

Law Council pursues fees issue with feds

The President of the Law Council of Australia, David Miles, has again written to the Attorney-General over the imposition of fees in the Family and Federal Courts and the AAT.

Mr Miles said the Attorney, Mr Duffy, made it clear that the Federal Government intended to raise revenue from users of the courts.

"The Law Council submits that this is a fundamentally flawed approach which ignores the right of all citizens to have access on as nearly equal a basis as possible to courts provided by the government," Mr Miles said.

"Ability to pay for use of the justice system is irrelevant: it is the responsibility of the Government to provide a justice system funded from general revenue for all citizens who may need to use that system."

Property settlements concern banks

Dear Ed,

We have been altered to several recent instances where requests have been made for banks to accept other than bank cheques or cash at settlements for sale of properties.

The members banks of ABA NT accept that in isolated instances special arrangements may have been made by individual banks in the past but now reaffirm that such exceptions will no longer be made in any circumstances.

This Association requests that you confirm to all members of the Law Society that banks will only accept bank cheques (or cash) at settlements. Your co-operation in this matter is appreciated.

NEIL JONES

Chairman

Australian Bankers' Association

Supreme Court Notes

by Cameron Ford, Barrister at Law

DAMAGES - comparable verdicts - use of in criminal injuries compensation.

Rigby v Solicitor for the Northern Territory (Angel J) 3/10/91

Reservation of question of law: "Whether a magistrate in assessing the amount of compensation to be specified in respect of s9 of the *Crimes Compensation Act* may make the decision with the aid of available verdicts put to her or him by counsel?"

Answer: yes, to the same limited extent as in civil personal injury claims, ie not as a precedent but to address what is customary and reasonable.

Discussion of Planet Fisheries Pty Ltd v La Rosa (1968) 119 CLR 118.

Counsel: R. Allen, Legal Aid Commission, applicant; J Stirk, Solicitor for the Northern Territory.

SENTENCING - Juvenile Court - natural justice on plea

G v Geoffrey Bourne (Angel J) 4/10/91

Juvenile pleaded guilty to counts of unlawful entry with intent to steal and stealing. On the charge relating to stealing two firearms, he was sentenced to six months with hard labour, suspended on a 12 month good behaviour bond and \$500 recognisance. On appeal against severity of the sentence, held: the sentence was manifestly excessive. There is a fundamental difference between the Juvenile Court and an adult court. In the Juvenile Court, the dominant thrust is to care and reform rather than to punish. Further, in forming a view on facts contrary to those advanced on the plea and not informing counsel for the defendant of that view, the magistrate denied the defendant natural justice.

The defendant was effectively precluded from calling evidence or mak-

ing submissions contrary to the summary finding because he did not know of it.

If a judge or magistrate is minded to draw inferences adverse to a party, the appropriate course is to indicate to counsel what is provisionally in her or his mind, and to offer an opportunity to call the client. Sentence of two years and \$500 bond substituted.

Counsel: J Blokland instructed by Withnall Cavanagh, appellant; P Murphy instructed by the Director of Public Prosecutions, respondent.

SENTENCING - Misuse of Drugs Act - statutory interpretation - mischief rule - second reading speech

Maynard v O'Brien (Angel J) 4.10.91

Appellant convicted of cultivation of prohibited plant (cannabis) in a trafficable quantity (18 plants?). Sentenced to 28 days imprisonment. On appeal against the sentence, held: under the *Misuse of Drugs Act*, imprisonment is the prima facie rule, reversing the normal rule. Regard may be had to the second reading speech where there is an ambiguity in an Act not resolved by a literal interpretation.

s37(2) is the maximum sentence to bear in mind in determining whether to deal with an offence summarily or not; it is not the maximum penalty to impose in the exercise of the summary jurisdiction.

"Particular circumstances" in the Act justifying a non-custodial sentence means circumstances sufficiently noteworthy or out of the ordinary relative to the conduct of the offender. They will be the exception rather than the rule. Here there were particular circumstances.

Sentence of \$500 and 18 month/\$500 bond substituted.

Counsel: R Coates, Legal Aid Commission, appellant; J Adams, Director of Public Prosecutions, respondent.