

COURT LIBRARY NOTES

NT LEGISLATION

Legislative changes in September 2002, notified in the *NT Government Gazette*

New Regulations

Coomalie (Dog Management) By-Laws (11.9.02)
33/2002 Veterinarians Regulations (11.9.02)
35/2002 Legal Practitioners Regulations (1.10.02)

RECENT ARTICLES

Aborigines, Aust - criminal law

Douglas, Heather - Justice Kriewaldt, Aboriginal identity and the criminal law, *Criminal Law Journal*, Vol 26(4) 2002 pp: 204-222

Aborigines, Aust - land rights

Henwood, Neville - Seabed claims under the Aboriginal Land Rights (NT) Act 1976 - Risk v Northern Territory, *Australian Mining and Petroleum Law Journal*, Vol 21(2) 2002 pp: 185-186

Appellate system

McCormack, Peter - Second thoughts - Supreme Court citation of dissents and separate concurrences 1949-1996, *Canadian Bar Review*, Vol 81(2) 2002 pp: 369-430

Nobles, Richard - The right to appeal and workable systems of justice, *Modern Law Review*, Vol 65(5) 2002 pp: 676-701

Arbitration

Archibald, Ian - Drafting the midnight clause, *Law Society Journal*, Vol 40(8) 2002 pp: 72-74

Bail

Nyman, Trevor - Repeat offenders - new bail law will fuel growth in goal, *Law Society Journal*, Vol 40(8) 2002 pp: 50-52

Commercial law

Berne, Brenden - Business rules in Asia, *Law Institute Journal*, Vol 76(9) 2002 pp: 34-37

Consumer law

Macdonald, Elizabeth - Scope and fairness of the Unfair Terms in Consumer Contracts Regulations - Director General of Fair Trading v First National Bank, *Modern Law Review*, Vol 65(5) 2002 pp: 763-773

Dean, Meryll - Defining unfair terms in consumer contracts - Crystal ball gazing? Director General of Fair Trading v First National Bank, *Modern Law Review*, Vol 65(5) 2002 pp: 773-781

Contracts law

Macdonald, Elizabeth - Scope and fairness of the Unfair Terms in Consumer Contracts Regulations - Director General of Fair Trading v First National Bank, *Modern Law Review*, Vol 65(5) 2002 pp: 763-773

Dean, Meryll - Defining unfair terms in consumer contracts - Crystal ball gazing? Director General of Fair Trading v First National Bank, *Modern Law Review*, Vol 65(5) 2002 pp: 773-781

Archibald, Ian - Drafting the midnight clause, *Law Society Journal*, Vol 40(8) 2002 pp: 72-74

Corporate manslaughter

Lieberman, Jonathan - Corporations that kill - liability of tobacco manufacturers, *Criminal Law Journal*, Vol 26(4) 2002 pp: 223-236

Corporations law

Lieberman, Jonathan - Corporations that kill - liability of tobacco manufacturers, *Criminal Law Journal*, Vol 26(4) 2002 pp: 223-236

Courts

Willhelm, Ernst - Are our courts truly open? *Public Law Review*, Vol 13(3) 2002 pp: 191-204

Criminal law

Nyman, Trevor - Repeat offenders - new bail law will fuel growth in goal, *Law Society Journal*, Vol 40(8) 2002 pp: 50-52

Lusty, David - Anonymous accusers - an historical and comparative analysis of secret witnesses in criminal trials, *Sydney Law Review*, Vol 24(3) 2002 pp: 361-426

Defacto relationships

Karsteadt, Anthony - The significance of financial and non-financial contributions in claims arising out of de facto relationships, *Brief*, Vol 29(8) 2002 pp: 25-31

Defamation

Collins, Craig - The sting - meeting the libel, *Law Institute Journal*, Vol 76(8) 2002 pp: 58-61

Driving offences

Walsh-Buckley, Warwick J - New drink driving defences, *Law Institute Journal*, Vol 76(8) 2002 pp: 73-76

Employment law

Pittard, Marilyn - Unfair dismissal laws - the problem of applications to small businesses, *Australian Journal of Labour Law*, Vol 15(2) 2002 pp: 154-169

Private lives, *Law Institute Journal*, Vol 76(8) 2002 pp: 49

Executors

Box, Alan - The solicitor-executor and remuneration clauses, *Law Institute Journal*, Vol 76(8) 2002 pp: 77-79

Expert evidence

Benjamin, Robert - Determining the validity of an expert's conclusion, *Law Society Journal*, Vol 40(8) 2002 pp: 70-71

Franchising

Zumbo, Frank - Trade practices spotlight falls on the franchising sector, *Law Society Journal*, Vol 40(8) 2002 pp: 63-65

Fraud

Purcell, Simon - Defrauding the great Australian dream, *Law Institute Journal*, Vol 76(8) 2002 pp: 63-67

Freedom of information

Fraser, Ron - Freedom of information - testing the limits of FOI access - some recent Commonwealth decisions, *Australian Journal of Administrative Law*, Vol 9(4) 2002 pp: 207-216

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Judges

Gleeson, Murray - Public confidence in the judiciary, Australian Law Journal, Vol 76(9) 2002 pp: 558-566
McHugh, M H - Tensions between the executive and the judiciary, Australian Law Journal, Vol 76(9) 2002 pp: 567-580

Kriewaldt J

Douglas, Heather - Justice Kriewaldt, Aboriginal identity and the criminal law, Criminal Law Journal, Vol 26(4) 2002 pp: 204-222

Judgments

Munday, Roderick - All for one and one for all -- The rise to prominence of the composite judgment within the civil division of the Court of Appeal, Cambridge Law Journal, Vol 61(2) 2002 pp: 321-350

McCormack, Peter - Second thoughts - Supreme Court citation of dissents and separate concurrences 1949-1996, Canadian Bar Review, Vol 81(2) 2002 pp: 369-430

Legal education

Curran, Liz - Demands, demands and competing demands - life in a legal clinic, Law Institute Journal, Vol 76(8) 2002 pp: 81-85

Legal profession

Box, Alan - The solicitor-executor and remuneration clauses, Law Institute Journal, Vol 76(8) 2002 pp: 77-79
Field, Andrew - Lawyers and literature - the unequal struggle, Law Institute Journal, Vol 76(9) 2002 pp: 56-58
How to enjoy your next trust inspection or accountant's report visit, Law Society Journal, Vol 40(8) 2002 pp: 54-55

Legal professional privilege

Bruce, Alex - The Trade Practices Act 1974 (Cth) and the demise of legal professional privilege, Federal Law Review, Vol 30(2) 2002 pp: 373-398
Evangorou, Evan - Criminal, illegal or improper conduct and client legal privilege, Law Institute Journal, Vol 76(9) 2002 pp: 38-43

Litigation

Venus, Paul - Five tips for drafting better affidavits and statements, Law Society Journal, Vol 40(8) 2002 pp: 60-62

Marriages

Mills, Eithne - The case of Kevin and Jennifer - transsexual marriage in Australia, Law Institute Journal, Vol 76(8) 2002 pp: 69-72

Mediation

Lancken, Stephen - What cases will a court refer to mediation over the objection of one of the parties? Law Society Journal, Vol 40(8) 2002 pp: 66-69

Mental health law

Richardson, Genevra - Autonomy, guardianship and mental disorder - one problem, two solutions, Modern Law Review, Vol 65(5) 2002 pp: 702-723

Mortgages

Purcell, Simon - Defrauding the great Australian dream, Law Institute Journal, Vol 76(8) 2002 pp: 63-67

Privacy

Good privacy - good policing, Brief, Vol 29(8) 2002 pp: 34-35
Private lives, Law Institute Journal, Vol 76(8) 2002 pp: 49

Property law

Hollott, Penny - Property owners can claim compensation if an adjoining public road is resumed, Law Society Journal, Vol 40(8) 2002 pp: 56-58

Sale of businesses

Johnson, James - Duty on business goodwill and statutory licences, Law Institute Journal, Vol 76(8) 2002 pp: 47-48

Sale of land

Hall, John - When 'M' really means 'P' (or when experts disagree), Law Institute Journal, Vol 76(9) 2002 pp: 54-55

Sentencing

Skinner, Rowan - Paedophilia, serious sexual offenders and Ryan's case, Law Institute Journal, Vol 76(9) 2002 pp: 44-49

Separation of powers

McHugh, M H - Tensions between the executive and the judiciary, Australian Law Journal, Vol 76(9) 2002 pp: 567-580

Sexual offences

Skinner, Rowan - Paedophilia, serious sexual offenders and Ryan's case, Law Institute Journal, Vol 76(9) 2002 pp: 44-49

Stamp duties

Johnson, James - Duty on business goodwill and statutory licences, Law Institute Journal, Vol 76(8) 2002 pp: 47-48

Terrorism

Fenwick, Helen - The Anti-Terrorism Crime and Security Act 2001 - a proportionate response to 11 September? Modern Law Review, Vol 65(5) 2002 pp: 724-762

Trade marks

Hakim, Saba - Trade marks register not so colourful, Law Institute Journal, Vol 76(9) 2002 pp: 50-53

Trade practices

Zumbo, Frank - Trade practices spotlight falls on the franchising sector, Law Society Journal, Vol 40(8) 2002 pp: 63-65

Trust accounts

How to enjoy your next trust inspection or accountant's report visit, Law Society Journal, Vol 40(8) 2002 pp: 54-55

Witnesses

Lusty, David - Anonymous accusers - an historical and comparative analysis of secret witnesses in criminal trials, Sydney Law Review, Vol 24(3) 2002 pp: 361-426

CLE Program

20/11/02	Intellectual Property Law	Christoph Antons
TBA Jan	Native Title	Raelene Webb
19/2/03	Bail Applications	Hon Justice Trevor Riley & Office of the DPP
19/3/03	Practice Management	Kriss Will

Prices are \$22 members, \$27.50 non-members, \$5.50 students (all include GST).

Practice Direction

SEALING OF DOCUMENTS

The following practice direction is issued pursuant to section 95 of the *Work Health Act* and will apply from 15 October 2002

Background

It has been the practice of this court and the expectation of solicitors that all documents required by the rules to be filed and/or served must be sealed by the Court Seal. The Rules do not require this to be done.

Direction

1. To facilitate more efficient processing of documents from the effective date of this practice direction the following documents will be sealed by the Court as required by the Rules:
Originating Application; Interlocutory Application; Appearance; Statement of claim; Notice of defence; Application to join party; Summons to give evidence; Summons for production; Final Order; Summons for Taxation; Bill of costs.
2. If the document you are filing does not have to be sealed or endorsed with a date by the court eg interlocutory applications, then multiple copies of documents do not need to be filed.

- Hugh Bradley, Chief Magistrate

DEADLINES

Contributions to Balance are welcome.

Copy should be forwarded to the Law Society no later than the 5th of each month.

Either fax your contributions to the Law Society: 08 8941 1623 or send them via email: lfonglim@lawsocnt.asn.au.

Advertising rates can be obtained from the Society on tel: 08 8981 5104 or downloaded from our website: www.lawsocnt.asn.au.

NOTICEBOARD

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Superannuation - Disablement benefits

In *Howitt-Steven v. Unisuper Ltd* ([2002] FCAFC 272; 28.08.2002) a 1997 claim for disability benefits for severe depression was refused by the trustee on the basis of an undisclosed medical condition being alcoholism. The SCT dismissed the complaint to it on the ground the Appellant had not provided a "accurate statement". The Full Court considered whether a point concerning the amendment of the Deed not taken before the primary Judge could be relied on in an appeal.

Judicial review - Decisions of the Commissioner of Taxation

In *Meredith v. Commissioner of Taxation* ([2002] FCAFC 271; 28.08.2002) a Full Court considered whether decisions of the Respondent under Part IV A of the *ITAA* were excluded from the *AD (JR) Act* and the distinction between the administrative functions of the Respondent and the Respondent's assessment functions.

Migration - Review Tribunal - Expert evidence

In *Thirukkumar v. MIMIA* ([2002] FCAFC 268; 27.08.2002) a Full Court concluded any failure by the RRT to take into account expert medical evidence of conditions suffered by an Applicant for a protection visa said to be consistent with abuse did not constitute jurisdictional error. (The same Full Court considered like issues in *Subramaniam v. MIMA* [2002] FCAFC 225).

Migration - Refugees - "Particular social group"

In *MIMA v. M* ([2002] FCAFC 253; 23.08.2002) a Full Court considered whether conscientious objectors in Afghanistan would be seen as comprising a "particular social group" for the Refugees Convention.

Federal Court - Practice - Cost - Investing - Ulterior purpose

In *Palm Springs Ltd v. Darling* ([2002] FCAFC 239; 23.08.2002) a Full Court concluded the decision of primary Judge that initiating Federal Court proceedings for the purpose of having them cross-invested to a State Court to facilitate hearing of related industrial relations commission proceedings was an abuse of process was itself in error.

Migration - Time limits

In *WAFE of 2002 v. MIMIA* ([2002] FCAFC 254; 21.08.2002) a Full Court concluded that the fact that an application to review a decision of the RRT was filed outside the time prescribed in s478(1)(b) of the *Migration Act 1958 (Cth)* due to the fault of detention staff and not the Applicant did not alter the circumstance that the Federal Court had no power to extend time. In *WACB v. MIMA* [2002] FCAFC 246 a Full Court considered when a minor was notified of a decision of a Migration Tribunal.

Income tax - Income - Income from illegal business

In *C of T v. La Rosa* ([2002] FCA 1036; 21.08.2002) R D Nicholson J considered when a drug dealer could claim to deduct from a betterment assessment under *ITAA* funds which had in fact been stolen from him.