military disaster at Fromelles remembered,* by Andrew Collett AM
- *Nuclear waste repositories: a view from inside,* by Kyra Reznikov
- *Bulletin keeps abreast of changing technologies,* by Wilbur Jordan
- *Admin to legal practice: making the transition,* by Emma Campbell
- *How royal commissions have shaped SA: a history; and History of royal commissions in SA (List),* by Lawrence Ben (combined nomination)
- *Are you a slave or master to technology?,* by Dr Anne Bardoel
- *Sleep deprivation is harmful to health & productivity*, by Wellbeing & Resilience Committee

B

A round-up of recent Society meetings & conferences

ROSEMARY PRIDMORE, EXECUTIVE OFFICER

16 AUGUST 2017

Small Business Commissioner

The Society was represented by David Hopkins and Giles Kahl, Members of the Property Committee at a meeting convened by the Small Business Commissioner to discuss the Society's submission regarding the Retail and Commercial Leases (Miscellaneous) Amendment Bill 2017. The Society was subsequently provided with some amendments to the Bill, some of which related to the issues it had raised.

LTO Stakeholder Reference Group meeting – 16 August 2017

The Chair of the Property Committee, Philip Page attended a further meeting of the Stakeholder Reference Group established by the Department of Treasury and Finance in relation to the "Land Services Commercialisation Project". The "sale" to private operator, Land Services SA had been announced by the Treasurer on 10 August 2017, the "financial close" to occur in late September 2017. The attendees were advised:

- the operator will collect LTO registration fees on behalf of the Government and will remit them to the Government (thereby removing any GST issue);
- the Government will pay a "service fee" to the operator;
- the operator will pay a 12.5% royalty to the Government on income generated from new products developed from use of the land services data.

The Society remains concerned at the lack of transparency as to the terms of the agreement. It is not clear what has been "sold" or that the data including that of a personal nature regarding South Australian land holders will be adequately protected.

16 AUGUST 2017

Meeting with Chief Justice

The President, Tony Rossi and Chief Executive, Stephen Hodder met with the Chief Justice. Matters discussed included the organisation of "Welcome to the Profession" events; various complaints and concerns by Members in relation to probate matters; the image of the profession; the independence of the judiciary; the planned upgrade to court facilities and the costs of litigating.

21.22 AUGUST 2017

Early Intervention consultation workshops

Jenny Olsson, Chair of the Children and the Law Committee attended a workshop convened by the Department of Education and Child Development. The consultation sought input to the Government's development of a Bill focussing on early intervention and prevention measures to improve the wellbeing and development of children, subsequent to the passage of the *Children and Young People (Oversight and Advocacy Bodies) Act 2016*.

22 AUGUST 2017

Electronic Court Management System Update

Tony Rossi met with Megan Webster Bradman, Executive Director, Strategy and Court Operations at the Courts Administration Authority to receive an update on the ECMS project. The CAA has signed a 10-year contract to implement and support an ECMS. The next step is to document the specifications necessary to configure the system.

24 AUGUST 2017

Small Practice Luncheon, Southern

Practitioners practising in the Southern Metropolitan region gathered for a luncheon meeting at which Tony Rossi spoke about issues of current concern to the Society. The practitioners took the opportunity to raise matters of local concern with Mr Rossi and Stephen Hodder.

24 AUGUST 2017

SA Bar Association

Members of the Society's Executive met with the President, Ian Robertson SC, Vice-President, Meredith Dickson, Treasurer, Ian Thomas and Executive Officer, Jan Martin of the SA Bar Association. Matters discussed included lobbying on behalf of the profession; comments of the Attorney-General recorded in Hansard, critical of the two organisations; retainer letters by barristers; the process of appointment of Senior Counsel; and section 6(3) of the *Legal Practitioners Act 1981*.

25 AUGUST 2017

Meeting with Hon Kelly Vincent MLC

Tony Rossi and Stephen Hodder met with the Honourable Kelly Vincent MLC at her invitation. Ms Vincent advised the contribution of the Society via its submissions relating to matters before the Parliament was highly respected and appreciated.

7 SEPTEMBER 2017

Joint Rules Advisory Committee

The Society's submission for an increase in the Supreme Court Scale was one of the matters before the JRAC at its September meeting. Tony Rossi spoke to the submission, which was drafted by the Costs Committee. The Society advocated for the introduction of a loading for skill, care and responsibility, South Australia appearing to be the only scale-regulated jurisdiction that currently does not allow a loading of this nature.

8–9 SEPTEMBER 2017

Law Council of Australia and associated meetings

The Society hosted the September quarterly meetings of Law Society Presidents; Constituent Body CEOs; Law Society CEOs; the Conference of Law Societies; the LCA Executive; LCA Sections Chairs; and of the LCA Directors. Tony Rossi (as President and as the Society-appointed Director of the LCA) and Stephen Hodder each attended a selection of the meetings. Matters discussed included the situation in various States as to sale of lands title services; the proper use of and maintenance of public purpose funds; the image of the legal profession and communications strategies to raise it; the LCA's Justice Project; a potential position for the LCA in relation to the outcomes of the Referendum Council; the independence of the judiciary; and the proliferation of non-licensed people doing legal work.

Please note: the Society's advocacy work is reported to Members via the Advocacy Notes e-newsletter. B

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Three brilliant Adelaide girls

ELIZABETH OLSSON, CHAIR, BULLETIN COMMITTEE

Bulletin Committee Chair Elizabeth Olsson looks back at the remarkable lives of three pioneering women: Mary Tenison Woods (nee Kitson), Dorothy Somerville and Sesca Zelling (nee Anderson).

One hundred years ago, on Saturday 20 October 1917, there was a significant gathering in the Supreme Court before Chief Justice Sir George Murray and Mr Justice Buchanan. The Governor's wife, Lady Galway, joined the judges on the Bench and present in the packed public gallery were a war hero, Captain Blackburn VC and his wife, Dr Helen Mayo, several university lecturers, leading citizens, various lawyers and their wives, law students, students from the Convent of Mercy (St Aloysius) and a great many young women. The reason? The admission of the first female as a legal practitioner in South Australia.

That lawyer was 23 year old Mary Cecil Kitson, a brilliant ginger-haired student who had matriculated at age 16, dux of St Aloysius as well as head prefect. Born in Caltowie, Mary was the fourth child of John Kitson, a police inspector, and his wife Mary, both of whom encouraged their daughter to pursue her career.

Although the University of Adelaide had allowed women to study for degrees from 1881, few women had enrolled in law because they were not allowed to practise. That changed in 1911 when the *Female Law Practitioners Act* was proclaimed. In 1912 Mary began her degree and in August 1914 was articled to Mr Thomas Slaney Poole of the firm Poole & Johnstone (the predecessor of modern day Mellor Olsson). Her Bachelor of Laws was conferred in December 1916, with the *Observer* recording "the somewhat singular experience...to admit a young lady as a *bachelor* of the University."[1]

Mary spent 1917 completing her articles and after her admission, she was employed as managing clerk of the firm, with her first brief being in the Children's Court. "I was shocked at what I saw" she recalled in 1950.[2] "The Court was little more than an off-shoot of the Police Court, and frightened little children were treated as adult criminals, being called on to plead guilty or not before His Sovereign Majesty, and so forth. I got interested in child welfare right away, and that interest increased with the years."

Outside of her work, Mary was involved in numerous activities. In 1918 the Adelaide University Magazine was established and Mary was the sub-editor for women law students. Representing the male law students was one Julian Gordon Tenison Woods, two years Mary's junior, who was described as "widely popular, of taking manners and fluent in speech". It was a meeting Mary would live to regret. An active member of the Women Graduates, Mary was also a founding member and Treasurer of the Adelaide Branch of the Lyceum Club in 1922, a Club that was to play a large role in the lives of the early women lawyers.

In 1919, Slaney Poole was appointed to the Supreme Court and Mary became a partner in the firm, now known as Johnstone, Ronald and Kitson. Her younger brother Augustine was articled to Mr Ronald at that time.

Having worked for several years in the law, in 1920 Mary applied to become a notary public. Her application was heard by her former principal, Mr Justice Slaney Poole, who refused her application. His Honour had no doubt that that Miss Kitson had the ability to take on the role of a notary public, but held that the *Female Law Practitioners Act* was not sufficiently wide enough to give authority to appoint a woman to this role. Misinterpreting the *Acts Interpretation Act* 1915, he arrived at the conclusion that because it was a public office, the wording of "person" in the *Public Notaries Act* did not include women.[3] Fortunately, Parliament acted swiftly and in 1921 the *Sex Disqualification Act* was passed allowing Mary to be appointed to that public office.

The year 1921 also saw the admission of the second female to the Bar, Aileen Constance Ingleby, the daughter of a KC. Aileen practised law for only a short year or two before becoming a reverend's wife in Mannum. But her effect on the legal profession was great because, whilst playing in the University Hockey Team, she convinced her teammate, Dorothy Christine Somerville to also study law.

Known to friends as Dumps, from a childhood nickname, Dorothy Somerville was born in 1897 in Unley and attended MLC (now Annesley College), where she was dux. Dorothy loved her school and was heavily involved in the Old Scholars for most of her life. Her mother, Susannah "Sesca" Lewin was an author and poet, having written "Songs of the South". A brilliant student, Dorothy graduated with a Bachelor of Arts (Honours) in 1919, winning the prizes for Latin and Greek. Tying for the David Murray scholarship in theory of law, Dorothy obtained her law degree in 1921 and undertook her articles with HT Ward at the firm of Fisher, Ward & Powers.

Although Mary Kitson had been practising for some four years, the *Daily Herald* reported "the spectacle of a lady conducting a case for a client" in the Adelaide Local Court when the then articled clerk appeared for the plaintiff to recover a debt. Her words to the Bench "I appear for the plaintiff, your Honour" were recorded, as was the fact that she was successful.[4] Dorothy went on some five years later to be the first female barrister to appear in the Supreme Court, as junior to Mr L A Whitington before the Chief Justice in 1927. It was reported that she received a cordial welcome, although the *Register* printed Mary Kitson's photo by mistake![5]

Her admission in July 1922 attracted much attention, with the headline in the *Observer* "Another Portia."[6] It also

inspired an interview by the society writer for the Journal, Lady Kitty, describing her as having "wonderful brown eyes" and being an outdoor girl having "courage, determination, and general wholesomeness" who loved sports and gardening and wished to travel.[7]

After her admission Dorothy became managing clerk of Isbister, Hayward, Magarey & Finlayson. In 1923, Mary's firm changed composition when Stuart Ronald became a Magistrate and my grandfather, Athol, joined the partnership to create the firm Johnstone, Kitson and Olsson.

The novelty of three women advocates led to an article in the *Mail* in May 1923,[8] from which the title of this article is taken. Each of them were asked "whether the law is a suitable career for girls to adopt?" Miss Kitson stated that the law "has a wide human interest all its own, and offers immense possibilities for social service." Miss Somerville "voiced her opinion in no uncertain way." She advised against taking up the study "as a means of whiling away her leisure moments" remarking that it was a very difficult course and much harder once working in the law.

"Very few girls are fitted, either physically or temperamentally, to be lawyers. She who intends taking it up seriously should, above all things, have an exceptionally strong constitution, especially if she wishes to do Court work. She must be capable of taking a wide survey of the case under discussion, have a logical mind, and plenty of assurance, and must be able to inspire her clients with confidence - not the easiest thing in the world."

Miss Ingleby opined that "A woman who intends to become a lawyer must have her emotions well under control and must not be squeamish."

On 18 November 1924 a Notice appeared in the *Register*[9] advising of the dissolution of the partnership of Johnstone, Kitson & Olsson because Miss Kitson was retiring from active practice. In reality, Mary was to be married to Gordon Tenison Woods and Percy Johnstone, a curmudgeonly bachelor whose own brief marriage had been a disaster, insisted that she leave because he felt that a married woman should not be in a partnership with a male other than her husband.

Mary and Gordon's wedding on 15 December 1924 was a society event, described in detail in *The Advertiser*.[10] On return from her honeymoon, it was announced that for the first time in the history of the Commonwealth, a law firm comprised of a partnership solely of women would be formed by Mary and Dorothy from 15 April 1925 - to be called Kitson & Somerville, Solicitors and Notaries Public. Shortly afterwards Mary achieved another first, being the first woman in South Australia to re-subscribe to the roll in her married name (which was slightly odd as the new firm traded under her maiden name). The motion was moved by her husband, Gordon.

The Women's Page of the *Register* was quick to report of "The Law and the Lady. A Visit to A Legal Firm"[11] and the writer, Elizabeth Leigh, went into great detail about the decor of the office (shining neat with creamy buff walls, with polished cedar cupboards and flowers on the writing table - "quite the most charming of any I have seen", in case you were wondering!).

"As for practising at the Bar, neither of the two young Portias have bound themselves in any way, but will be guided by the needs of cases as they arise." stated Miss Leigh. She went on

"they do believe that there is a special field for usefulness for the woman lawyer...Women seldom have — or had— much training in business affairs, and to put a clear statement of a case which they only partly understand to an acute-minded man whom they feel understands not at all, is more than many of them feel they can do. Their very dread of appearing irrelevant and muddle headed keeps them from the point, and they feel a real, if unnecessary, humiliation in the contrast of their own slowness and the keen comments of the man of law. Many of them, if they knew they could talk to a woman who would understand the workings of the feminine mind and listen not only without secret impatience, but with real sympathy, would be quicker to place their affairs in order."

Miss Leigh hastened to assure her readers that neither of the lady lawyers were rampant, feminist militants, stating further that in South Australia "there has never been the slightest prejudice against women in practice."

Tragedy struck Mary Tenison Woods in April 1927. Gordon had stolen over £500 from his trust account, submitted worthless cheques as repayment and lied about it. His own father had reported him to the Law Society. It was also found that the trust account was frequently in debt. When she discovered Gordon's behaviour, Mary, who was then nine months pregnant, fled to Sydney in panic. On her arrival, after a long train journey, she immediately went into a traumatic labour, with her son, Julian Tenison Woods (called Mac), being born with cerebral palsy.

Dorothy Somerville upon being admitted to practice

Gordon was struck off the roll in June 1927 and left for New Zealand, abandoning his wife and child. Ever the cad, his main excuse for his wrong doing was "domestic trouble" in April, such that "he was not able to give proper attention to his business."[12]

Returning to Adelaide as a single mother, Mary needed the financial security of paid employment. She left the partnership with Dorothy and joined the firm of Bennett, Campbell, Browne and Atkinson. Dorothy Somerville remained as a sole practitioner, practising in the Epworth Building, where she remained for the rest of her professional life.

Retaining her interest in sport, Dorothy became Honorary Solicitor to many sporting organisations, notably the SA Women's Hockey Association from 1925-1974 and the Australian Croquet Council from 1948-1975. She served as Honorary Solicitor from 1925-1971 to the CWA (SA) and involved herself with Wanslea Inc (Emergency Homes for Children) and the Women's Memorial Playing Fields.

Like Mary, she had been a Foundation Member of the Lyceum Club in Adelaide

and she regularly attended social events there, later becoming an Honorary Life Member.

By 1929, 12 women had been admitted in South Australia but only nine were practising (plus one in London). Whilst some women felt that there was "an entire lack of hostility toward us" by the male practitioners, another held firm views:

"If women barristers had to rely upon men solicitors for briefs," she remarked, "they would starve. Their only hope would be in there being sufficient women solicitors to feed them. I do not think male solicitors would brief a woman barrister unless a client demanded it."[13]

Dorothy Somerville promoted the law as a vocation for girls. In 1931 she wrote:

"Progress in the profession depends of course, on personal ability and application. There is no prejudice against women lawyers, nor does there appear to be any branch of law which offers special scope to them."[14]

MARY LEAVES ADELAIDE

During this time, Mary obtained Australia Council funding to investigate young delinquents in South Australia. Her report to the Delinquency Committee assisted in the creation of a specialist Children's Court.

Upon obtaining a divorce from Gordon in 1933, Mary moved to Sydney to take up an editorial position with Butterworth and Company, undertaking writing, editing and teaching, work that she could undertake from home and care for her child. For the next fifteen years, she wrote many textbooks and taught for a time at Sydney University. In 1942, despite the War, Mary travelled to England to study child welfare there. On her return she chaired the Delinquency Committee of the Child Welfare Council. She was appalled at the conditions of the Gosford Boys Home and the Parramatta Girls Industrial School and receiving no response from government, she went to the newspapers, which led to significant reforms.

An invitation came for Mary from the ILO to travel to a child welfare conference in Montreal in 1945 but her permit to travel came too late, perhaps deliberately so, for her to attend. She was however able to travel to London for seven months the following year. During that time she reported to the Australian press about the first woman in the UK to preside as a Magistrate as well as her meetings with many other women who were pioneers in their fields. She also undertook broadcasting on the BBC and on her return, the ABC.

The year 1950 brought significant accolades and challenges, Mary was awarded an OBE for her work with the Child Welfare Council and she was appointed as chief of the Status of Women Commission in the Human Rights division of the United Nations, working with five women lawyers of differing nationalities. Mary agonised over accepting the position because it would mean leaving Mac, then 23, in Sydney. Restricting her term to 12 months, Mary left for Lake Success, New York in June 1950.

She was to remain in her new position until 1958. During this time, she travelled the world undertaking the Commission's work, promoting issues such as ownership of matrimonial property, joint guardianship of children, right to independent employment and equal wages. Two Conventions were adopted during her time - one granting protection of women's full political rights and the second that marriage should not affect the nationality of a wife. By the end of her term at the UN, Mary was almost 65 and Mac, 30. She decided to return to Sydney and after taking Mac on a world trip, she settled in Ryde close to Mac's care facility.

Awarded a CBE for public service in 1959, Mary wrote two further books for Butterworths before settling into retirement. She never remarried, because as a devout Catholic, she felt that she could not do so whilst Gordon was still alive. Mary Tenison Woods died on 18 October 1971, she was 77.

DOROTHY SOMERVILLE & THE THURSDAY GIRLS

After Mary's move to Sydney, Dorothy became the most senior female member of the profession, a position that she held for 59 years. The steady trickle of female lawyers continued, with two admitted in both 1930 and 1933, four in both 1934 and 1935. These included Beryl Linn, Vivienne Judell and Roma Mitchell in 1934 and Marjorie Frick and Jean Gilmore in 1935. During those years it was a tradition for the majority of the female lawyers and law students to gather at the Lyceum Club

Mary Tenison Woods (nee Kitson)

for an annual dinner and bridge, presided over by the elder stateswoman, Dorothy Somerville. It was a way to introduce students to practitioners and offers of articles were known to be made after such occasions.

At that time women were not allowed to lunch in hotels. So every Thursday Roma Mitchell, Vivienne Judell, Jean Gilmore, Chris Walker and Beryl Linn would join Dorothy in her office for the Thursday Girls lunch. This enabled them to provide support to each other. In 1937, the Girls were joined by Dorothy's niece, Sesca Ross Anderson, who was serving her articles with her Aunt Dumps. In taking on Sesca as her article clerk, another first was achieved, Dorothy Somerville was the first female practitioner in Australia to take on a female articled clerk. As the new girl, Sesca was christened by the ladies to be their Girl Friday!

THE GIRL FRIDAY

Born in 1918, Sesca, like her mother and aunt before her, attended MLC, where she was awarded the Old Scholars' Prize for qualities of leadership and contribution to the life of the school, being made Head Prefect in 1936, and excelled in sport. Like her Aunt Dumps, Sesca was dux of the school and she topped the State in Leaving Botany in 1934.

Obtaining her law degree in 1941, Sesca was the 35th woman to be admitted to the

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Bar in South Australia - it had taken 24 years to reach that number.

After her graduation, Sesca retained her interest in her school and university, serving as President of the Old Scholars' Association, President of the Women Graduates Association, President of the Australian Federation of University Women and, a member of the Council of St Ann's College. She was the third woman to be appointed to the Council of the University of Adelaide

Commencing in 1942, Sesca was a prosecuting officer for the Deputy Commonwealth Crown Solicitor until 1947, when she became the first female Secretary of the Law Society of South Australia. In his annual report of 1948, the Society's President Mr D. Bruce Ross, noted that "Miss Anderson is our first woman secretary and I have an idea that some members of the Council were a little doubtful whether a woman - however competent - could cope with the manifold and ever increasing duties of that office. Miss Anderson has set at rest all such doubts…".[15]

Sesca held that office for three years and during that time she was heavily involved in the running of the Legal Assistance Scheme. Although she resigned in 1950 upon her marriage to Howard Zelling, she soon returned to the job when her successor left, filling the vacancy until another person could be appointed.

After her marriage, Sesca shared an office with her husband, where she practised primarily in wills and estates, and conveyancing. She was known to be meticulous and thorough in her work.

In 1951 Sesca, Howard and Roma Mitchell attended the jubilee of the Commonwealth Legal Conference in Sydney. Upon arriving at the venue for the convention dinner, they were told that although they had paid for the function, it was a male only affair and they could not enter. Undeterred, they entered and found their seats. A male delegate at her table told Sesca that she looked like a woman in a men's bathing house. Despite this, both women remained at the dinner.

Sesca had joined the Law Society in 1942 and between 1955 to 1963, she was a member of the Society's Council. From 1946 to 1957, she was the Convenor of the National Council of Women Standing Committee for laws and suffrage, also serving as Australian Vice-President from 1954-1957 and President of the South Australian chapter from 1957-1960. In 1970 she was made a Life Vice-President of the SA branch.

For 22 years Sesca was a Trustee of the National Council of Women War Memorial Fund, commencing in 1954. Other service was with the Marriage Guidance Council and the YWCA.

In recognition of her service to women and the community, Sesca was awarded an OBE in 1960.

In 1962, Sesca was appointed a Trustee of the Pioneer Women's Memorial Garden and was Chair at the time of her death.

Over the years, she and Howard took on several article clerks, whom they adopted as their "children", closely following their careers.

When Howard Zelling was made a judge in 1969, Sesca did not wish to risk any criticism of conflict of interest and wound up her practice, although she continued to renew her practising certificate until 1994.

MISS SOMERVILLE AND MRS ZELLING'S LATER YEARS

Sesca remained close to her Aunt Dumps, who continued to practise in Pirie Street, walking daily from the Brighton train to her office, sporting her trademark big red hat. Dorothy was awarded an AM in 1986 by the Queen on the Royal Yacht Britannia. The story was that when asked a question by Her Majesty, Dorothy was so overcome by the occasion that she replied "Yes, Your Honour!"

Retiring in 1991, at the age of 94, Dorothy Somerville died the following year, aged 95. She had been a legal practitioner for 69 years!

Sesca continued to be active in her many interests and in 1993 she was made an Honorary Member of the Law Society. She had been appointed a Justice of the Peace in 1945 and at her death, was the longest-serving woman member of the Royal Association of Justices.

Howard Zelling died in November 2001. He and Sesca had been married for almost 52 years. They were not separated long however - Sesca died only 16 days later, aged 83.

All three of these extraordinary ladies lead brilliant and accomplished lives in the legal profession. But it was not without significant sacrifice and hardship

Sesca Zelling

on their part, facing very real personal and professional obstacles that seem quite outrageous to a modern female practitioner. It is because of their courage and determination that they can truly be called legal trail blazers. B

Endnotes

1 "Woman's Onward March" *The Observer* Saturday 16 December 1916, page 33
2 "Job of world rank for Australian woman lawyer", *Australian Women's Weekly*, Saturday 10 June 1950 page 25
3 "Women as Public Notaries" *The Register* Wednesday 22 December 1920, page 6
4 "A Lady Barrister", *The Daily Herald,* Thursday 9 February 1922, page 2
5 "Miss Dorothy Somerville", *The Register,* Tuesday 18 October 1927, page 4
6 "Another Portia" *The Observer,* Saturday 29 July 1922, page 12
7 "Lady Kitty's Letter" *The Journal.* Saturday 29 July 1922, page 16
8 "At the Bar, Law as a Career for Women. Three Brilliant Adelaide Girls" *The Mail,* Saturday 19 May 1923 page 2
9 *The Register* Tuesday 18 November 1924, page 2(5)
10 "Weddings, Wood-Kitson" *The Advertiser,* Monday 19 December 1924, page 12
11 "The Law and the Lady. A visit to a legal firm" *The Register,* Tuesday 28 April 1925, page 4
12 "Struck of the Roll" *The News,* Tuesday 21 June 1927, page 1
13 "Women at the Bar. Way Made Smooth for Them in Adelaide" *The News* Thursday 7 February 1929, page 9
14 "Vocations for Girls. Law" *The Advertiser,* Tuesday 8 December 1931, page 14
15 President's Address, Report of the Council and Financial Statement for the Year ending 30th June 1948, The Law Society of SA, page 2

This sculpture of Dame Roma Mitchell depicts the pioneering lawyer surrounded by books, gazing contentedly over North Tce. Situated just outside of Government House, the monument was dedicated in 1999 and was designed by Janette Moore. The statue acknowledges the achievements of Dame Roma, who accomplished many firsts – the first female lawyer in Australia appointed to the Supreme Court, the first female State Governor, and first female chancellor of an Australian university.

History a turning point for Irene

LINDY MCNAMARA

In 1985 Irene Watson became the South Australia's first Aboriginal law graduate in South Australia. More than 30 years later she continues to fight for the rights of her peoples.

From her days at high school it was evident that Irene Watson was always going to stand up for and fight for the rights of her people.

Proud of her ancestry with the Tanganekald Meintangk Boandik First Nations Peoples from the Coorong and South East of South Australia, the teenager wasn't about to let her teacher get away with a distortion of history. "She was a nice older person and I've grown up to respect my elders, but let's just say we had a conflict over our versions of history," she explained.

"A white history teacher was telling me there were no massacres across Australia and naively I confronted her and told her that didn't sit well with my knowledge from growing up. I didn't complete Year 12 and left school after that because I didn't have much respect for an educational system that wasn't inclusive of the Aboriginal version of history."

Decades later in her role as the Pro Vice Chancellor Aboriginal Leadership and Strategy, and Professor of Law with the School of Law at the University of South Australia, Professor Watson is continuing to advocate for her people, with her teaching and research focusing primarily on Indigenous peoples in domestic and international law.

As the first Aboriginal law graduate in South Australia, Professor Watson is undeniably a trailblazer. While she acknowledges this as an achievement, Professor Watson believes that it's how you work with your success that really matters.

"That's probably been the hardest thing to achieve, to translate individual success into desired visionary work outcomes in terms of building social justice agendas for our people and developing safe and thriving Aboriginal communities. That has been the biggest challenge of all."

She admits her career has been littered with "the little things of racism and sexism," but concedes that has been the case for First Nations Peoples since the coming of Cook.

Her road to becoming an Aboriginal leader in law did not follow the well-trodden path taken by so many in the profession.

After dropping out in Year 12, she worked as a receptionist in the Aboriginal Affairs office. The young Irene then spent time travelling, learning and volunteering for the Aboriginal nutrition program run by the medical service in Redfern.

Her decision to tackle law came at a time when she was developing a career as a film maker making legal education movies for the Aboriginal Legal Rights Movement (ALRM). She became interested in the work of the legal service and how it was representing Aboriginals and giving them a voice other than pleading guilty.

"One of Mum's cousins (Indigenous rights campaigner) Ruby Hammond was instrumental in the movement and she had a big influence over me," she explains.

Like Ruby, she wanted to be able to make a difference. Irene headed back to the books, completing a Diploma in Aboriginal studies at the then College of Advanced Education before enrolling in a law degree at the University of Adelaide in 1979.

She graduated and was admitted in 1985, practising in her early years with the ALRM doing the "run around" to the Adelaide and Murray Bridge courts.

"The legal service was in difficulty with securing funding and resources so I was catapulted into the role of director in 1988 and managed it for a short while before I took time out for my family."

It was then that she moved into the academic world, a career choice which offered a work/life balance conducive to raising her three young daughters.

Over the years she has worked at Flinders and Adelaide Universities and as a post-doctoral fellow with the University of Sydney Law School before taking up an appointment with UniSA in 2008.

Irene Watson

Often called upon to give independent opinions relating to First Nations peoples, Professor Watson is outspoken and passionate when it comes to talking about property law.

"Mabo was framed as a high point, a point of reconciliation, point of recognition. But we've not really advanced the Aboriginal position in ways that we should and could have since then."

"For any lawyer who works in this area they should understand there are two ways we can look at this – there was recognition of Aboriginal title within the Australian property law system, but a very limited recognition. What didn't come with the rejection of terra nullius was also the rejection of the idea that Aboriginal people had no law and no form of government."

"While translating Aboriginal interests into the property law paradigm there was no recognition that Aboriginal interests were really different. Aboriginal connection to country is really different and not based on contemporary neo-liberal principles of property law, ownership."

"For myself that was highly disappointing, that the Aboriginal way of being in relationship to country was not acknowledged at the High Court level."

Professor Watson's important part in the history of South Australia's legal profession was acknowledged last year with the relaunch of the *"Irene Watson Room"* at the Adelaide University Law School.

Throughout her career she has served on numerous Aboriginal bodies across Australia primarily concerned with advancing Aboriginal rights. She has written numerous journal articles and book chapters, and recently published *Indigenous Peoples as Subjects in International Law*.

Her involvement with the Aboriginal Legal Rights Movement, which began in 1973, continues to be supported today. Professor Watson is also the current chair of the Kungari Aboriginal Association, a body formed to manage and protect Aboriginal lands and culture in the South East region. **B**

ANDREW DUNNCLIFF

Commercial and Legal is pleased to announce the recent senior appointment of Andrew Dunncliff to the Firm as Special Counsel. Andrew joined C&L in August and adds to firm's growing practice with over 30 years' experience in property law, commercial and corporate transactions, franchising and succession planning. Andrew has played a significant role in the Adelaide legal market with senior positions at other high profile firms.

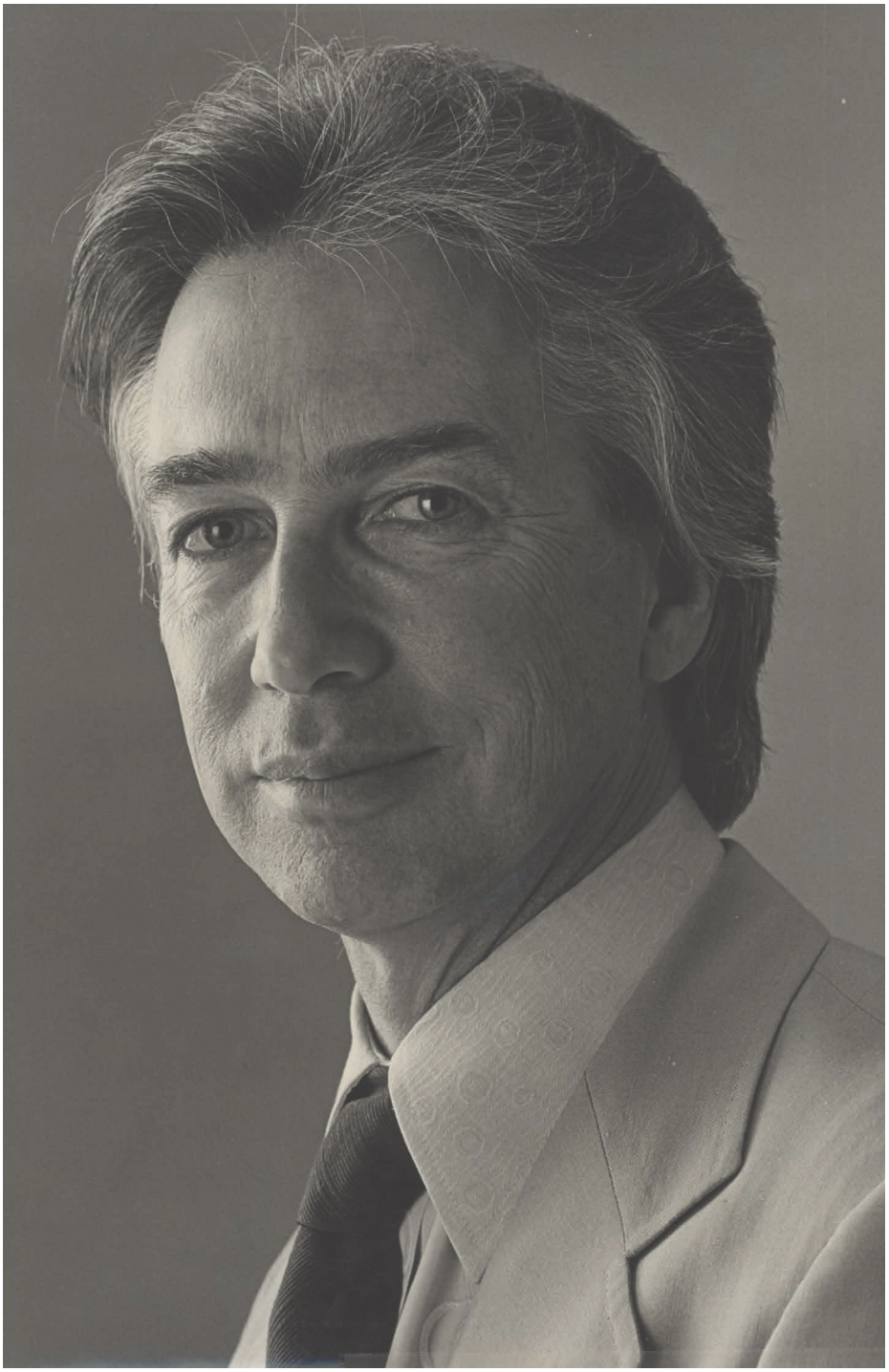
Don Dunstan's law reform legacy

THE HONOURABLE CHRIS SUMNER AM, FORMER ATTORNEY GENERAL OF SA

It is impossible in the space allocated to adequately fulfil my brief to encapsulate the reforms of Don Dunstan and how they were followed in other jurisdictions. I have attempted to identify the major ones where his role was critical in influencing policy nationally and those where credit for the reforms is more nuanced or of more local interest.

The Walsh Labor Government was elected in 1965 after 38 years of Liberal and Country League rule with Sir Thomas Playford as Premier for 27 of them. Post-war migration was in the process of changing Australian society and younger people were no longer prepared to be as complacent about race, Aboriginal disadvantage or inequality and an unfair electoral system as previous generations were. Playford had industrialised the State by dextrous use of State enterprises behind high tariff walls (economic policies which are now totally out of fashion – a matter of as much regret to Dunstan as it would be to Playford) but showed little interest in the emerging social issues thrown up by a changing society. For Dunstan, initially as Attorney-General, there was much to be done and he brought an extraordinary level of energy and dedication to the task.

Arguably the most significant of Dunstan's measures and of ground breaking national significance was to reverse the years of assimilationist and discriminatory policies which had applied to Aboriginal people. From his experience in Fiji, Dunstan had an abhorrence of racism. He was instrumental in changing Labor's long held white Australia policy. When first elected to Parliament in 1953 he vehemently opposed criminal laws which prohibited consorting between Europeans and certain Aboriginal people. As part of the Aboriginal "protection" regime there were laws controlling many aspects of their lives unless exempted by the Aborigines Protection Board. He became actively



Don Dunstan. Photo: University of Newcastle

involved in the Aborigines Advancement League. The measures he introduced in 1965 were unprecedented and far reaching. The legislation removed all restrictions imposed by the protection regime. The *Aboriginal Lands Trust Act* 1966 enabled a Trust comprised of Aboriginal persons to hold land in freehold for Aboriginal communities which had previously been part of missions or Crown Reserves. This was Australia's first land rights legislation. The ALT still exists but has been enhanced by more comprehensive land rights regimes and native title across the nation. The *Racial Discrimination Act* 1965 made it a criminal offence for the first time in Australia to discriminate against a person on the grounds of race in employment or the provision of accommodation, goods and services. The Act made an important statement of principle but relying on the criminal law alone was a blunt instrument. Now, throughout Australia (in SA the *Equal Opportunity Act* 1985), the criminal sanctions are accompanied by measures for education and conciliation procedures. The *Aboriginal and Historic Relics Preservation Act* 1965 (now in SA the *Aboriginal Heritage Act* 1988) protected Aboriginal heritage and was a precursor to national and State legislation throughout Australia (which it must be said operates with varying levels of effectiveness).

Dunstan was a tireless campaigner for fair elections. Under Playford, the House of Assembly boundaries were deliberately drawn by law to give the LCL an electoral advantage by significant malapportionment of electors between country and city seats. In 1955 the average for 13 metropolitan seats was 22,300 but for 26 country seats it was 6,657. Playford consistently won elections with less than 50 % of the State-wide vote. Despite SA being quite radical in the early years of the colony with the early introduction of full manhood suffrage for the House of Assembly, the secret ballot and later votes for women and, for the first time in the world, enabling women to stand for Parliament, the Legislative Council still had a more limited franchise. In 1965 Dunstan introduced legislation for House of Assembly electorates of similar size set by an independent commission and full adult franchise in the Legislative Council which was defeated by Liberals in the Legislative Council. With some exceptions the Liberals tenaciously resisted these changes and it was not until the 1977 election that a Government was elected on Assembly boundaries drawn on this basis, and not until 1979 that all Legislative Councillors were elected with full adult franchise. The exceptions were former Premier Steele Hall, Attorney-General Robin Millhouse and other small "l" Liberals who for a brief period formed the breakaway Liberal Movement. They realised (correctly) that as matter of principle and reality the Liberal Party's continuing resistance to reform was unsustainable. Gradually around Australia the electoral principles espoused by Labor and Dunstan prior to and in 1965 have been adopted in virtually every jurisdiction.

There has been an interesting recent sequel to all of this. Since 1989 there were four elections in which the ALP won Government with less than 50% of the two-party preferred vote. After the 1989 result all parties agreed on a "fairnes" clause to be inserted in the *Constitution Act* which required boundaries that as far as practicable enabled the party with more than 50% of the vote to form Government. In its most recent report the Electoral Boundaries Commission has drawn boundaries that give effect to this requirement provided it can be done within the 10% tolerance which applies above and below the standard quota determined for all electorates. The SA Supreme Court has rejected an ALP

challenge to this approach in which it argued that the primary objective should be an actual equality of electors in each electorate.[1] Dunstan was not a fan of the fairness clause in a single member system even though it is always possible that a majority of votes will fail to deliver a majority of seats (this also happened in the 1998 Federal election resulting in the re-election of the Liberal Coalition Government). The current system is not deliberately designed to favour one party over another as it was under Playford but it is interesting to speculate what Dunstan's position might have been when faced with what has become a systemic case of perverse results. I suspect like me he would have had difficulty in supporting the current outcomes as fair after years of having agitated for Labor to be given the right to govern on obtaining 50% of the vote overall.

In 1965 Dunstan obtained cabinet and caucus approval to decriminalise homosexual acts between consenting male adults. It did not proceed because of later misgivings in caucus and I suspect because the Government was aware that it would not pass the Legislative Council. It took the tragic drowning of Dr George Duncan in the River Torrens in 1972 to revive the issue. A Bill introduced by Liberal Legislative Councillor Murray Hill in 1972 to decriminalise homosexual acts between consenting adult males in private was amended in a way that maintained the criminal offence but provided for a defence if done in these circumstances. Decriminalisation had to await a private members Bill introduced by Peter Duncan in 1975. Although not a Government Bill it had Dunstan's full support and was the first such legislation in Australia (following the UK in 1967 which had eventually legislated to give effect to the 1957 Wolfenden Report). While there was a later proposal to prohibit discrimination on the grounds of sexuality, this did not proceed and had to await the major changes contained in the *Equal Opportunity Act* 1985 that I introduced.

Dunstan always supported the rights of women and the *Sex Discrimination Act* was passed in 1975, the first such legislation in Australia. This was a bipartisan affair and not entirely a Dunstan Government initiative. David Tonkin (later Liberal Premier from 1979 to 1982) had introduced a private members Bill which went to a Select Committee, was amended and strengthened, and then adopted as a Government Bill. Rape in marriage laws were also pioneering.

Less well known but equally ground-breaking was the *Planning and Development Act* of 1967. There was no ministerial portfolio in this area and Dunstan as Attorney-General inherited responsibility through the Registrar General of Lands and Deeds where the Town Planner was located. A State Development Plan which had languished under Playford now provided the impetus for modern planning legislation albeit not without quite a fight. This also ensured protection for the Hills Face Zone. Dunstan was also a great supporter of the built heritage (something that regrettably is less fashionable in government today).

Dunstan's support for the arts is well documented but the initiative of most national significance was the establishment of the SA Film Corporation in 1972 which sparked a revival in the Australian film industry.

From today's perspective, it is hard to believe that the 1967 liquor licensing reforms could be so controversial as to require a Royal Commission. The hotels had a virtual monopoly on liquor outlets, a significant economic stake in any outcomes and were effective lobbyists. Also, unlike other States, Methodists who particularly came from Cornwall to work in the copper mines were influential in the Labor Party and teetotallers. There was a lot of negotiating to be done but eventually hotel hours were extended from 6pm to 10pm but this had already occurred in some other States. Most significantly the changes enabled the range of liquor outlets to be extended (bottle shops and most importantly restaurants). The hotels weren't going to give in easily and a Liquor Licensing Court comprised of a Judge and two Magistrates was established to decide on applications for new liquor licences. There was big money at stake so not surprisingly the process was expensive and time consuming. Nevertheless, it enabled more restaurant licences to be granted, extended their trading hours and broadened the beverages that could be consumed in them. The increase in the number and diversity of restaurants fitted in with Dunstan's passion for cooking (try Don's hearty breakfast sauce for poached eggs and other breakfast delights from his cookbook) and the importance of good food and wine to our Mediterranean lifestyle which he championed, including the establishment of the Regency Park Catering School. The reforms were an important step in the process of liberalisation and a necessary precursor to the sort of café society we enjoy today, even if this did not completely flourish until after significant further reforms to remove many of the bureaucratic obstacles to the easier grant of licences and outdoor dining. The changes in South Australia were generally mirrored in Australia which is now known for the diversity of its food and the quality of its wine.

There were other areas in which Dunstan took a leading role. He was one of the first to recognise the role of new migrants in the cultural fabric of Australia with a simple message that "Migrant cultures were now part of SA society." He was a libertarian in matters of lifestyle and opposed to censorship. Subject to some limits adults should be able to see or read what they wished. A Classification of Publications Board oversaw the administration of this policy. Capital punishment was eventually abolished in 1976 after several failed attempts. Major changes to consumer protection laws were overseen by Attorney-General Len King in the early 1970s. In 1972 the *Ombudsman Act* was passed. SA was one of the first States to have a specific environment portfolio and the first to introduce deposits on drink containers.

There were a couple of notable failures. Len King's proposal to create a tort covering the invasion of privacy failed (as did a later attempt made by me). There was strong media opposition to the proposal although there are now various other mechanisms to protect privacy in Australian law. Dunstan's proposal to prohibit the disclosure of the names of accused persons until conviction (or at least until committal for trial) also failed in the face of furious media opposition. No jurisdiction in Australia has adopted this policy. **B**

Endnotes

1 Martin v Electoral Boundaries Commission [2017] SASCFC 18

Proper Accounting for Representation Costs in the SAET

GREG MAY, LEGAL PROFESSION CONDUCT COMMISSIONER

A party (other than the relevant compensating authority) to proceedings before the South Australian Employment Tribunal (SAET) under the *Return to Work Act* 2014 is entitled to be paid representation costs by the relevant compensating authority. The payment of costs is regulated under Sections 106 to 108 of that Act, and under Rules 124 to 126 of the *South Australian Employment Tribunal Rules* 2017.

Of course, before SAET and Return to Work SA, representation costs were paid in a similar manner by WorkCover SA.

It is important that any representation costs received by a practitioner are accounted for properly in accordance with the requirements of the *Legal Practitioners Act* (LP Act) and the *Legal Practitioners Regulations* (LP Regulations).

Previously, the Legal Practitioners Conduct Board was called on to consider matters in which representation costs were billed to and paid by a compensating authority, where the firm's client had not then received any bill from the firm.

In 2006, the Board expressed the view that representation costs received by a practitioner from WorkCover SA in those circumstances were firm money, not trust money.

In 2013, the Board subsequently expressed a different view, saying that any such money received was trust money and had to be dealt with accordingly by the practitioner.

Of course, the Board's previous considerations took place under Sections 31(1) and 41(1) of the LP Act, as it occurred before the July 2014 amendments.

Following the July 2014 amendments to the LP Act and LP Regulations, I consider that the Board's 2013 view is still applicable – that is, that any representation costs received by a practitioner, where the practitioner has not yet given a bill to the client, are clearly trust money. The relevant provisions of the *Return to Work Act* 2014 make it clear that the costs are payable to the party. That is, the practitioner or firm is not entitled to the money until it deals with it in accordance with the usual requirements for using trust money to pay a bill.

Schedule 2 Clause 22(1)(b) of the LP Act says that, in relation to trust money, a law practice may "*withdraw money for payment to the practice's account for legal costs owing to the practice if the relevant procedures or requirements prescribed by this Act and the regulations are complied with.*"

Regulation 45 of the LP Regulations then states:

1. This regulation prescribes, for the purposes of Schedule 2 clause 22(1)(b) of the Act, the procedure for the withdrawal of trust money held in a general trust account or controlled money account of a law practice for payment of legal costs owing to the practice by the person for whom the trust money was paid into the trust account.
2. The trust money may be withdrawn in accordance with the procedure set out in either subregulation (3) or (4).
3. …..
4. The law practice may withdraw the trust money—
   (a) if the practice has given the person a bill relating to the money; and
   (b) if—
      (i) the person has not objected to withdrawal of the money within 7 days after being given the bill; or
      (ii) the person has objected within 7 days after being given the bill but has not applied for a review of the legal costs under the Act within 60 days after being given the bill; or
      (iii) the money otherwise becomes legally payable.

Therefore, to comply with Regulation 45, when representation costs are paid to a firm, until a bill has been given to the client and seven days have elapsed without objection, those monies are trust monies and should be deposited in the firm's trust account. B

Our first children's commissioner: A long time coming but worth the wait

RENE EARLES, CHILDREN & THE LAW COMMITTEE

For almost 20 years, the South Australian legal community has actively campaigned for the appointment of a children's advocate who can speak for and on behalf of the children and young people of South Australia. From a legal perspective, children and young people have for too long been a silenced and marginalised group in our society. The Law Society's Children and the Law Committee in particular spent many years lobbying government to recognise the value of a children's "champion" in this State. The vision has been for a person who not only acts as a mouthpiece for children and young people but who also has the legal capacity to make a direct difference to the needs, interests and welfare of children and young people in South Australia.

Multiple investigations, reports and enquiries later, government was finally mobilised into passing the *Children and Young People (Oversight and Advocacy Bodies) Act* 2016. This Act, heavily influenced by the findings and recommendations of the 2016 Nyland Report, lays out the legislative foundation for a holistic set of reforms and sets up the Office for the Commissioner for Children and Young People. In brief, the Act establishes a framework for the Commissioner to operate as an independent officer, the statutory basis for the Commissioner to act as an advocate for the needs and interests of all young people and children, as well as in a "watchdog" capacity for the many services catering to children and young people across the State. Importantly, the Commissioner has the power to conduct formal inquiries (akin to Royal Commissions) into systemic matters related to children and young people in SA.

Following a rigorous recruitment process for the right person to take up this special position, Helen Connolly was appointed as the first South Australian Commissioner for Children and Young People in April, 2017. Helen comes to the role highly qualified and with an extensive 25 year background working with children and families in frontline, senior leadership and governance positions. Throughout her career, she has been involved in both the development and implementation of services in areas as diverse as child protection, social enterprise, homelessness, family breakdown, environmental programs and refugee services.

Helen has also held many national and State government advisory and board positions. She was Chairperson of the South Australian Council of Social Services (SACOSS) Policy Council and Board for seven years, a Director on the ACOSS Board for five years and Co-Chair for Reconciliation SA. Helen has taken an active advocacy role on key policy issues that impact on the wellbeing of families and children, particularly in community development, with a focus on early intervention, prevention strategies and policies. Helen's background in making a difference to the day-to-day lives of children and young people with a systemic advocacy focus made her an ideal choice for the position of Commissioner when it became available. She will hold this position for five years.

The overarching plan for the Office of the Commissioner for Children and Young People over the next five years is to "engage with thousands of children and young people across the whole State to inform them about their rights and the role of the Commissioner in assisting them to access their rights, engage, include and empower children and young people in everything about them".[1]

The aim is to ensure that the "voice" of children and young people becomes paramount in the context of new and existing policies, practices and services in SA that affect them. The Commissioner has employed a distinct "empowerment' model" and over the next five years will focus on five key activity areas, namely:

Commissioner for Children and Young People Helen Connolly

1. Awareness raising - with a focus on ensuring children and young people understand and know their rights and that a certain level of protections are put in place for children and young people
2. Engaging young people in decision making within the community
3. Enfranchising – exploring what it means to be involved in decision making
4. Research, policy and advocacy activities
5. Conducting formal investigations where appropriate.

The Commissioner's role as an investigator is quite distinct to that of the Guardian for Children, whose role it is to support and advocate for children in the Care and Protection space primarily, and on a case-by-case basis. The Commissioner will have the statutory authority to receive notifications about failings within the system and may be in a position to intervene at a systemic or institutional level to make changes to best practice for services affecting children and young people where appropriate. The final

processes and procedures addressing how this will be implemented and managed will be developed over the coming months.

The Commissioner's first step in the early days of the role is to meet with as many children and young people in the State as possible and obtain their thoughts, feedback, views and experiences to gain their perspectives on what is going on for them. The Commissioner has already conducted over 60 meetings in metropolitan and regional South Australia, and has met with over 950 children and young people representing a diverse range of experiences, backgrounds and age groups. A report will be generated from these consultations about the issues that are really affecting children and young people. The primary target audience of the report will be the children and young people in this State.

The Commissioner recognises the critical need for cultural change so that children and young people are actively and genuinely included in the conversations around issues that impact them. She also understands that this must be change that is generated for and driven by children and young people themselves. To this end, the website for the Office of the Commissioner for Young People has been designed and developed by young people and the logo for the Office of the Children's Commissioner was designed by a young person. The Commissioner is committed to developing an exemplary model for empowering children and young people to shape all aspects of this work.

It is critical to the Commissioner that this is a real opportunity to create a culture of aspiration for children and young people living in this State. There is a sense that the Commissioner's role will build a brighter future for the children and young people of South Australia. Whilst it has been a long time in the making, the Office certainly offers a unique opportunity to make a number of changes to a group that has traditionally been denied a public voice. B

CCYP logo winner Soraya Proude with Commissioner Helen Connolly

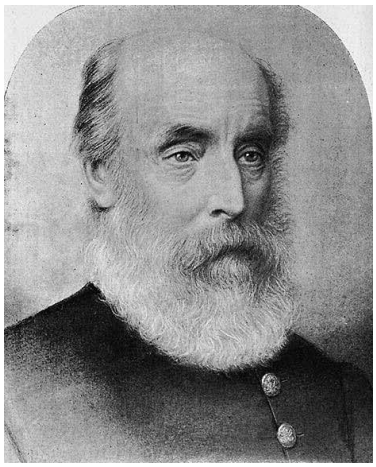
Endnotes

1 "I'm listening"- Office of the Commissioner for Children and Young People" brochure, 2017

TRAILBLAZERS IN THE LAW

What is a trailblazer? A trailblazer can be the first person from a particular group to achieve something significant, thus opening the door for countless others. Mary Kitson, who 100 years ago became the first South Australian woman to be admitted to legal practice, was undoubtedly a trailblazer in this sense. She paved the way for women in the law, and made it possible for other female trailblazers, such as Dame Roma Mitchell and Catherine Branson QC, to make their mark on the profession. Trailblazers can be pioneers in other ways, by having the courage and determination to try something new or break with the conventional wisdom of the time. One need not look any further than Christopher Legoe QC, who was the first South Australian lawyer to practice solely as a barrister. It took seven years for anyone else to follow suit. Trailblazers can be innovators, changing the way we think about deeply ingrained concepts. Former Premier Don Dunstan introduced many reforms that at the time were radical, but now are regarded as uncontroversial and self-evidently good.

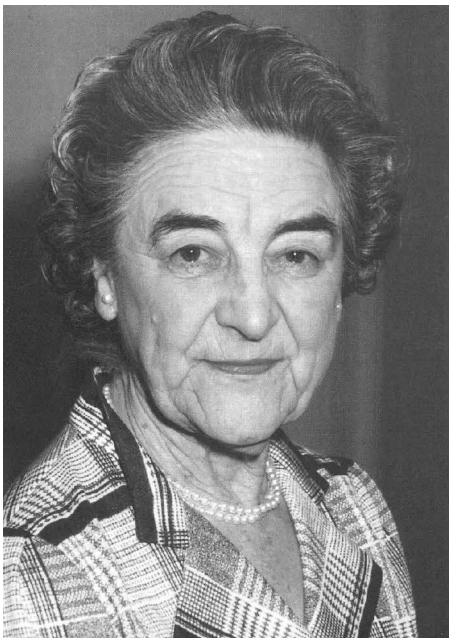
In this special feature we pay tribute to several trailblazers of the South Australian legal profession. This is far from an exhaustive list – merely a snapshot of some of the remarkable individuals who have shaped the legal profession in this State and beyond. This is the beginning of an evolving repository of trailblazing lawyers, which will be regularly updated on the Society's website (www.lawsocietysa.asn.au/LSSA/Media/Trailblazers_in_the_Law). We invite you to nominate a trailblazer who you think should be included in our trailblazers archive. Send your nominations to The Editor at bulletin@lawsocietysa.asn.au.



SIR ROBERT RICHARD TORRENS GCMC

B: 1814; D:1884

Sir Robert Torrens was a Member of Parliament, briefly Premier of South Australia and although not a lawyer, was responsible for the successful establishment in South Australia of the much lauded system of recording land ownership (now known as the Torrens Title System). Torrens Title is the system whereby "land ownership is transferred through registration of title instead of using the former English common law system of deeds."[1] Torrens Title is used throughout Australia and worldwide, including New Zealand, much of Europe, Canada, Malaysia, Singapore and Israel. It took quite a crusade on Torrens' part before the legislation *The Real Property Act* was passed in 1858. Much of the opposition to the Bill in fact came from the legal profession. With legislation enacted Torrens resigned from parliament and took up the challenge of putting the system into practice as Register-General, a position he held until 1862[2].



JEAN GILMORE

B: 1913; D: 2015

Jean Gilmore was one of the first and longest-serving female lawyers in South Australia. An exceptional school and university student (she won the coveted Stow Prize at University of Adelaide), Jean Gilmore was admitted to the Bar in 1935. She was the 23rd woman to sign the Practitioners Roll in South Australia. Jean Gilmore became a partner of Fisher Jeffries in 1949, and spent her whole career at the firm, retiring in 1987 at the age of 74. Jean Gilmore was also extremely active and generous in the community. She drafted the constitution of St Ann's College, which opened in 1947 as a boarding house for female university students (it is now co-residential). She also created an undergraduate scholarship for meritorious and needy law students.

DAME ROMA MITCHELL

B: 1913; D: 2000

Dame Roma Mitchell is remembered for her profound achievements in the law and regarded as a pioneer of her time. Dame Roma was admitted to practice in 1934 after graduating from the University of Adelaide. She became partner in 1935 and went on to take silk in 1962, at the sole recommendation of the Chief Justice, being the first female Queen's Counsel. Among her numerous accolades, Dame Roma was appointed as a Supreme Court Judge in 1965, the first woman in Australia to be appointed to that position. In 1982 she became a Dame Commander of the British Empire and in 1983 Dame Roma was Acting Chief Justice of South Australia. Dame Roma became the first female Chancellor of the University of Adelaide in 1983 and remained in this position until 1990. In 1991, Dame Roma became the first female Governor of SA and was made Companion of the Order of Australia. Dame Roma retired in 1996 and shortly before she died on 5 March 2000, she received her final honour, Commander of the Royal Victorian Order.

ELLIOT JOHNSTON QC

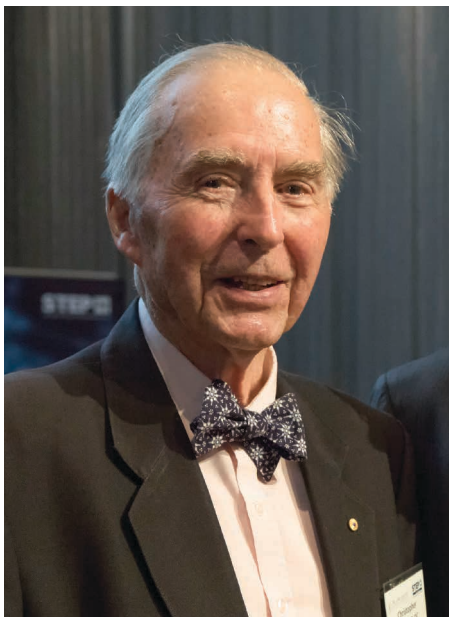
B: 1918; D: 2011

Radical. Iconoclast. Trailblazer. However you describe Elliot Johnston QC, those who knew him would agree that he was unapologetically himself. Elliot Johnston was a much loved lawyer, judge and Royal Commissioner. He was also a committed communist activist. In his university years, Elliot Johnston joined the University Peace Group and then established the Radical Club, which was banned within a month. As a lawyer, he was a champion of workers' rights but in 1951 ceased practising to take up a full-time role at the Communist Party of Australia After spending some time in China to study, Elliot Johnston returned to practice in 1957, when he and his wife Elizabeth set up their own firm, Johnston & Johnston. The firms took on numerous human rights and criminal matters, but workers compensation claims and industrial law lay at the heart of the practice. After Chief Justice Bray's nomination was initially rejected by the Hall Government for political reasons, Elliot Johnston was made silk in 1970, when Don Dunstan was Premier. He was appointed to the Supreme Court Bench in 1983, a role he served with distinction for almost five years. Elliot Johnston was also instrumental in setting up the Aboriginal Legal Rights Movement and Australian Society of Labor Lawyers. He was Commissioner to the landmark Royal Commission into Aboriginal Deaths in Custody.

PAMELA (PAM) CLELAND

B: 1922

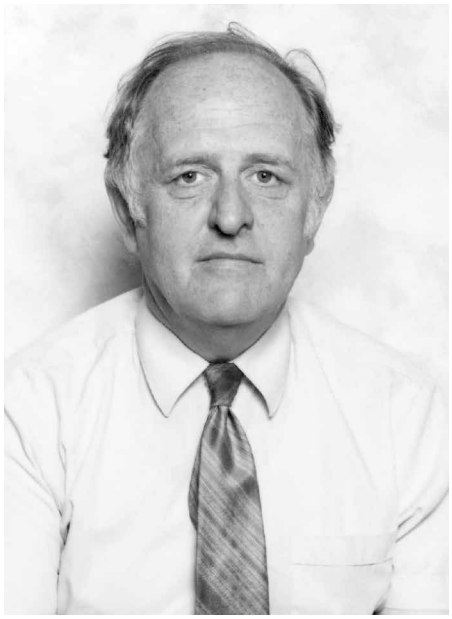
Pamela Cleland was the first woman in South Australia to join the independent Bar. She signed the Bar roll in 1973 and worked from Cleland Chambers (also known as Libra Chambers) at her property on Waterfall Gully. Cleland Chambers was only the second chambers to be established in South Australia. Pam was admitted to practice 1956 and was the 49th woman to be admitted in South Australia. She was articled to Dame Roma Mitchell who offered her a position at Nelligan Mitchell & O'Leary. She worked there for three years before obtaining a job at Genders Wilson & Bray where she frequently appeared in court as John Bray's junior. Pam started her own legal practice in 1963 specialising in matrimonial and criminal law, before joining the Bar. By 1984, 16% of legal practitioners were women but Pam was still the only female to have signed the bar roll. She retired from legal practice in 1993.



THE HON. CHRISTOPHER LEGOE AO QC

B: 1928

The Hon. Christopher Legoe AO QC was the first "independent barrister" to practise in South Australia. He was admitted to the English Bar in October 1951 and then in South Australia in 1953. He was Associate to the Honourable Justice Reed of the Supreme Court of South Australia before working as a legal officer in the Crown Law office in Adelaide in 1954-55. Having been trained as a barrister in England, he broke with convention and set up practice solely as a barrister in South Australia in 1955. It was seven years until another lawyer, Jack Elliot, wold join the independent Bar. A Bar Association was formalised in 1964, comprising Legoe Elliot, Howard Zelling and Robin Millhouse. Christopher Legoe was appointed Queens Counsel in 1972 and was appointed a Justice of the Supreme Court from 1978 to 1994. In 2015 he was awarded Queens Birthday Honour Officer of the Order of Australia for distinguished service to the law and to the judiciary, to the development of professional standards and legal education and to historical, artistic and environmental conservation groups.



PROFESSOR ALEX CASTLES

B: 1933; D: 2003

Alex Castles was a renowned legal academic widely recognised as being responsible for shaping the discipline of Australian legal history. He is best known for his ground-breaking work, published in 1982, *An Australian Legal History*. This was the first book published on Australian Legal History written from a non-British legal perspective. Alex Castles was the author of a number of published books and wrote numerous articles for various legal journals. He was a noted media commentator and a renowned public speaker. He was one of the foundation Members of the Australian Law Reform Commission established in 1975. He took a post at the Faculty of Law, Adelaide University in 1958, being appointed Professor in 1967. Upon his retirement in 1994 he was made Professor Emeritus Adelaide Law School and a Professional Fellow at Flinders University.

MALCOLM PENN OAM

B: 1939; D: 2008

Malcolm Penn OAM was a visionary leader who did not let his blindness stop him from excelling in the law. Malcolm Penn, who lost his sight at four, was the first blind person to graduate from law at the University of Adelaide and the first blind person admitted to the bar in South Australia. He worked in private practice, at the Legal Services Commission and the Children's Court. One of his most important contributions to the community was his role in drafting legislation that allowed guide dogs to access all public places. Malcolm Penn established the Sir Charles Bright Scholarship to assist tertiary students with disabilities

THE HON. MARGARET NYLAND AM

B: 1942

Margaret Nyland AM had the fortune of being mentored by two legal pioneers and the brilliance to become a trailblazer in her own right. She studied law at University of Adelaide, where Roma Mitchell was her family law lecturer. Roma Mitchell became a close friend and mentor of Ms Nyland and was an inspiration to her. Dame Roma become Australia's first Supreme Court Judge in 1965, the year that Ms Nyland graduated. Ms Nyland was articled to Pam Cleland (who herself was previously articled to Roma Mitchell and later became the first woman to join the independent bar). When Ms Cleland joined the bar Ms Nyland took over the practice and managed a successful family law firm Nyland, Haines & Co. Ms Nyland took up several profesisanl appointments, including Chairperson of the Commonwealth Social Security Appeals Tribunal, Chair of the South Australian Sex Discrimination Board and subsequently Deputy Presiding Officer of the Equal Opportunity Tribunal (SA). In 1987 Ms Nyland became the second woman to be appointed as a District Court Judge, and in 1993 became the second woman, some 28 years after Roma Mitchell, to be appointed to the Supreme Court Bench. In 2014, she was appointed Commissioner in the Child Protection Systems Royal Commission, which resulted in a comprehensive report delivered in 2016 that heavily influenced recent child protection reforms in SA. Throughout her career, Ms Nyland has been a passionate mentor to many young lawyers who have benefitted form her generous tutelage.

PAUL ROFE QC

B: 1948; D: 2013

Paul Rofe QC, known for his piercing intellect, commitment to fairness and sound judgment, was the State's first Director of Public Prosecutions and a much loved and acclaimed figure in the law. Paul Rofe was admitted to the bar in 1973, was associate to Justice Waters, then Chief Justice Bray, before working as counsel assisting the coroner and then joining the Crown Prosecutor's Office. In 1992, a year after making silk, he was appointed as inaugural director of the DPP where for 12 years he was a fearless defender of the independence of the prosecutorial body and developed the DPP into an office of the utmost professionalism and integrity. Recognising the need to provide greater assistance to vulnerable parties in the court process, Paul Rofe was instrumental in establishing the witness and victims support programs. Upon resigning form the DPP, he founded Elliot Johnston Chambers where he practiced for 10 years.

THE HON. CATHERINE BRANSON QC

B: 1948

Catherine Branson QC is best remembered as the first woman to hold the office of Crown Solicitor and, as a consequence, the first woman to be appointed permanent head of a government department in South Australia. Following her appointment as Crown Solicitor in 1984, she took silk in 1992 and was appointed to the Federal Court of Australia in 1994. In 2008, Catherine Branson became President of the Australian Human Rights Commission and in 2009 she was appointed Human Rights Commissioner. She retired in 2012. She has also served as Deputy Chancellor of University of Adelaide, Chair of the Human Rights Law Centre, a Board Member of Cancer Council SA, an Adjunct Professor at Adelaide Law School, a Member of the National Women's Advisory Council, and President of the Australian Institute of Judicial Administration.

In recognition of her contribution to the Australian justice system, she was awarded an Honorary Doctorate of Laws by Flinders University and an Honorary Doctorate of Letters by Macquarie University. Catherine Branson grew up on a rural property in the mid-north of South Australia near Hallett and studied law at the University of Adelaide. A student gap year volunteering for legal aid in the United States opened her eyes to inequality in the law. In retirement, she has devoted her time to numerous non-profit organisations.

Endnotes

1 The Hon John Darley, the House of Assembly

2 Emerson, John, *History of the Independent Bar of South Australia'* The University of Adelaide Barr Smith Press, 2006

Australian Women Lawyers as active citizens

PROFESSOR KIM RUBENSTEIN, AUSTRALIAN NATIONAL UNIVERSITY

As Mary Jane Mossman writes of the first women lawyers in the late 19th and early 20th centuries, while the role of women doctors could be explained as an extension of women's roles in the "private sphere", by contrast, women lawyers were clearly intruding on the public domain explicitly reserved to men".[1]

This "intrusion" is far from complete. The last 100 years show many new women at the "rolling frontier" of the Australian legal profession, entering previously male-only areas of practice, adopting new ways of practising, taking up elite legal positions and entering the profession from increasingly diverse socio-political, ethnic and religious backgrounds.

The *ARC Funded Trailblazing Women* and the *Law Project*[2] provided some insights to the experiences of women pushing the boundaries by recording, showcasing and analysing, through oral history, the experiences of seven decades of Australia's pioneer "trailblazing", female lawyers. Bringing together the interdisciplinary expertise of scholars in the fields of gender, oral history, biography, law, citizenship, social networks, cultural informatics, digital publishing and women's history archiving, the project filled the well-noted absence of leading women lawyers' lives from national history and Australian scholarly analysis. The research demonstrates the many and various ways that women lawyers stand at the forefront of women's participation in Australian civic life.[3]

One important outcome of the project is the online exhibition Australian Women Lawyers as Active Citizens.[4] The exhibition builds upon the oral history interviews and archival research to document how women with law degrees have used the skills and experiences from their individual broader life experience, together with their law degree and various forms of practice, to have an impact on others in society, as a form of active citizenship in the civic sphere more broadly. It understands the term "citizenship" to have multiple meanings. It can be used in a legal and political sense, in talking about rights and as a way of marking one's identity.

Evolving from a set of Oral Histories[5] that were conducted on trailblazing women lawyers, research for the exhibition prompted us to ask other women to write and reflect on their own experiences in an essay-like framework. Those women who responded to that invitation are identified through the Auto/Biography[6] page.

The online exhibition showcases the experiences of women nominated for the Australian Research Council funded oral history project on Trailblazing Women and the Law.[7] The project, which was seeded by a pilot project between the National Library of Australia and the Australian National University (ANU) in 2010, evolved into a joint project of the ANU and the University of Melbourne from 2013. It drew upon the support of Australian Women Lawyers (the peak body for women lawyers' associations throughout Australia), the Family Court of Australia, the Federal Court of Australia, the National Foundation for Australian Women, and the National Library of Australia.

Over the past six years, hundreds of women were nominated as possible interviewees for the project.

As the project was funded for a finite forty five oral history interviews[8] and those interviews were driven by the research objectives[9] of the academic investigators of the project, it was determined that it was important to showcase in different ways all women nominated up until June 2016 as having made a significant contribution as women lawyers to Australia. The exhibition has also identified lawyers already on the Australian Women's Register.[10]

The exhibition also enables users to identify women lawyers associated with the different jurisdictions. There are over thirty listed in South Australia[11] with the oral histories conducted with Catherine Branson, Koula Kossiavelos, Robyn Layton, Margaret Nyland and Irene Watson.

The exhibition is in no measure a full account of Australian women lawyers who have made wonderful contributions to our society and there are no doubt many more who haven't been identified in this exhibition. That is purely due to the constraints of setting up something as ambitious as this project with limited resources. It is also testament to the importance of immediately marking the contributions thus far brought to the project's attention. B

Robyn Layton being interviewed for the Trailblazing Women in Law project. Photo: Kim Rubenstein.

Endnotes

1 Mossman, MJ, 2006. *The First Women Lawyers: A Comparative Study of Gender, the Law and Legal Professions*. Hart Publishing, Oxford.

2 LP120200367

3 Chief Investigators with Professor Kim Rubenstein from the ANU are Associate Professor Gavan McCarthy and Helen Morgan, University of Melbourne (social networks, cultural informatics, ePublication and women's history archiving). Kevin Bradley is a Partner Investigator, National Library of Australia (contributing substantial oral history expertise). Researcher/Coordinator Dr Nikki Henningham, University of Melbourne brings to the team great oral history expertise and Larissa Halonkin, was Research Assistant for the project,

4 http://www.womenaustralia.info/lawyers/index.html

5 http://www.womenaustralia.info/lawyers/browse_oralhistories.html

6 http://www.womenaustralia.info/lawyers/browse_auto_biography.html

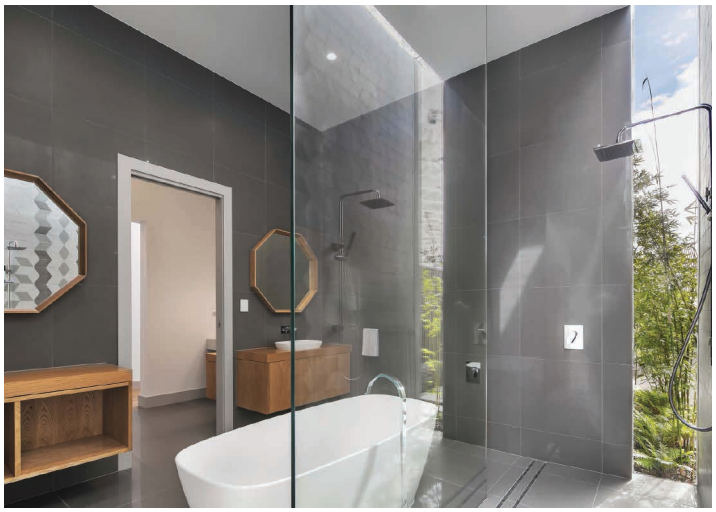
7 http://www.tbwl.esrc.unimelb.edu.au

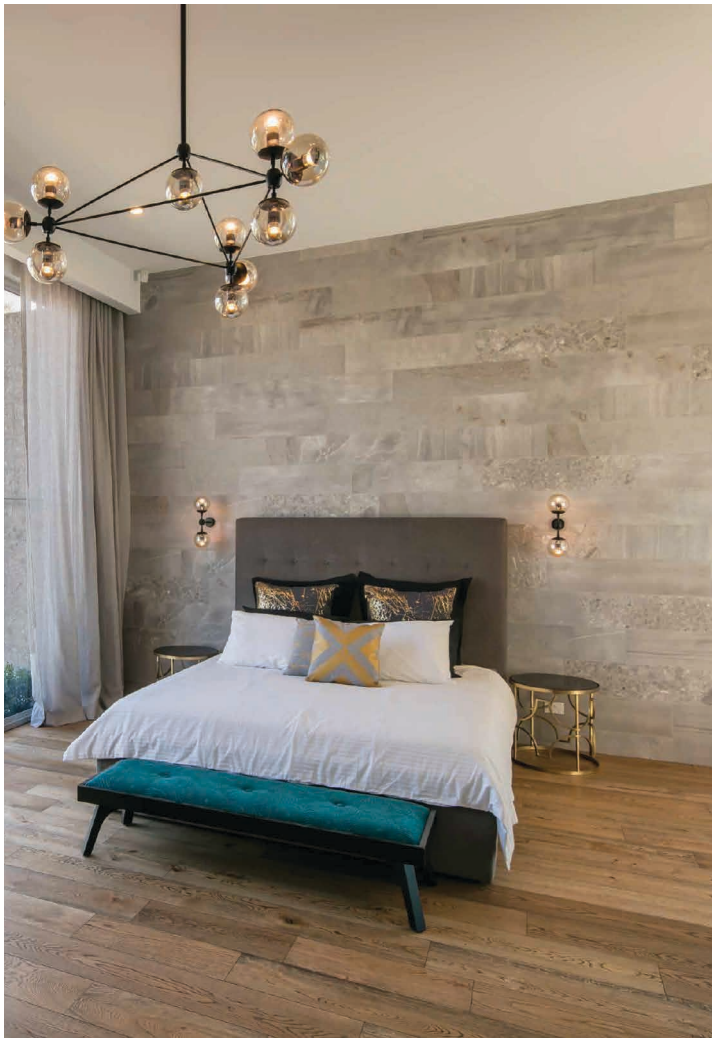
8 http://www.womenaustralia.info/lawyers/browse_oralhistories.html

9 http://www.tbwl.esrc.unimelb.edu.au/methods/

10 http://womenaustralia.info/br_l_function.htm#AWF0144

11 http://www.womenaustralia.info/lawyers/jurisdiction.html





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Land tax on 'banked' primary production land

JOHN TUCKER, DIRECTOR, DW FOX TUCKER LAWYERS

Land tax is imposed by the *Land Tax Act 1936*[1] on all land in the State unless the land is excepted or wholly or partially exempt under the provisions of the Act.

One of the most significant entire exemptions is for land used for primary production that is situated within a defined rural area.

Qualification for this exemption requires firstly that such use of the land be "for" primary production within the meaning defined in Section 2(1) of the Act, which in turn requires the land to be used wholly or mainly for the business of primary production.

Further exemption requirements look to an individual owner's engagement on a substantially full time basis in a 'relevant business', which includes a business of primary production of the type for which the land is used, and also that the land is used to a significant extent for the purposes of that business. In the case of a company the focus is on the company's main business activity or activities of its shareholder. This article focuses only on the requirement that the land be used for primary production without examining in detail the other requirements for the exemption to apply.

In recent times, there have been arguments raised that the holding of land for the purpose of future development (commonly referred to as 'land banking') denies that land the availability of the primary production exemption, even if the land is being used for primary production activities at the time of assessment for land tax.

In February the Court of Appeal of the Supreme Court of New South Wales considered this issue in its decision in *Chief Commissioner of State Revenue v Metricon Qld Pty Ltd*[2].

While each state has different requirements for the primary production exemption to apply, the requirement that the land be used for primary production is common to both the South Australian and New South Wales legislation, making this case relevant from a South Australian perspective.

In the *Metricon* case, the pertinent facts were that the company had acquired land for the future residential development and agreed with an unrelated entity for it to graze and agist cattle on the land. As indicated above, the issue for determination was whether the dominant use of the land was for primary production.

The Chief Commissioner alleged various competing uses of the land, other than primary production, these including land banked trading stock, rental use of the parts of the land with dwellings on them, rental use from the unrelated party with grazing and agistment rights and that the lands were used for commercial land development.

In prior decisions[3] "use" is had been regarded as a protean word, taking its meaning from its context. Nevertheless it has an ordinary meaning an understanding of which, in the context of *Metricon*, required an examination of the activities undertaken upon the land[4].

White J at first instance[5] held that "use" requires doing something with the land, using it physically or putting it to advantage by, say, letting it. He found that Metricon's use of the land as a land bank was not a current or present use of the land and so the primary production use was the dominant use.

Between the decision at first instance and the appeal, White J heard another case, *Leppington Pastoral Co Pty Ltd v Chief Commissioner of State Revenue*[6].

In that case a substantial dairy business was carried on by the appellants however it was engaged, alone and with others in building on adjacent land a new township within which its land would eventually be encompassed. Also it had entered into a Development Rights Agreement in respect of its land.

In this case the Commissioner successfully asserted that competing uses of earthworks for residential development on the adjacent land, use of the land by consultants for current and future residential development and a "passive" or nonphysical use by reason of the Development Rights Agreement amounted to a dominant use other than for primary production.

With respect to nonphysical use White J "accepted as a matter of principle that the conferral of such rights … was a nonphysical use of the land" and was a relevant use when determining the dominant use of the land.

The Court of Appeal in *Metricon*, delivering their judgment a few days after that of White J in Leppington Pastoral, disagreed, holding that the comparison required was only between physical uses of the land. This was because the references to "use" and "for" required a comparison of activities for which the land was used by deliberate physical acts.[7]

Barrett AJA (with whom Macfarlan and Ward JJA agree) posed the hypothetical question:[8]

> *"Assume the owner of the fee simple leases a parcel of land to another who devotes it entirely and exclusively to agricultural by raising crops. Three possible characterisations are available. First, it may be said that there are two uses of the land, with the lessee using it "for" agriculture and the lessee using it "for" leasing. The second possible view is that there is one use only, with the lessee using the land "for" agriculture and the lessor also using it "for" the agricultural purpose that the lessee's activities entail. The third possibility is again that there is one use only, with the lessee using the land "for" agriculture and the lessor not using it at all."*

In the context of comparison required to determine dominant use the Court of Appeal held that no meaningful comparison could be made between physical use and the exploitation of ownership rights. Where the rights of a lessor and lessee were fully deployed they are equal and the correct construction was therefore physical use and this was the use by the lessee.

Interestingly the Court concluded that inactivity, deliberately adopted, whose purpose is objectively determined to be a means for obtaining actual or present advantage from the land, is a "use". For how long and in what circumstances inactivity might be taken to be a use for primary production nevertheless remains open to further interpretation.

Significantly in the context of land banking, the Court of Appeal held that "use" was current use, not intended future use, and that activities preparatory to the use of the land for a specific purpose, for example, the incurring of significant expenditure in employing planners and other consultants for the purpose of planning the future development of the land, do not amount to a physical use of the land and are therefore not relevant. Accordingly Metricon's use of the land as a "land bank" was not a comparator with the tenant's physical use of grazing and agisting cattle.

The Court of Appeal's interpretation of "use" and "for primary production" are of significance in reference to the threshold requirement of the Act that the land be used for primary production. However it is noted that "use" in the context of the NSW provisions is concerned with the use at large rather than use by a particular person and, as mentioned before, s5(10)(g) of the Act imposes additional tests relating to the activities of the land owner that also need to be met for the land to gain exemption in South Australia.

Tax Files is contributed on behalf of the South Australian based members of the Taxation Committee of the Business Law Section of the Law Council of Australia.. **B**

Endnotes

1 The Act
2 [2017] NSW CA 11; (2017) ATC 20-607 *(Metricon)*
3 See *Aboriginal Land Council (NSW) v Minister Administering Crown Lands Act* (2007) 157 LGERA 18 per Mason P
4 *New South Wales Aboriginal Land Council v Minister Administering the Crown Lands Act* [2016] HCA 50,; (2016) ALJR 177, per French CJ, Kiefel, Bell and Keane JJ
5 *Metricon QLD Pty Ltd v Chief Commissioner of State Revenue (No. 2)* [2016] NSW SC 332
6 [2017] NSW SC 9 *(Leppington Pastoral)*
7 Relevantly, we note that s2(1) of the South Australian *Land Tax Act 1936* uses the same words.
8 at [50]

Challenging cancer

Cancer Council SA

Being SunSmart isn't just about the heat

LINCOLN SIZE, CHIEF EXECUTIVE, CANCER COUNCIL SA

Australia has one of the highest rates of skin cancer in the world, with two out of three Australians diagnosed with skin cancer before the age of 70 and more than 12,000 cases of melanoma diagnosed in Australia each year.

Within Australia, 95% of melanomas are attributable to overexposure to UV radiation. Australia experiences some of the highest levels of ultraviolet (UV) radiation in the world. UV exposure increases the risk of both melanoma and non-melanoma skin cancers so protecting your skin in five ways (Slip, Slop, Slap, Seek and Slide) can reduce your skin cancer risk.

From the beginning of August in South Australia, UV levels are on the rise, placing the community at risk of skin damage. When UV radiation reaches a level of 3 on the UV Index it is strong enough to damage unprotected skin. Cancer Council SA recommends that sun protection is used outside whenever UV radiation is 3 and above and is urging the legal profession to set the example and be SunSmart.

Unfortunately, there is a still a common misconception that UV radiation is only harmful when the temperature is high. UV radiation can reach 3 and above regardless of temperature, so even on cool and cloudy days check the UV level before you head outside.

The SunSmart App is an easy way to find out the daily sun protection times for your location. The app lets you know when you do and don't need sun protection, making it easier than ever to be smarter about your sun exposure. You can find out how to download the app via the Cancer Council SA website.

Being SunSmart is an easy and effective way to protect your skin from harmful UV rays and reduce your risk of skin cancer. If you are heading outside and the UV is 3 or above it is important that you wear sun protective clothing, apply SPF 30 or higher sunscreen, wear a shady hat and sunglasses and seek shade where possible.

With skin cancer accounting for more than 80 per cent of all new cancers diagnosed in Australia each year, it is up to all of us to make an effort to protect ourselves against harmful UV radiation.

If you want to find out more about the Cancer Council SA SunSmart program and how to download the SunSmart app, visit www.cancersa.org.au/cut-my-risk/sunsmart.

To have and to hold... after cooling off

CARLY FISHER, SENIOR ASSOCIATE, O'LOUGHLINS LAWYERS

In January 2016, a British couple were enjoying their honeymoon in Adelaide when one of them, David Bulmer-Rizzi, died suddenly. The newlyweds were a same-sex couple and the tragedy made international headlines.

The surviving spouse, Marco Bulmer-Rizzi found he was relegated to play a secondary role behind David's bereaved parents because his marital status was not recognised under South Australian law. At each step of handling the aftermath of David's death, the authorities and funeral director insisted on contacting David's father for consent. David's Death Certificate was originally to be issued showing David as "never married" despite Marco's protests.

The Premier, having telephoned Marco to apologise, promised to introduce legislation recognising overseas same sex marriages. Some nine months later the Premier had a new Bill presented to do that and to provide legal recognition to South Australian lesbian, gay, bisexual, transgender, intersex and queer ("LGBTIQ") couples.

The *Relationships Register Act* 2016 (the Act) was passed shortly after on 15 December, 2016. The *Statutes Amendment (Registered Relationships) Act* 2017 (the Amendment Act) followed more recently, passing in April 2017.

The register is now live, having come into operation on 1 August, 2017, and is being administered by the Registrar of Births, Deaths and Marriages.

In addition to providing recognition to bereaved same-sex partners like Marco Bulmer-Rizzi, there are several ways in which the new register has much broader effect, including potential complications in succession practice. In conjunction with the Amendment Act, the new Act impacts many legislative provisions, including:

- the automatic revocation of wills under the *Wills Act* 1936;
- the class of claimants under the *Inheritance (Family Provision) Act* 1972; and
- the definition of domestic partner under the *Administration and Probate Act* 1919.

It adds a layer of complexity to verifying the relationship status of a deceased person who may have had a recognised partner.

Whilst the intent of the Act is to provide greater rights for LGBTIQ couples, it also presents an alternative to marriage for heterosexual couples.

OPERATION OF THE REGISTER

To register a relationship, any two consenting adults can apply to the Registrar of Births, Deaths and Marriages supplying a statutory declaration and supporting documentation addressing their eligibility. The registration is not effective until the Registrar enters it into the register after a 28-day cooling off period.

Registration cannot be made whilst a person is legally married and polygamous relationships are not eligible for recognition under the Act.

Registration can be revoked by application of one or both parties with any such revocation to take effect when the Registrar enters it into the register after a 90 day cooling off period. If one party legally marries, the registration is automatically revoked.

There is the potential for registration to be used as a means for partners of less than two years to become eligible claimants or beneficiaries of a prospective estate, particularly where one of the partners is of advanced age. Registrations may become void in certain circumstances including a subsequent finding that a party was mentally incapable of understanding the nature and effect of registration at the time.

ISSUES FOR ESTATE ADMINISTRATION & PLANNING

It will take some time for public awareness of the register and take up rates to build. However succession practitioners will need to be aware of its operation as it will become necessary to consider issues such as the following:

- Registered partners (who currently need to obtain a declaration under the *Family Relationships Act* 1975) will immediately become eligible to claim under family provision legislation or as a beneficiary under intestacy rules.
- Existing wills will be automatically revoked on the registration of a relationship, as with the solemnisation of a marriage;
- Wills can be made in contemplation of the registration of a relationship, as they can in contemplation of a marraiage;
- The termination of a registered relationship has the same effect as the termination of a marriage – gifts given to the spouse, appointments of the spouse as executor, trustee or guardian, and powers of appointment given to the spouse will all be revoked, unless the contrary intention appears in the will. It will be possible for a client to have a registered partner and subsequently enter into a separate unregistered domestic partner relationship.
- The prospect of family members being unaware of a registered relationship, particularly where family members are distant, or where the deceased person's sexual orientation was undeclared to their family.
- For a client in a same-sex marriage that was conducted overseas, it is likely to be necessary to obtain a copy and translation of their original certificate to evidence their eligibility under local legislation.

Similar relationship registers have for some time been in operation in Victoria, New South Wales, Queensland, Tasmania and the ACT. In these States, registration is a particularly attractive option to those seeking to fast-track a visa application for an immigrating partner, rather than waiting out an extended local co-habitation period. The Act does not impose a cohabitation requirement on the couple. As such, South Australia's register may prove popular with couples in this situation as well as the intended demographic of LGBTIQ couples seeking legal recognition.

The ability to secure a partner's status by paperwork alone, without ceremony, in an age where family networks are increasingly disconnected raises the prospect of surprise relationships emerging in the administration of an estate - relationships with more secure and certain rights than before. B

Robin Millhouse: A true maverick

After Robin Millhouse died peacefully, aged 87, on 28 April, a number of Parliamentarians from across the political spectrum paid tribute to the former Attorney General and Supreme Court Judge who had left behind an extraordinary legacy.

In Parliament shortly after Mr Millhouse's passing, State Premier Jay Weatherill said South Australia had lost "one of its most colourful, accomplished and resilient figures" who "had a passion for social justice and progressive ideas and was an extraordinarily popular and electorally successful MP".

Robin Rhodes Millhouse was educated at St Peter's College and University of Adelaide, and was admitted to legal practice in 1953. He entered Parliament just two years later, aged 25, as the Liberal and Country League (CLC) Member for Mitcham. He was the Attorney General in the Steele Hall Government from 1968-70. He resigned from the LCL in 1973 to form the Liberal Movement, then the New Liberal Movement, and then merged that party with other parties to form the Australian Democrats, becoming the first Member of Parliament for the Australian Democrats.

His legal career progressed alongside his parliamentary career. Maintaining a legal practice while in politics, in 1979 he was made Queen's Counsel, and in 1982 he followed in his father Vivian's footsteps and was appointed to the Supreme Court, where he served with distinction until 1999. He then became Chief Justice of Kiribati and Chief Justice of Nauru, before serving as a locum judge in Tuvalu.

During his time in the Steele Hall Government, Mr Millhouse was instrumental in a number of major and legacy-defining reforms, including the re-drawing of electoral boundaries (based on the "one vote, one value" principle), abortion law reform, the introduction of mandatory seatbelts in cars, and the metropolitan Adelaide transport plan, among many others.

Mr Weatherill said that "the removal of the notorious gerrymander, which was brought about by the courage and leadership of Robin Millhouse and Steele Hall, was a bold and courageous act that changed our state for the better".

Christopher Legoe, who also served on the Supreme Court bench, paid tribute to Mr Millhouse, who was the first barrister to join Mr Legoe at Cowra Chambers.

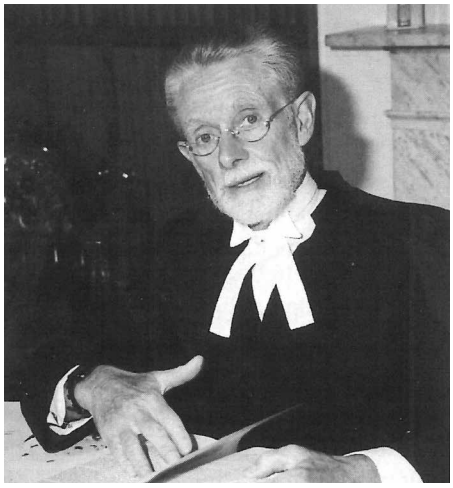
"I can say from a long and close friendship and as a professional colleague Robin was an original thinker and innovator in his court work and out of court in the 'think talks' we had," Mr Legoe said.

"Of course we all remember his novel and progressive ideas in politics and his parliamentary life. Not so well known, except to practising lawyers, is Robin's legal work," Mr Legoe said. "He appeared in the courts right through his long time in Parliament. Robin was a master at analysing the facts of cases he worked on. From the facts as he found them Robin applied the legal principles and arrived at a fair and just result."

Mr Legoe said that the popular Popeye ferries would likely not be around today if it was not for Mr Millhouse. "Robin as a judge had to decide what was the nature and validity of the Popeye licence to children and their families on the River Torrens. Robin went down and found for himself the real function and practice of the Popeye. His clear findings of the facts lead to a sound legal conclusion, which was upheld on appeal. Popeye was saved as one of South Australia's great legacies. Children and their friends have Robin to thank for this."

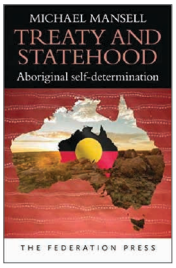
Mr Millhouse has been described as "eccentric" – he certainly was a man who was unashamedly himself and never shied from following his passions and speaking his mind, regardless of how radical or strange people thought they were at the time.

He was a devout Christian who was also a keen nudist who pushed for the establishment of Maslin Beach. He was also a committed environmentalist who shunned driving for cycling, a fitness enthusiast, a social progressive, an activist, and most of all, a dedicated family man. Mr Millhouse was married to Ann for 35 years before Ann died in 1992. His is survived by his five children. B



Robin Millhouse

Robin Millhouse, as Chief Justice of Kiribati, running with the Queen's baton in the lead-up to the Dehli 2010 Commonwealth Games



By M Mansell
The Federation Press 2016
PB $59.95

TREATY AND STATEHOOD: ABORIGINAL SELF-DETERMINATION

Abstract from Federation Press

If governments of Australia agreed to share power with Aboriginal people, what would the result be? And if Australia was to have a settlement or a treaty with Aboriginal and Torres Strait Islanders, what would a treaty deal with and how would a treaty affect the general public? Is there anything beyond a treaty?

The book critically examines the legality of designated seats, treaty, sharing of power and autonomous communities. The legal examination is broken down into easy-to-understand language. Ultimately, Mansell looks at whether justice can best be served to Aboriginal people through a new State of Australia.

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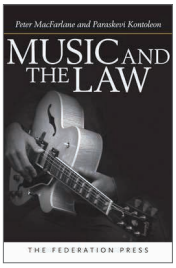

By P MacFarlane and P Kontoleon
The Federation Press 2017
PB $59.95

MUSIC AND THE LAW

Abstract from Federation Press

Music and the Law is a book that examines the relationship between the law and the music industry in Australia. The book is specifically aimed at assisting and educating law and music students, as well as individuals involved in the music industry including musicians, managers, agents and music enthusiasts.

The book's introductory chapter considers the importance of music from a social, cultural and political perspective and provides an introduction to the Australian legal system. The book then looks specifically at various aspects of the music industry and, in particular, provides a summary of the following key aspects:

- Contracts
- Recording and distribution
- Copyright
- Musical works, literary works and sound recordings
- Live performance and the live music industry in Australia
- Alternative dispute resolution

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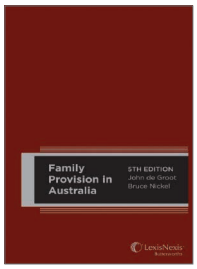

By J de Groot & B Nickel
5th ed, LexisNexis 2017
PB $219.00

FAMILY PROVISION IN AUSTRALIA

Abstract from LexisNexis

This highly anticipated Fifth Edition has been completely reviewed and updated with a further 250 cases considered. The existing concise case tables have been expanded to include new tables covering small estates, De Facto widowers, foster children and same sex partners. This edition also includes new sections dealing with special disability trusts, summary dismissal and Crisp orders. Essential reading for all practitioners, teachers and students involved in this challenging area of the law.

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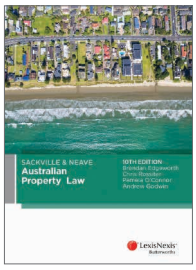

By B Edgeworth, C Rossiter, P O'Connor, A Goodwin
10th ed, LexisNexis 2017
PB $159.00

SACKVILLE & NEAVE AUSTRALIAN PROPERTY LAW

Abstract from LexisNexis

The book retains the structure adopted in the ninth edition and incorporates various innovations, including an increased focus on the transactional context within which the substantive law operates. Chapter 1 deals with conceptual issues that underpin and define the ambit of property law. Later chapters examine four broad issues with which the law of property is concerned: the fragmentation of proprietary interests (Ch 2, 3 & 6); the acquisition and transfer of proprietary interests (Ch 4); and the enforceability of proprietary interests and related priority issues (Ch 4 & 5). The book also examines the rules regulating the creation and enforcement of particular interests in land, including leases, easements, restrictive covenants and mortgages.

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Law Society launches online wellbeing resource

A video of senior members of the legal profession discussing their experiences with mental health issues was the centrepiece of the Law Society's launch of its online health and wellbeing program on 14 September.

The video featured Trevor Edmond, Magistrates John Wells and Luke Davis, Professor Elisabeth Handsley and Judith Jordan speaking about the impact of mental health issues and the importance of peer support and seeking help.

Timed to coincide with R U OK Day, Chair of the Law Society's Wellbeing and Resilience Committee Toni Vozzo debuted the video trailer at the event and spoke about the objectives of the free online program.

"This program will hopefully give some pointers as to how to deal with serious mental health issues, and also give some practical tips that everyone can use to defuse stress and anxiety before things get out of hand," Ms Vozzo said.

"Throughout this course, you will have the opportunity to view segments of videos made by members of the legal profession who have shared their experiences with mental health."

The program, which was made possible by a grant from the Professional Standards Councils of Australia, includes a number of educational modules which are designed to be completed within an hour and a half. On completion, participants will be entitled to one CPD unit in the mandatory area of Professional Development.

The Hon. Chris Kourakis, Chief Justice of SA, was the special guest and he spoke about his own experiences dealing with anxiety and stress as counsel, and commended the Society's Wellbeing and Resilience Committee for the initiative.

Ms Vozzo thanked everyone who shared their stories in the video, Gianna Di Stefano and Grant Feary form the Law Society for their work in developiong the program, and Anne Johnson and Helen Carter from McAvaney Media for putting together the videos.

The online program is based on a program created by the Canadian Bar Association the Mood Disorders Society of Canada and Bell Let's Talk.

The support of the Professional Standards Councils and the Canadian Bar Association is gratefully acknowledged.

The online program can be accessed at:
wellbeing.lawsocietysa.asn.au

Magistrate Luke Davis, Judith Jordan, Trevor Edmond, Chief Justice Chris Kourakis and Toni Vozzo at the launch of the Law Society's health and wellbeing online program

Guests mingle at the event, which coincided with R U OK Day

Law Society Deputy Director of Law Claims Grant Feary and PII Risk Manager Gianna Di Stefano.

The online program includes a video featuring senior members of the legal profession, including Magistrate John Wells (pictured), spekaing about their mental helath experiences

Frank Moran QC: A fearless leader of the profession

On 17 March, Frank Moran Chambers and Shaw & Henderson Lawyers hosted a tribute to Frank Moran QC, with **Michael Abbott QC** reflecting on his incredible career and inimitable personality in a colourful speech. The event raised funds for the Ice Factor program – a project established by Marie Shaw QC which provides support for at-risk youth. The Bulletin felt it fitting that an abridged version of Mr Abbotts' speech be published in this special "trailblazers" edition.

"My memory of Francis Brian (Frank) Moran goes back more than 50 years, in fact before he was a QC and when he was a member of the junior bar.

Whatever else you can say about Frank one thing is clear, he was a character. Moreover a character that stood out amongst the many characters that we had practising criminal law in South Australia in the days when he grew up, became a barrister, then a QC, a finally District Court judge.

Frank needs to be seen in the setting of a legal profession in South Australia that in the 60's and 70's boasted many colourful characters and identities. Frank however was an outstanding character even in that company. I'm talking about Claude Philcox, Peter Waye, Jack Elliott, Harry Alderman, Lloyd Gunn, EB Scarfe, Malcolm Fricker, Brian Stanley, Helen Devaney, Alan Wardrop, Frank Boylan, Ross Matulich and George Basisovs and several others who from time to time one saw at the criminal bar.

When the television series of Rumpole appeared on Adelaide television we all realised that Frank was Adelaide's answer to Rumpole. His view and Rumpole's view of people like Guthrie Featherstone QC MP were identical and his distaste for those who put on airs and graces to which they were not entitled was deep and abiding and lasted as far as I could tell his entire life.

Many people when they spoke of Frank said he had "the common touch" but really that was a way of saying that deep down Frank not only cared for his fellow men (and women) but he was prepared to forgive, **but not forget**, some of the worst sinners in South Australia, many of whom from time to time he acted for in the courts.

Another side of his personality that coincided with Rumpole's with his attitude to the judiciary. Frank had a healthy contempt for the judiciary, in any form, I think in part because he'd grown up in the system which denied the highest judicial office to Roman Catholics and promoted men only (until Roma Mitchell) to the role of Supreme Court Justice, not necessarily because of their ability, but because of their religion, their political affiliations, and their membership of the Adelaide club.

Today it's hard for us to put ourselves in the position that Frank was in, coming back from the war in 1945 aged 24. In those days it was all very well to get admitted to practice law in South Australia but the system was dominated by Freemasons and members of the Liberal party and/or the Adelaide club.

I'm not saying this in any way to be critical of Freemasons and members of the Liberal party and the Adelaide club today, but merely to emphasise that to a Catholic boy of Frank's disposition he must have appeared to the judges to have been something of an upstart when he appeared in court defending those charged with serious criminal offences.

It's only after many many years of proving himself through fearless advocacy and defending persons accused of the most horrific of crimes in the criminal calendar that Frank earned the respect of the courts and the community. Like all genuine respect it was hard earned and at a considerable cost to him both financially and personally.

As you all know Frank Moran QC was a leader of the criminal bar, having been appointed a QC in 1970 and being one of, in my opinion, only 2 leaders, the other being Jack Elliott QC. Being a leader meant that it was not just the public but also the profession who acknowledged you as a leader of the Bar.

Frank's greatest skills were before a jury. Initially juries were all male and Frank was in his element talking about the war, cricket, football, drinks at the pub and in fact anything else other than the facts of his clients offending, just to get the jury onside so that they could identify his client with Frank as being a good mate and a good fellow.

When women were appointed to the jury Frank was just as good, he was able to deploy his Catholic heritage is a good Catholic boy to great effect, and the ladies loved him.

The first case I remember briefing Frank in was *R v Beresford*.[1] This was the first time a marijuana case reached the Court of Criminal Appeal.

One of the cases I was in with Frank, and there were several, was the case of *The Queen v Romeo & Gray*. Frank acted for Little Joe Romeo and I acted for Billy Gray. The case is reported on appeal,[2] when for her sins Marie Shaw was my junior and I acted for Little Joe Romeo.

For the trial at first instance we were in

QC with the common touch

By MICHELLE WEIDENHOFER

OBITUARY
FRANK MORAN
1921-1995

One of Australia's most respected and colorful criminal lawyers, Mr Frank Moran, QC, has died, aged 73.

A retired District Court judge and life member of the South Australian National Football League, Mr Moran was remembered yesterday for his quick wit and passion for the law, sport and his family.

Mr Moran, appointed a Queen's Counsel in 1970, was known as one of the country's great criminal lawyers. He was involved in some of the State's most sensational murder cases.

He became a judge of the District Court in December, 1983. At a ceremony to mark his appointment to the bench, he spoke of the importance of family life.

"If we could get back to good, healthy Christian and family life and principles, well I think the work of the (criminal) courts would be very much reduced," he said.

Mr Moran was a founding member of the Democratic Labor Party in SA in 1957.

He represented the West Torrens Football Club as a delegate to the SANFL for almost a decade.

From 1971-78 and during 1980, Mr Moran was chairman of league commissioners and, in 1979, an assistant league commissioner.

He also had a strong link to cricket, touring with the famed Services cricket team as scorer for the Victory Tests in 1945. Mr Moran was also a life member of Woodville District Cricket Club.

His son, Mr Brendan Moran, said yesterday the law was his father's great passion.

"He got a name for defending anybody. He was quite unique in terms of being a character of the law," he said.

"He was a man of great principles . . . he was not afraid to take a stand on an unpopular cause."

The South Australian Chief Justice, Mr John Doyle, said Mr Moran was known as a courageous and tenacious advocate.

"He was also one of those colorful characters who add life to the law. He'll be remembered with affection by those who worked with him and before whom he appeared as an advocate," Chief Justice Doyle said.

The District Court's Chief Judge, Mr Don Brebner, said Mr Moran "never lost the common touch".

"At the end of the day — whether in the courts, in the sporting sphere or with his family — he enjoyed nothing more than a beer and a yarn.

"He was a genuine and truly Australian character," Chief Judge Brebner said.

The SANFL general manager, Mr Leigh Whicker, described Mr Moran as a "great stalwart" of SA football.

"He had a very, very good wit and he was a man of great compassion," Mr Whicker said.

Mr Moran is survived by his widow Peggy, 12 children and 18 grandchildren. His funeral service will be held early next week.

Frank Moran, QC: involved in some of the State's most sensational murder cases.

> He was a man of great principles . . . he was not afraid to take a stand on an unpopular cause
>
> – Brendan Moran

An obituary of Frank Moran QC published in the Advertiser

the main District Criminal Court, which had originally been the main Magistrates Civil Court and which is now Supreme Court No. 6 with a jury in front of His Honour Chief Judge Neil Ligertwood who had been appointed the inaugural Chief Judge of the District Court.

To frank, His Honour Chief Judge Ligertwood was in many respects Guthrie Featherstone QC MP personified. It was obvious to me that he and Frank just didn't get on.

Frank made his attitude to His Honour Chief Judge Ligertwood clear by taking all the time in the world to stand up after His Honour had adjourned court for the day and while His Honour left the court.

If you can imagine as the days went on during this trial and tempers got more heated, Frank's ability to rise at the end of the day became more and more reduced until on one occasion he just sat there.

That seemed to have infuriated His Honour but at that point of the trial he didn't show it, particularly in front of the jury.

A day or two later Frank not only sat there but put his leg up on the bar table and at that point as His Honour was leaving he finally snapped and turned round and berated Frank in front of the jury for his behaviour. Eventually when the torrent of words had ceased and His Honour had asked him for an explanation for his behaviour, thinking there couldn't possibly be one, Frank looked at the jury said "It's me old war wound Your Honour, it's playing up again".

What could His Honour say, or for that matter do?

Of course the jury were completely mystified why a judge would suddenly turn on old digger like Frank who had done nothing but show courtesy, albeit tongue in cheek, to the judge.

Frank knew that getting the jury's attention, getting them focused on the one issue that might secure an acquittal for your client, was the best, and in many cases sometimes the only, strategy to win and that meant, when necessary, distracting the jury from your opponent's case. Sometimes it didn't work, but often it did.

As I've said Frank was unsurpassed before a jury. The only person that I can remember who could handle a jury as well as Frank, was Jack Elliott QC. But comparisons are odious and it enough to say that Frank was a true master of his trade when it came to juries.

Frank's greatest win in the High Court was undoubtedly in *R v Ireland*.[3] Ireland's case concerned another Frank, Frank Ireland and in the first trial Frank and his Junior Counsel, who happened to be my brother Jonathan, who was also Frank's instructing solicitor, were unlucky enough to cop Chamberlain J, then at the height of his powers.

In the first trial presided over by Chamberlain J, Ireland was convicted and sentenced to death for the murder of the licensee of the Exeter hotel in Rundle Street (the death penalty was however a formality since none were carried out).

Although Ireland was not an employee, he was however friends with the deceased licensee and helped her behind the bar and did other tasks from time to time and in particular (as it turned out) on the night of the murder.

Frank and my brother prosecuted an appeal to the Court of Criminal Appeal[4] presided over by Bray CJ, Zelling and Walters JJ on a number of grounds, 3 of which proved to be successful.

All 3 were based on the premise that evidence should have been excluded in the exercise of the judge's discretion. You, today can have no idea how hard it was to get evidence of police wrongdoing excluded when it didn't involve the police actually beating up your client.

Those grounds were:

Firstly that photographs of Ireland's hands were wrongly obtained; and

Secondly coupled with that he was wrongly subjected to a medical examination, and therefore the provisions of section 81 (2) of the *Police Offences Act* not having been complied with.

The third ground concerned the then common practice of police officers continuing to question suspects after they had said they did not want to answer any questions which usually resulted in the police officer putting a lot of damaging accusations to which the hapless defendant who, in Frank Ireland's case, kept on saying *"I decline to answer, I decline to answer, I decline to answer"*.

You can see how prejudicial that sort of evidence could be.

Frank's argument was, at the time novel, because he argued that the right against

self-incrimination applied to procedures such as examination of your hands and photographs of your hands in the same way as if the evidence had come out of your mouth and that although the privilege against self-incrimination could be abolished by statute, as it was, in the case of the *Police Offences Act* section 81(2) in relation to medical examinations and photographs, you still had to comply with that law, otherwise the privilege applied.

On appeal, Bray CJ and Zelling J held that the photographs should have been excluded and the medical examination similarly excluded. They also held that Chamberlain J should not have allowed the evidence of the questioning that proceeded past the point where the accused Ireland declined to answer questions, to have been put before the jury.

Having won the appeal, the Crown exercised their right of appeal to the High Court and so Tony Bishop had prosecuted the trial and the appeal at first instance, now joined by Brian Cox the Crown Solicitor went off to the High Court, as did Frank and my brother, for two days in Sydney in June 1970.

In the High Court, Frank's argument was much the same as his argument before the Full Court and apart from the issue of the illegality of the photos and the medical examination he also argued that the prejudicial effect of the evidence of questioning after the accused had declined to answer any further questions, outweighed any probative value.

The probative value of course was nil, because Ireland was merely exercising a right which the law gave him.

There was also in South Australia a precedent in the Full Court decision in the case of *The Queen v Evans*.[5] Evans was a career criminal known as "Baldy Evans" because he had no hair, a client of Peter Waye's and Peter had successfully argued previously that police questioning which went on after an accused had availed himself of the right not to answer question should be excluded, so there was authority and precedent for what Frank was arguing.

In the High Court[6] Chief Justice Barwick held that the breach of section 81 of the *Police Offences Act* resulted in unlawfully obtained evidence and that, as a consequence of the breach of the statute, the evidence should have been excluded in the exercise of the trial judge's discretion.

It wasn't so much the conclusion that has caused ripples down through the ages since then, but the way in which Chief Justice Barwick said it and the fact that this was the first time any judge had said anything like it. His famous words were, after describing and characterising evidence of relevant facts or things ascertained or procured by unlawful unfair acts

> *"Whenever such unlawfulness or unfairness appears, the judge has a discretion to reject the evidence.*
>
> *He must consider its exercise.*
>
> *In the exercise of it [the discretion], the competing public requirements must be considered and weighed against each other.*
>
> *On the one hand there is the public need to bring to conviction those who commit criminal offences.*
>
> *On the other hand there is the public interest in the protection of the individual from unlawful and unfair treatment.*
>
> *Convictions obtained by the aid of unlawful or unfair acts may be obtained at too high a price.*
>
> *Hence the judicial discretion."*

That had never been said before and was the complete opposite of what the English Courts were saying.

No sooner had the decision of the High Court been handed down then they listed Ireland's case again for a retrial and by August 1970, in front of Justice Mitchell, Ireland was again convicted and again appealed to the Court of Criminal Appeal which was again constituted by Bray CJ but this time with Hogarth and Wells JJ.[7]

The main ground of appeal concerned a police chart but unfortunately on this occasion the court was not prepared to uphold the appeal and Ireland duly served his sentence.

Ireland became one of **the** great cases decided by the High Court and although of course before Ireland there were cases like *Lee*[8] and *McDermott*[9], Ireland's case was really the first of the great trilogy of cases that dealt with the obligation of a court to reject evidence that was unlawfully or illegally or unfairly obtained.

R v Ireland in 1970[10]
Bunning v Cross in 1978[11]
Cleland in 1982[12]

These are the seminal cases that set the scene forever and still apply today.

As I have said these cases involved a rejection of the English Courts' view as expressed in the cases of *Kuruma*[13] and *Sang*[14], and laid the foundation for a case of I was involved in 1995 in the High Court, *Ridgway's* case.[15]

Let me conclude by paying tribute to Frank's bravery.

It takes a very brave man, or woman to stand up to the Judges on behalf of their clients, back in the days when Judges behaved (I am glad to say) often differently from how they behave today. No matter what the cost, (and the cost was considerable to Frank both professionally and personally), Frank never pulled a punch that he could fairly and properly make on behalf of his client just because he might cop some flak personally from the Supreme Court judges (in the Full Court) or one or other of them, sitting as a trial judge.

It has been a privilege to be able to talk about Frank. He was unique. B

Endnotes

1 *R v Beresford* (1972) 2 SASR 446.
2 *R v Romeo & Gray* [1982] 30 SASR 243.
3 *R v Ireland* [1970] SASR 416.
4 Ibid.
5 *R v Evans* [1962] SASR 303.
6 *R v Ireland* [1971] 126 CLR 321.
7 *R v Ireland* (No.2) [1971] SASR 6.
8 *R v Lee* [1950] HCA 25.
9 *McDermott v* R [1948] HCA 23.
10 *R v Ireland* [1970] HCA 21.
11 *Bunning v Cross* [1978] HCA 2.
12 *Cleland v* R [1982] HCA 67.
13 *Kuruma* v *The Queen* (1955) AC 197.
14 *R v Sang* [1979] UKHL 3.
15 *Ridgway v The Queen* [1995] HCA 66.

Supervision - a skill not to be underestimated or devalued

GRANT FEARY, DEPUTY DIRECTOR, LAW CLAIMS

Effective supervision has great benefits both for the supervisor and the person being supervised.

The supervision of other practitioners is an essential part of legal practice for many practitioners, even in small firms. Of course, newly admitted practitioners on restricted practising certificates must engage in two years (full-time equivalent) supervised practice before they are qualified for an unrestricted practising certificate. (Rule 3.1 of the Legal Practitioners Education and Admission Counsel (LPEAC) 2004.) The term "supervised practice" is defined in the LPEAC Rules as :

> *"practice as an employed practitioner controlled or managed by a legal practitioner entitled to practise as a principal during which supervised practice the practitioner is employed at the location where the principal conducts his or her practice."*

The particular content of the "control", "supervision" or how the "management" of the supervised practitioner is to be exercised is not specified.

Apart from the obvious interest the supervised practitioner has in their period of supervised practice being useful and rewarding, the supervising practitioner also has a vital interest in making sure their supervision is effective, after all, if a problem arises from conduct of the supervised practitioner it will invariably involve a claim against the supervising practitioner and their practice.

Supervision is also important even after the supervised practitioner has an unrestricted practising certificate. In many areas of practice it will be important to ensure that practitioners are supervised well after their first two years of full time practice.

Set out below are some tips for supervisors in making their supervision as effective as possible:

CONDUCT REGULAR SUPERVISION MEETINGS

Hold regular face to face meetings with your staff.

The frequency and structure of the meetings will depend on the practice area and the seniority of the employees as well as their work load. These meetings are not about a lack of trust – having these types of meetings does not mean that you don't trust your staff. These meetings are about maintaining control of your practice, complying with your professional obligations, adding value to the service provided to your clients as well as mentoring, training and giving valuable feedback to staff.

How to manage regular supervision meetings

- Set regular times – weekly, fortnightly or monthly.
- Make them a priority – don't cancel unless you absolutely have to.
- Be prepared – use reports and data from your practice management system to guide discussion.
- Aim to address each of the matters the employee has that you are responsible for – don't just address the matters the employee wants to address.
- Review any outstanding issues from the last meeting.
- Provide feedback on the work done – positive or constructive.
- Use the meetings as an assessment opportunity for development – for example assess if the employee is coping with the workload and pressure, whether new or different files should be given to them and what other training may be needed.

CONDUCT REGULAR FILE AUDITS

Check that processes and procedures such as sending out engagement letters and making file notes are being done. It reinforces the firm's commitment to and expectation of quality. It also allows you to pick up things you might not have found for example that an employee is not coping and not progressing a matter.

USE THE PRACTICE MANAGEMENT TOOLS YOU HAVE

Your practice management system should be able to provide you with items such as practitioner file lists, aged billing, WIP information and inactive file reports. These reports will help you oversee how your employees are managing their files. You can tell a lot about what is happening on a file if there is a lot of old WIP or unpaid bills or inactivity on files. These are often a sign a file or employee is in trouble. Bear in mind though that while this financial management information can be a good indication of how a matter is progressing, there is no substitute for actually talking to the practitioner at regular intervals.

MONITOR INGOING AND OUTGOING MAIL

Do you have a policy that only partners sign outgoing mail? Do you read all incoming hardcopy mail? This may be difficult to achieve, of course, and monitoring emails is even harder but it will be a good way of keeping your finger on the pulse of the work output of your practice. Some firms have a policy that partners still have to approve any significant emails, some require anything of substance be a PDF letter attachment to the email and some require the partner be copied into the email. Whichever policy you adopt ensure compliance by conducting regular audits.

Of course you should adapt your approach to fit the particular person you are supervising. Different strategies or approaches may be required for staff with different levels of experience or different personalities because, as noted above, even experienced lawyers may need some level of supervision.

There are obvious business and personal benefits in effectively supervising employees. It is important therefore for all supervising lawyers to give supervision the thought, the time and the priority it deserves. Even if it means that the supervising lawyer might be doing less direct legal work themselves, the benefit to the practice from effective supervision will be immense.

Lawyers doing things differently

PAUL GORDON & DANIELLE MACOLINO, YOUNG LAWYERS COMMITTEE

NewLaw seems to be the buzz word amongst the profession in recent times. Small firms breaking away from more established traditions has become a trend that cannot be ignored. But what motivates people to do things differently? The Young Lawyers Committee spoke to Catherine Evans of Kit Legal, Christos Tsonis of CXT Legal and Elias Farah of Commercial and Legal to learn more.

HOW LONG HAVE YOU BEEN PRACTICING?

Catherine Evans: Nearly 14 years.

Christos Tsonis: I was admitted in 2006. It's been 11 plus years of fun since then!

Elias Farah: Almost 15 years.

WHERE DID YOU GET YOUR START?

Catherine Evans: Thomson Geer (previously called Thomson Playford)

Christos Tsonis: I participated in work experience at one of Adelaide's then leading corporate law firms when I was in year 11 at School. I then did unpaid work experience for a QC during my university days. He made quite the impression on me and moved my admission (when I wrapped up my studies in 2006).

Elias Farah: I was booked for a summer clerkship at Thomsons in their Corporate team but had a go applying for a first year property lawyer role at Finlaysons. Something "clicked" on the day with Steve Tarca and (then) David Lim, and off I started.

WHEN DID YOU START YOUR NEW FIRM?

Christos Tsonis: We launched CXT Legal in March 2015. It's been a non-stop amazing ride since then! I was 9 about years post admission when we opened the doors.

Catherine Evans: We launched this year, when I was 13 and a half years PAE.

Elias Farah: I left Minter Ellison in December 2009 and started Commercial & Legal fresh on 1 January 2010. So I would have been almost eight years PAE

WHAT MADE YOU WANT TO GO OUT ON YOUR OWN?

Catherine Evans: I wanted to create an enterprise that had a positive impact on staff, other businesses we work with, our community and our environment. I wanted to pursue purpose over profit by trying to fix some of the issues in our industry both for lawyers and for clients. As a mum with two small children (but still equally ambitious for a meaningful career), I realised that the way many traditional law firms are structured and success is measured is simply not conducive to having a successful and meaningful career whilst still fulfilling a role as an active and involved parent. I didn't want to compromise either roles.

Christos Tsonis: I've always had my own ideas about everything in life – and that included operating a business. The easiest way to implement your own ideas is to do it your own terms.

Elias Farah: I wanted to play a significant front-line advisory role with my clients. I wanted to be involved and really understand their business and goals. I wanted to change the way my clients think of lawyers and to be front of mind for them. Incredibly difficult to do this in a large Firm which generally operate by way of departmentalisation as opposed to a true team culture.

WHAT ARE THE MAIN AREAS OF PRACTICE THAT YOU FOCUS ON?

Catherine Evans: Helping business in the financial services industry.

Christos Tsonis: Mid-market mergers and acquisitions, capital raisings and financial services laws. We also have a very strong commercial advisory law practice.

Elias Farah: Put simply - property and projects, including all related areas. We do the usual general property advisory, commercial leasing, due diligence and sales/acquisitions. But we also have a strong specialty in mixed-use developments, apartment projects, hotels, construction and high-volume conveyancing.

HOW DO YOU DO THINGS DIFFERENTLY?

Catherine Evans: Most clients are on an annual subscription (some fixed fee work), no billable hours, no time sheets, flexible work environment (no fixed hours, unlimited annual leave and sick leave), open source for the best lawyer to do the job, purpose before profit.

Christos Tsonis: We advise on bespoke "hard stuff" at fixed pricing. It's that simple. We have engineered our internal and external systems so clients get a scope and fixed price for the service we provide them. On the back of this model, our clients are our public relations advocates; we can only thank them for advocating for us online, in boardrooms and over lunches!

Elias Farah: We make an active effort to understand, care and lead our clients and their projects. We build a true working relationship and value-add wherever possible. It is extremely rewarding to each member of our team when you are able and encouraged to work this way.

DO YOU HAVE ANY COMMENTS ON HOW THE PROFESSION IS CHANGING, AND WHERE IT IS GOING IN THE FUTURE?

Catherine Evans: Less full service firms and more specialist firms co-operating with each other to deliver the best services to clients. Automation will replace much of the run of the mill low value work performed by lawyers. Younger lawyers are not motivated by one day becoming an equity partner and earning lots of money. They want to feel they are contributing to something bigger and positively impacting society.

Christos Tsonis: The future of legal services is premium specialised boutique operators collaborating to deliver a fixed priced outcome product. Clients don't want justification on time spent; they want a clear path to their outcome and a clear cost that is understood and relative to the services provided.

Elias Farah: Too many thoughts that would fit in this article, but here are some. Many of the traditional firms will struggle to keep up with changing client expectations and sources of work, and this is happening now. Many of the larger firms will struggle to retain quality talent, again this is happening now. Many clients will shift to working with specialty firms or sourcing contract specialist lawyers to work in-house on particular projects (very big interstate and overseas). Many firms will also switch to lower cost models by use of smart IT systems and/or swapping a traditional team of lawyers for paralegals that are overseen by a lawyer. SA will lose market share to interstate competitors, as we will fail to adapt quick enough and will be out-smarted and, oddly enough, out-priced. Not only will this make it harder for graduate lawyers to find employment, the quality of their training and experience will not be the same. Combined with all this will be a shift in the way firms traditionally obtain their work, which no doubt will lead to significantly more public marketing, and quite possibly further negative impact on the reputation and prestige of being a lawyer. Sounds very negative, it's not all bad if we are aware of these challenges and start to deal with them now. I would also say it is imperative that each lawyer consider and develop their own personal speciality within the law and their own personal profile within the market, this will help to insulate you against some of the above changes.


Catherine Evans


Christos Tsonis


Elias Farah

I would also say it is imperative that each lawyer consider and develop their own personal speciality within the law and their own personal profile within the market, this will help to insulate you against some of the above changes.

Profession welcomes new practitioners

ERICA PANAGAKOS & MELANIE TILMOUTH, CO-CHAIRS, YOUNG LAWYERS' COMMITTEE

Welcome to the Profession Members of the Young Lawyers' Committee, Law Society President, Tony Rossi, and other members of the profession congregated at the Law Society on 19 July to welcome newly admitted practitioners to the profession.

"Welcome to the Profession" events are held bi-annually and provide an opportunity for the new admittees to meet and network with members of the profession, and for members of the profession to congratulate the newly admitted practitioners on their recent achievements. The evening also provides an opportunity for new admittees to hear about opportunities and support services available to them through the Society, including the Young Lawyers' Support Group.

The event was very well attended by members of the judiciary including the Chief Justice of the Supreme Court, and members of the Young Lawyers Committee, the Resilience and Wellbeing Committee and the Young Lawyers Support Group.

The Committee continues to encourage senior members of the profession to attend the 'Welcome to the Profession' events which provide un-paralleled opportunities for new admittees and which enable members of the profession to show their support as the new admittees embark upon their careers.

The Young Lawyers' Committee again extends its thanks to the Law Society and to the members of the profession and judiciary who were able to attend.

Family Law Case Notes

ROB GLADE-WRIGHT, THE FAMILY LAW BOOK

PROPERTY - TREATMENT OF PROPERTY ACQUIRED AFTER SEPARATION IS DISCRETIONARY

In *Calvin & McTier* [2017] FamCAFC 125 (12 July, 2017) the Full Court (Bryant CJ, Ryan & Aldridge JJ) dismissed with costs the husband's appeal against a property order of the Magistrates Court of WA. Magistrate Calverley included among the parties' divisible property an inheritance received by the husband four years after separation (of which $430,686 was unspent). He had also made initial contributions to the $1.3m pool, being real estate to the value of $580,000,a car, shares and superannuation of unstated value ([10]-[11]). The parties were married for eight years and had one child who spent equal time with them.

Contributions (which were found to have been otherwise equal) were assessed as 75:25 in favour of the husband, a 10% adjustment being made for the wife under s 75(2).

The Full Court said ([24]) that "both the relevant definition of 'matrimonial cause' and s 79 refer to all of the property held by the parties at the time of the hearing before the court" and that "[a]ll of the property then held by both of the parties or either of them can therefore be the subject of orders under s 79, regardless of when particular assets were acquired".

The husband's counsel ([38]) argued that "where there is after-acquired property and the owner of that property objects to its inclusion … there must be a separate … consideration as to whether there is a principled reason for its inclusion and division". The Court rejected that submission as being ([44]) "contrary to the extensive weight of authority", saying (at [51]-[52]):

> *"In short … the court retains a discretion as to how to approach the treatment of after-acquired property. The trial magistrate could have included the inheritance amongst the property to be divided or dealt with it separately. The trial magistrate was not obliged to follow one course or the other. (…) It is worth repeating that it was not submitted that any error said to have arisen from the inclusion of the inheritance for division led to a result which, after consideration of the contributions and the s 75(2) factors, was inappropriate. Rather, the submissions were directed to the process."*

CHILDREN - FATHER WITHHELD CHILDREN - COURT'S REFUSAL TO MAKE RECOVERY ORDER SET ASIDE - REFUSAL OF URGENT LISTING UNJUSTIFIED

In *Renald (No. 2)* [2017] FamCAFC 133 (14 July, 2017) a consent interim order provided that the parties' seven children live with the mother and spend long weekends and some holidays with the father (who lived in Town H, a two hour drive away). While not pursuant to the order, the mother agreed to the father having the children B, V and A from 8 to 29 January, 2017. At the end of that time the father returned A but withheld B and V, saying that they did not wish to return to the mother. The Magistrates Court of WA did not dismiss her application but refused the mother both an urgent listing "notwithstanding [that] the school year was about to commence" ([2]) and a recovery order *(inter alia)* as the Court did not wish to "chop and change" arrangements prior to the hearing ([14]).

On appeal Thackray J observed [10] that the mother would have been entitled to seek a review of the refusal to grant an urgent listing, saying ([17]-[19]) that there was substance in her argument that in not dismissing the mother's application the magistrate failed to determine it and that that error was compounded by the delay in listing (which, it was argued, was "not justified in view of the nature of the application and the evidence … including that of the single expert").

Thackray J said (at [30]) that "there was ample evidence in the reports to have persuaded His Honour that the exercise of some appropriate … encouragement by the father would have ensured the children's return to the mother" and ([34]) that "his failure to consider the effect on the other children of seeing the father flouting an order with impunity, constituted error" (at [71] citing *Bondelmonte* [2017] HCA 8 at [39]).

While allowing the child B due to his age (born 2002) to stay if he wished to do so, Thackray J said ([82]) that "an order requiring V to be returned, even with a trial looming, may send a message to the legal profession and their clients that the court is willing to enforce its orders, and that parents should not take matters into their own hands where there is no evidence of risk".

CHILDREN - MOTHER WINS APPEAL AGAINST DISMISSAL OF HER APPLICATION TO VARY PARENTING ORDER TO ALLOW HER TO RELOCATE

In *Searson* [2017] FamCAFC 119 (5 July, 2017) the parties consented during proceedings to a final order in 2015 that the children live with the mother and spend five nights a fortnight and holidays with the father. In 2016 the mother applied for variation of the order so as to allow her to relocate from Melbourne to Queensland and an order for another family report. The father opposed both applications. At a preliminary hearing Judge Harland dismissed the applications, holding that the mother had not satisfied the rule in *Rice & Asplund,* "raising something now which she ought to have raised previously" ([41]). The mother appealed.

Murphy J (with whom Kent and

Loughnan JJ agreed) referred (at [11]) to Warnick J's statement in *SPS & PLS* [2008] FamCAFC 16 that "[w]here an application is dismissed at a preliminary stage, it is not dismissed for some technical reason, such as the failure of a party to appear or some lack of compliance with form and procedure but rather because, assuming the evidence of the applicant is accepted, there is an insufficient change of circumstance shown to justify embarking on a hearing".

The Court said [23] that it was "abundantly plain from the mother's affidavit material that no part of the … matters to which she deposed prior to the making of the consent orders involved living permanently with her now partner or postulated a significant future role for her now partner in the children's lives or involved her moving to south east Queensland" and ([25]) that "[n]owhere in … [the earlier] family report [was] any factual foundation offered which might provide the reason for providing any opinion about relocation".

The mother's appeal was upheld and the case referred to another judge for orders and directions to prepare the case for trial.

PROPERTY - HUSBAND WINS APPEAL AGAINST S 79A ORDER REQUIRING HIM TO PAY WIFE A FURTHER $300,000

In *Pendleton* [2017] FamCAFC 108 (20 June, 2017) the Full Court (May, Thackray & Cronin JJ) allowed the husband's appeal against an order made by Judge Coates due to a miscarriage of justice by suppression of evidence under s 79A(1)(a) which varied a final property order made by consent by requiring the husband to pay the wife a further $300,000. The parties had agreed their assets at $622,000 but redundancy and other payments made to the husband before and after the order totalling $91,000 were not disclosed. Thackray & Cronin JJ (with whom May J agreed) said (from [45]):

> *"In submissions … counsel for the wife accepted that if the … orders had been set aside, rather than varied, his Honour would have been required to 'start afresh' and to consider … s 75(2) and 79(4) because the Act … required him to do so. It was argued, however, that there was no such requirement when a court is merely 'varying' orders pursuant to the power conferred by s 79A." (…)*

The Court (at [50]) applied (with emphasis) the following statement by the Full Court in *Simpson & Hamlin* [1984] FamCA 62 at [39], a case where s 79A(1)(d) was engaged:

> *"The husband also complained that in making the variation, his Honour did not consider the present financial circumstances of the parties. Indeed, had his Honour set the consent order aside and proceeded to make a fresh order under sec. 79, he would have been obliged to consider all factors which must be considered under sec. 79(4) and, so far as they are relevant, under sec. 75(2). As Nygh J. explained in Parker and Parker … [1983] FamCA 54 … the choice between setting aside and variation depends on the degree of intervention to be made.* ***Where, as here, that intervention consists of a perceived realignment of the distribution of property of the parties from one-third to two-thirds respectively to an approximately equal division, it is in our view a matter which goes beyond mere variation and would require the formal setting aside of the order and the making of a new order with all the consequences of that under sec. 79.*** *Only thus can the Court ensure that the new order will be just and equitable between the parties."*

The appeal was allowed and the case remitted for re-hearing. **B**

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3 and 4 November 2017
9.00am – 5.00pm 8 Units *

The Royal Commission into Aboriginal Deaths in Custody
8 November 2017
5.30pm – 7.00pm 1.5 Units *

Ethics in Pro Bono Legal Practice
9 November 2017
5.30pm – 7.00pm 1.5 Units *

Succession Law Conference
10 November 2017
9.00am – 5.00pm 6 Units *

PPSA Update (Family Law)
15 November 2017
5.30pm – 7.00pm 1.5 Units *

Do You See What We See?
19 November 2017
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4 August 2017 – 3 September 2017

A MONTHLY REVIEW OF ACTS, APPOINTMENTS, REGULATIONS AND RULES COMPILED BY MELLOR OLSSON'S ELIZABETH OLSSON.

Acts Proclaimed

Retirement Villages Act 2016 (No 50 of 2016)
Commencement: 1 January 2018
Gazetted: 8 August 2017, No. 53 of 2017

Electronic Transactions (Legal Proceedings) Amendment Act 2017 (No 9 of 2017)
Commencement: 1 September 2017
Gazetted: 29 August 2017, No. 57 of 2017

Police Complaints and Discipline Act 2016 (No 60 of 2016)
Commencement remaining provisions: 4 September 2017
Gazetted: 29 August 2017, No. 57 of 2017

Statutes Amendment and Repeal (Simplify) Act 2017 (No 7 of 2017)
Commencement Part 8; ss 76(2), 83: 1 September 2017, immediately after commencement of *Electronic Transactions (Legal Proceedings) Amendment Act* 2017:
Gazetted: 29 August 2017, No. 57 of 2017

Acts Assented To

Statutes Amendment (Heavy Vehicle Registration Fees) Act 2017, No. 28 of 2017
(amends *Highways Act* 1926; and *Motor Vehicles Act* 1959)
Gazetted: 15 August 2017, No. 54 of 2017

Parliament (Joint Services) (Staffing) Amendment Act 2017, No. 29 of 2017
Gazetted: 15 August 2017, No. 54 of 2017

Land and Business (Sale and Conveyancing) (Beneficial Interest) Amendment Act 2017, No. 30 of 2017
Gazetted: 15 August 2017, No. 54 of 2017

Electoral (Legislative Council Voting and Other Measures) Amendment Act 2017, No. 31 of 2017
Gazetted: 22 August 2017, No. 56 of 2017

Local Government (Boundary Adjustment) Amendment Act 2017, No. 32 of 2017
(amends *Local Government Act* 1999 and *South Australian Local Government Grants Commission Act* 1992)
Gazetted: 22 August 2017, No. 56 of 2017

Local Government (Mobile Food Vendors) Amendment Act 2017, No. 33 of 2017
Gazetted: 22 August 2017, No. 56 of 2017

Bail (Miscellaneous) Amendment Act 2017, No. 34 of 2017
Gazetted: 22 August 2017, No. 56 of 2017

Statutes Amendment (National Policing Information Systems and Services) Act 2017, No. 35 of 2017
(amends *Children's Protection Act* 1993; *Criminal Law (Forensic Procedures) Act* 2007; *Disability Services Act* 1993; *Spent Convictions Act* 2009)
Gazetted: 22 August 2017, No. 56 of 2017

Summary Procedure (Service) Amendment Act 2017, No. 36 of 2017
(amends *Summary Procedure Act* 1921 and *Electronic Communications Act* 2000)
Gazetted: 22 August 2017, No. 56 of 2017

Appointments

Resignations
South Australian Civil and Administrative Tribunal
effective from 29 August 2017
Deputy President
Judge Susanne Cole
Gazetted: 29 August 2017, No. 57 of 2017

Rules

Magistrates Court Rules 1992
Amendment 62
Gazetted: 29 August 2017, No. 57 of 2017

REGULATIONS PROMULGATED (4 AUGUST 2017 - 3 SEPTEMBER 2017)

REGULATION NAME	REGULATION NO.	DATE GAZETTED
Animal Welfare Act 1985	215 of 2017	8 August 2017, Gazette No. 53 of 2017
Motor Vehicles Act 1959	216 of 2017	8 August 2017, Gazette No. 53 of 2017
Second-hand Vehicle Dealers Act 1995	217 of 2017	8 August 2017, Gazette No. 53 of 2017
Land Agents Act 1994	218 of 2017	8 August 2017, Gazette No. 53 of 2017
Aquaculture Act 2001	219 of 2017	8 August 2017, Gazette No. 53 of 2017
Fisheries Management Act 2007	220 of 2017	8 August 2017, Gazette No. 53 of 2017
Fisheries Management Act 2007	221 of 2017	8 August 2017, Gazette No. 53 of 2017
Fisheries Management Act 2007	222 of 2017	8 August 2017, Gazette No. 53 of 2017
Fisheries Management Act 2007	223 of 2017	8 August 2017, Gazette No. 53 of 2017
Fisheries Management Act 2007	224 of 2017	8 August 2017, Gazette No. 53 of 2017
Fisheries Management Act 2007	225 of 2017	8 August 2017, Gazette No. 53 of 2017
Fisheries Management Act 2007	226 of 2017	8 August 2017, Gazette No. 53 of 2017
Fisheries Management Act 2007	227 of 2017	8 August 2017, Gazette No. 53 of 2017
Fisheries Management Act 2007	228 of 2017	8 August 2017, Gazette No. 53 of 2017
Fisheries Management Act 2007	229 of 2017	8 August 2017, Gazette No. 53 of 2017
Fisheries Management Act 2007	230 of 2017	8 August 2017, Gazette No. 53 of 2017
Fisheries Management Act 2007	231 of 2017	8 August 2017, Gazette No. 53 of 2017
Fisheries Management Act 2007	232 of 2017	8 August 2017, Gazette No. 53 of 2017
Fisheries Management Act 2007	233 of 2017	8 August 2017, Gazette No. 53 of 2017
Fisheries Management Act 2007	234 of 2017	8 August 2017, Gazette No. 53 of 2017
Fisheries Management Act 2007	235 of 2017	8 August 2017, Gazette No. 53 of 2017
Fisheries Management Act 2007	236 of 2017	8 August 2017, Gazette No. 53 of 2017

REGULATION NAME	REG NO.	DATE GAZETTED
Primary Industry Funding Schemes Act 1998	237 of 2017	8 August 2017, Gazette No. 53 of 2017
Forestry Act 1950	238 of 2017	8 August 2017, Gazette No. 53 of 2017
Fire and Emergency Services Act 2005	239 of 2017	8 August 2017, Gazette No. 53 of 2017
Roads (Opening and Closing) Act 1991	240 of 2017	8 August 2017, Gazette No. 53 of 2017
Air Transport (Route Licensing—Passenger Services) Act 2002	241 of 2017	8 August 2017, Gazette No. 53 of 2017
Motor Vehicles Act 1959	242 of 2017	8 August 2017, Gazette No. 53 of 2017
Police Superannuation Act 1990	243 of 2017	8 August 2017, Gazette No. 53 of 2017
Superannuation Act 1988	244 of 2017	8 August 2017, Gazette No. 53 of 2017
Retirement Villages Act 2016	245 of 2017	8 August 2017, Gazette No. 53 of 2017
Retirement Villages Act 2016	246 of 2017	8 August 2017, Gazette No. 53 of 2017
Historic Shipwrecks Act 1981	247 of 2017	15 August 2017, Gazette No. 54 of 2017
Subordinate Legislation Act 1978	248 of 2017	15 August 2017, Gazette No. 54 of 2017
Development Act 1993	249 of 2017	15 August 2017, Gazette No. 54 of 2017
Art Gallery Act 1939	250 of 2017	15 August 2017, Gazette No. 54 of 2017
Controlled Substances Act 1984	251 of 2017	15 August 2017, Gazette No. 54 of 2017
Controlled Substances Act 1984	252 of 2017	15 August 2017, Gazette No. 54 of 2017
Freedom of Information Act 1991	253 of 2017	15 August 2017, Gazette No. 54 of 2017
Legislation Revision and Publication Act 2002	254 of 2017	15 August 2017, Gazette No. 54 of 2017
Mining Act 1971	255 of 2017	22 August 2017, Gazette No. 55 of 2017
Juries Act 1927	256 of 2017	22 August 2017, Gazette No. 55 of 2017
Subordinate Legislation Act 1978	257 of 2017	22 August 2017, Gazette No. 55 of 2017
Dangerous Substances Act 1979	258 of 2017	22 August 2017, Gazette No. 55 of 2017
Dangerous Substances Act 1979	259 of 2017	22 August 2017, Gazette No. 55 of 2017
River Murray Act 2003	260 of 2017	22 August 2017, Gazette No. 55 of 2017
Police Complaints and Discipline Act 2016	261 of 2017	29 August 2017, Gazette No. 57 of 2017
Police Act 1998	262 of 2017	29 August 2017, Gazette No. 57 of 2017
Food Act 2001	263 of 2017	29 August 2017, Gazette No. 57 of 2017
Long Service Leave Act 1987	264 of 2017	29 August 2017, Gazette No. 57 of 2017
Electronic Transactions Act 2000	265 of 2017	29 August 2017, Gazette No. 57 of 2017
National Electricity (South Australia) Act 1996	266 of 2017	29 August 2017, Gazette No. 57 of 2017
National Gas (South Australia) Act 2008	267 of 2017	29 August 2017, Gazette No. 57 of 2017
National Energy Retail Law (South Australia) Act 2011	268 of 2017	29 August 2017, Gazette No. 57 of 2017

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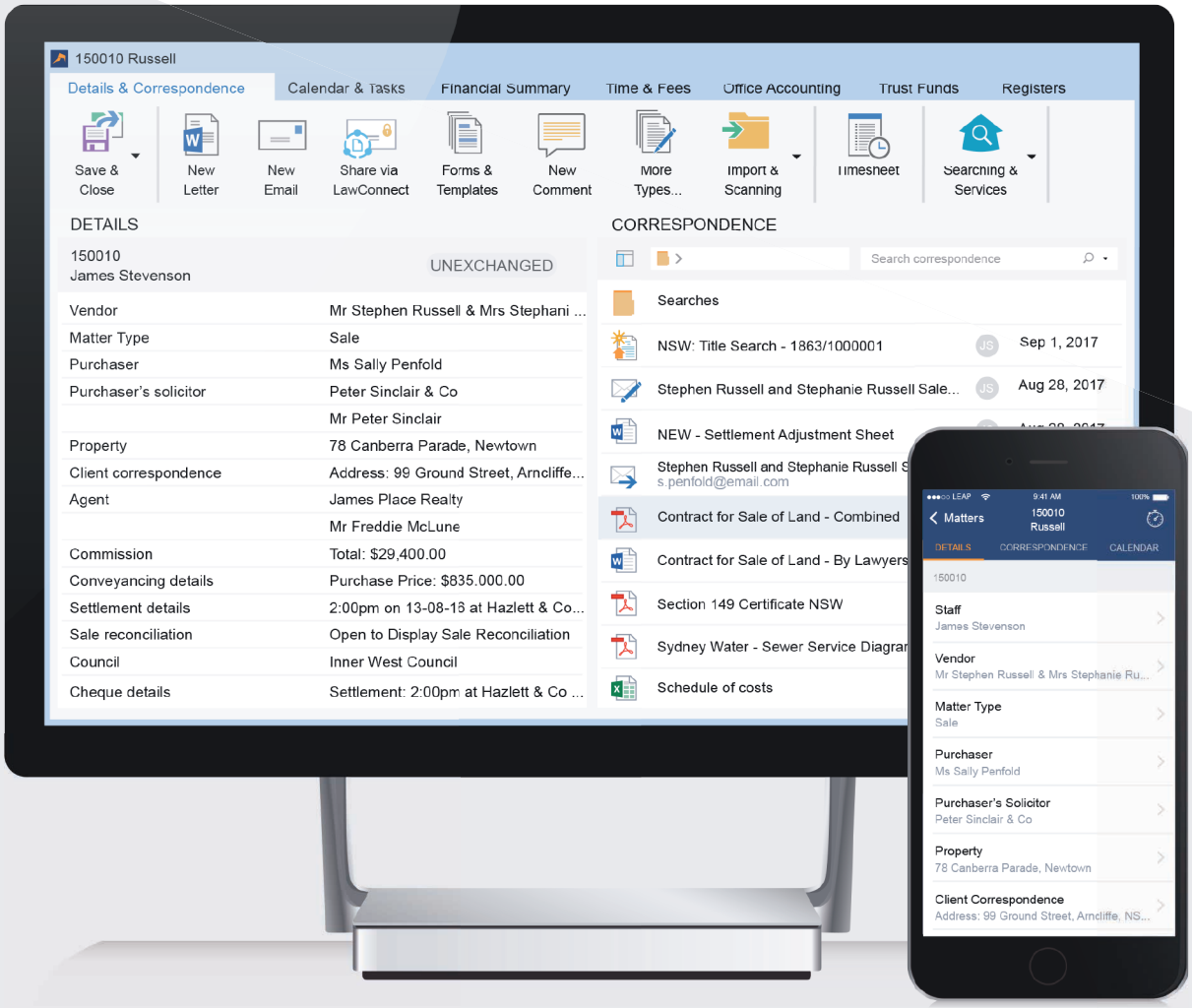

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