

Legal Practitioners Bill 2006 and PII issues

The second edition of the Model Legal Profession Bill (Model Bill Edition 2) was approved for public release by the Standing Committee of Attorneys-General (SCAG) meeting on 28 July 2006. Copies of the Model Bill Edition 2 are now available and can be obtained from the Law Society Secretariat or the Law Council website.

Finalisation of the Model Bill Edition 2 involved a lot of work by the Law Council of Australia (LCA) Working Groups, the Officers Working Group (which included SCAG and LCA Officers) and the Parliamentary Counsels' Committee. The Model Bill Edition 2 includes improvements in a number of areas, particularly costs.

The NT Version of the Model Bill Edition 2, the Legal Practitioners Bill 2006 (NT Bill) is now being finalized and should adopt these improvements. The Bill is scheduled to be introduced at the October 2006 Legislative Assembly sittings, to be passed at the December 2006 sittings and commence on 1 March 2007. The Law Society is continuing discussions with the Department of Justice, particularly in relation to "local" issues. It is also considering operational implications, some of which are complex. The Law Society is developing a CPD and information program on the NT Bill.

The Law Society has suggested a draft of the NT Bill be available for consideration by the NT Legal Profession as soon as possible and it is likely to be available on 11 September 2006 with the Department of Justice co-ordinating information sessions.

Mandatory CPD is scheduled to commence on 1 April 2007 and the CPD Committee is looking at related issues. We have been working with other jurisdictions on the development of uniform national guidelines, which accommodate the needs of NT practitioners, such as those working in more isolated areas.

Members of the Professional Indemnity Insurance Committee and Councillors are meeting with Marsh Pty Ltd and QBE to work out a strategy leading up to the 2007-2008 renewal year.

Under consideration is the development of other insurance models, such as co-insurance of insurance



Barbara Bradshaw, Chief Executive Officer

or a firm risk rating approach for premiums.

Our priority remains the achievement of stable or lower premiums whilst retaining or improving coverage in accordance with nationally agreed terms and conditions. Risk reduction strategies remain a key component of this, so the Law Society and practices must ensure that risk reduction remains a key priority. Initiatives in line with this include mandatory CPD and the possible adoption of approved management systems for practices operating as ILPs. Continuation of the Quality Practice Review (QPR) process, whether conducted by Le Messurier Harrington or another approved provider, is also important.

The QPR process has been very successful to date and it is likely to retain the support of Marsh and QBE. Initiatives will be looked at to encourage firms not already involved to participate. It is noted that reports on QPRs conducted on individual practices are not provided to the Law Society and remain confidential to the practice concerned. However, a general report outlining some of the major issues in a non-identifying manner is provided by Le Messurier Harrington. The report assists the Society in addressing 'big picture' issues.

The current report deals with issues such as the need to facilitate locum arrangements and to develop a confidential service (similar to that of the Law Society of South Australia) which assists practitioners in dealing with personal problems that may impact on their legal practice.

The report also focuses on what should be included in follow-up phase reviews for the larger and

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'Naming and shaming' juvenile offenders in the Northern Territory cont...

bond. Such an order either is or is not warranted as a matter of law. At least the former chief magistrate correctly recognized that the identification of MCT would be a 'stick', and Mr Bradley adverted to the real risk that the *News* would report the court proceeding in an inflammatory and unfair manner. Reference to this problem in the Territory does not appear in Justice Angel's judgment.

REFORMING THE LAW

The law should give greater power to the courts to restrict publication which is harmful to individuals. In *Nationwide News v District Court of New South Wales* his Honour Justice Mahoney suggested that the law should be based upon an analysis of the harm to the individual by the publicity (the price paid) and whether this outweighs the public interest in the information (the benefit).¹⁵ As an alternative reform, Mahoney J suggested an exception to the open justice principle based on "the harm, hurt and distress that may be caused."

Sentencing remarks in 2001 by (the late) Justice Stephen Bailey indicate that his Honour favoured law reform on this issue. In *R v H*¹⁶, his Honour deemed it appropriate to make an order prohibiting publication of a child offender's name, the name of his school or "...anything else which could lead to his identification in any media reports of these proceedings." Unfortunately a national newspaper had already identified *H* when reporting his appearance in the Magistrates Court.

Justice Bailey justified the Court's non-publication order: "Further publication of the offender's name, in my view, would only damage his prospects for future rehabilitation." *H* was 17 years of age when he committed the subject armed robbery in Katherine.

CONCLUSION

Shaming should be directed at the act, not the juvenile offender. The Northern Territory Government should promptly rectify this glaring deficiency in the law, and provide child offenders in the Territory the same legal protection which benefits their interstate counterparts.

ENDNOTES

1. Watt R. "Bored thug walks free" *NT News* 28 May 2003, p1-2.
2. Smith C. "Gang of 30 bashes 3 teens" *NT News* 16 April 2003, p1-2.
3. *Children (Criminal Proceedings) Act 1987* (NSW), s 11; *Children and Young People Act 1999* (ACT), s 61A; *Children and Young Persons Act 1989* (Vic), s 26; *Magistrates Court (Children's Division) Act 1998* (Tas), s 12; *Young offenders Act 1993* (SA), s 13; *Children's Court of Western Australia Act 1988* (WA), s 35; *Children's Court Act 1992*

(Qld), s 20.

4. See generally – Senate Legal and Constitutional Committee, *Inquiry into the Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999*, paras 5.47-5.49 http://www.aph.gov.au/senate/committee/legcon_ctte/completed_inquiries/1999-02/mandatory/report/contents.htm
5. NT Hansard, 30 June 2005.
6. "Youth Media – Naming and Shaming" *Stateline NT*, ABC TV 4 August 2006. <http://www.abc.net.au/cgi-bin/common/printfriendly.pl?http://www.abc.net.au/stateline/nt/content/2006/s1706846.htm> (viewed 5/8/06).
7. Toyne P., letter to S. Payne (Dir. NAALAS) dated 6 December 2005.
8. Unreported [2006] NTSC 35, 3 May 2006.
9. (1986) 38 NTR 31 at 33.
10. (1988) 56 NTR 1 at [19].
11. "We put judges on trial" by G. Pascoe-Watson. *The Sun* online, 16 June 2006, www.thesun.co.uk/article/0,,2006270085,00.html viewed 16/6/06.
12. *The Sun's* judicial name and shame campaign continued. Judges admitted to feeling "low" and "dispirited" as a result. For example, see Gibb F. "Chief Justice hits back in row over 'soft sentencing'" *TimesOnline* 19 June 2006. www.timesonline.co.uk/article/0,,29389-2231934,00.html viewed 16/7/06.
13. *MCT v McKinney* (supra) at p16.
14. See generally Braithwaite J. *Crime, Shame and Reintegration* (1989), Cambridge University Press, Melbourne. Also Botchkovar V. and Tittle C. "Crime, shame and reintegration in Russia" (2005) Vol. 9 No.4 *Theoretical Criminology*, SAGE Publications.
15. (1996) 40 NSWLR 486, at 494-495.
16. Unrep. NTSC, 9 October 2001.

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smaller practices. For instance, larger practices that have had the "managing the retainer" component of phase 3 could undertake the "managing critical dates" component and vice versa. Reviews could otherwise include a general audit of compliance with improvements made including a "spot review" of files with a focus on issues previously raised. It has also been a suggestion there be an overall focus in all practices on matters raised in claims or notifications relating to practices generally.

Following on from Stephen Mason's successful CPD on the risks stemming from the recent developments in technology, some of which have not really been addressed by the legal profession, it is acknowledged they represent one of the major risks to firms which needs to be addressed either by special CPDs or as part of the QPR process.