

# Legislative contraptions

Dear Ed,

*Interest in the Local Court* in the September 1992 issue raises the question of alteration of the laws of evidence by rules of court. Tucked away on the back page, [Cameron] Ford says:

"It was necessary to elevate [the Supreme Court Rules] since the rules relating to delivery of experts' and medical reports arguable (sic) altered the substantive law of evidence."

He goes on to say that I have "tacitly accepted" that Local Court Rule 19.01(3) is ultra vires.

I do not wish in these pages to discuss Local Court Rule 19.01(3), if only because I do not recall the occa-

sion of my tacit acceptance.

I would, however, refer to the status of the Work Health Rules about medical reports.

Rule 23 may suffer the same defect and it may be necessary to enshrine its provisions in a statute.

I recently had to consider the rule in *Smith v D & W Livestock Transport* (3/9/92).

The ultra vires point was not taken, and I indicated that had I not ruled that a particular document was not shown to be a medical report I should have felt bound by Rule 23(14) to give full weight to findings that I did not feel deserved weight.

I suppose the wider significance or

the memory (or both) of my tacit acceptance had left me.

I suggest that the obvious solution is the well known difficult one. All these provisions which change the substantive law must be taken out of rules and enacted by Parliament, leaving only procedural matters in the rules.

That would leave the making of procedural rules where they belong, with the courts, and save us from yet another legislative contraption - there is too much of Heath Robinson in it to call it a device - like the Supreme Court (Rules of Procedure) Act.

**ALASDAIR MCGREGOR,**  
**Stipendiary Magistrate**

## Estates & UK assets

Dear Ed,

We are a firm of solicitors practising in the city of London.

One of the areas that we have identified as causing difficulties for those unfamiliar with the English legal system is the realising of assets in the UK when a person dies domiciled outside the UK but with assets there.

Although the local lawyers will doubtlessly deal efficiently and quickly with the "home-based" parts of the estate, there is often some confusion

as to the best method of obtaining the release of those located in the UK.

In order to assist non-UK lawyers, we have set up a service which aims to realise or transfer assets to the beneficiaries economically and quickly [and the writer included a brochure published by the firm. Anyone interested should contact Walker Martineau, 64 Queen Street, London EC4R 1AD, fax 071-2362525].

**WALKER MARTINEAU**

## Aust-Italo association

Dear Ed,

The first Annual General Meeting of the Australian Italian Lawyers Association was held in Melbourne in July this year.

At the meeting, a constitution was adopted setting up a body structured as a National Executive with state and territory chapters.

The Association has been established with a view to involving not only lawyers of Italo-Australian origin, but those who have contact or affiliation with the Italo-Australian community.

We have associate membership for students and people in fields related to law.

The aims of the Association are primarily to provide links with those having an interest in the law of Australia and Italy and to provide a network of contacts in Australia and Europe among lawyers, academics, business people, and students.

Further information is available from me on telephone (02) 2676182.

**NICK PAPALLO**  
**President.**

## Fee rise for evaluation committees

Dear Ed,

You may recall that the Department agreed at the end of 1991 to review the fee payable to members of the legal profession who assist this Department and certain other agencies by sitting on committees to evaluate the performance of legal staff.

The Remuneration Tribunal recently adjusted the daily sitting fees for part-time Deputy Presidents of the AAT.

As the amount payable to members

of those Evaluation Committees had been based on the rates set by the Tribunal, I would propose that those rates now be adjusted.

This would result in an increase from \$400 to \$450 per day from 1 July this year.

**DALE BOUCHER**  
**General Manager,**  
**Practice Development**  
**Attorney-General's Dept**