

# 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](http://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.