

WORLD WAR I CENTENARY EDITION

Volume 36 - Issue 8



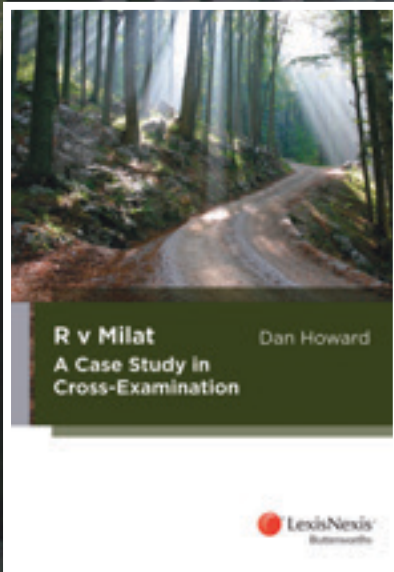
Bulletin

September 2014

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Views expressed in the Bulletin in its 'Opinion' column and
advertising material included are not necessarily endorsed by The
Law Society of South Australia. No responsibility is accepted by
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President's Message

Morry Bailes, Law Society President

The First World War – the Great War – started a century ago. It was the first truly modern war, borrowing elements from the Boer War but fought in a way that was entirely unexpected by the combatants. It was the war that was supposed to have those involved home by Christmas but proved to be a most protracted and terrible affair that has left its indelible mark not only on 20th century history but as one of the worst conflicts human history has ever seen.

Whilst the machinery that led those nations to war is much vaunted in the history books, the fact remains that the nation states involved chose to go to war. As Professor Hugh White of the Australian National University recently theorised at the annual Hawke lecture, the passage into war was not inevitable; it was a series of deliberate decisions in part because each nation assumed wrongly that the other would back down, and in part because the old hegemonies of Europe and Asia Minor sought to preserve the old order. The rise of Germany was their focus, and on 4 August Great Britain supported by Australia made the fateful decision, against advice from some senior cabinet members, to declare war on Germany. Australia had, in the days

preceding, arrived at the same decision to go to war, not merely out of obligation to Great Britain but because it too, facing the rise of Japan in the Asia Pacific, elected to join the defence of the old order.

It was not to be. Europe and the world, including Australia, was changed irretrievably and forever. Empires fell and the ingredients for World War Two, the war that tore the world as we knew it asunder, were laid.

It requires us to make comparisons to the world today. The long peace enjoyed during the 19th century is not unlike that that we have enjoyed in the latter half of the 20th and beginning of the 21st centuries. There has been unparalleled growth of economy and technology, and the existing order is again under threat, with the primacy of the USA challenged by China in the Asia Pacific. Let not the lessons learnt by the terrible advent of the First World War be lost and let us as a middle power in the Asia Pacific do our part in preserving our peace in this region and in the world.

As we learnt at the Law Society event to mark the centenary of the commencement of the Great War, many members of the legal profession and articulated clerks joined



Australian arms forces and fought in it. We must remember that no member of the Australian armed forces was conscripted for the First World War, which only drew its forces from volunteers. You will read in the edition of the results of some of the meticulous research conducted by Elizabeth Olsson and Margaret Kelly into those members who participated in the Great War, 12 of whom died as casualties of the war. Their stories are intimate and tragic, as their deeds were heroic. Almost all of us are in some way connected with this great conflict. For me it was my grandfather Herbert who saw action and was wounded at The Somme. Many of the names of the profession who fought are well known to us today.

It is a not too subtle reminder that the difficulties we perceive in our lives today pale by comparison with what these men, women and families endured during this time in our history. It also speaks to us of sacrifice. The undertaking of these men and women, particularly so during the Second World War, resulted with our world being a far less terrible place than it might well have been. Thus we remember those that fought and those that fell, and we thank them for their bravery, their courage and their sacrifice.

As this edition was about to go to print, I learnt of the sad passing of Helen Wighton, who wrote an article about her grandfather, Arthur Blackburn VC, for this edition. I express my sincere condolences to Helen's family and friends. Helen was Deputy Director of the SA Law Reform Institute at the time of her passing. **B**

“Almost all of us are in some way connected with this great conflict. For me it was my grandfather Herbert who saw action and was wounded at The Somme. Many of the names of the profession who fought are well known to us today.”

A summary of the Law Society's recent advocacy activities

By Rosemary Pridmore, Executive Officer

President of the South Australian Civil and Administrative Tribunal – 22 July 2014

President Morry Bailes, Immediate Past President and Chair of the Justice Access Committee John White, and Chief Executive Stephen Hodder met with the Honourable Justice Parker, President of SACAT. Matters discussed included the Statutes Amendment (SACAT) Bill 2014, which seeks, in its first stage, to transfer the work of the Residential Tenancies Tribunal, the Guardianship Board and the Housing Appeal Panel to the SACAT. Issues of legal representation of those who are the subject of guardianship or administration proceedings under the Mental Health Act and the process for the hearing of appeals in respect of in-patient treatment orders under section 81 of that Act received a particular focus.

The Honourable Chief Justice Kourakis – 23 July 2014

Matters discussed at a meeting that Morry Bailes and Stephen Hodder held with the Chief Justice included Continuing Professional Development activities, gender equity for women in the legal profession, the establishment by the Court of a Committee to consider a Case Management (e-filing) system, the courts precinct project, review of the LPEAC rules for Mandatory Continuing Professional Development and pre-action protocols.

Meeting with practitioners practising in the Southern suburbs – 24 July 2014

A luncheon meeting with approximately 20 practitioners who practise in the Southern suburbs provided Morry Bailes and Stephen Hodder with the opportunity to give an update on matters that are currently of key interest to Members and to discuss them in an informal setting.

Meeting with the Shadow Attorney-General – 25 July 2014

Morry Bailes and Stephen Hodder met with the Shadow Attorney-General, Ms Vickie Chapman MP, to discuss a range of matters. In particular, issues practitioners are experiencing with the Advance Care Directives scheme that was introduced on

1 July, the Society's response to the Legal Services Commission Review, the Society's request for amendment of legislation to allow the inclusion of personal injury cover under the Limitation of Liability Scheme, the CTP Scheme changes and the workers compensation review.

Public sector networking drinks – 25 July 2014

Approximately 30 practitioners working in the public sector took the opportunity to meet for drinks and were able to converse with the President and Chief Executive.

Legal Profession Conduct Commissioner – 4 August 2014

Matters discussed at a meeting between Morry Bailes, Stephen Hodder and Commissioner Greg May included the Professional Mentoring Agreement; and inclusion by the Commissioner, when communicating with practitioners who are the subject of a complaint to him, of a notification of the support services available via the Society's Lawyers' Complaint Companion Service.

The Honourable Tammy Franks MLC – 4 August 2014

At the invitation of Ms Franks, Morry Bailes and Stephen Hodder met with her to discuss a range of issues including ticket scalping, workers compensation, CTP changes, the development by the Society of an App to educate the community on legal issues and ramifications of underage sex, Advance Care Directives, transgender issues, the de-criminalisation of prostitution and the Coroner's reports on domestic violence matters.

Information Session - Return to Work Bill 2014 – 5 August 2014

The President was invited by the Deputy Premier, Attorney-General and Minister for Industrial Relations, the Honourable John Rau MP to attend an Information session on the *Return to Work Bill 2014*. The President, Chair of the Accident Compensation Committee Tony Rossi, Chair of the Industrial Relations Committee Steven Dolphin, and Chief Executive attended the briefing on the

Bill and the associated *SA Employment Tribunal Bill 2014*, both of which were presented to the Parliament on the following day. The Society's Committees are considering the Bills. A Workers Compensation Executive has been formed, inclusive of representatives of the SA Bar Association and the Australian Lawyers' Alliance and is considering a response to the Bills.

Consumer Law Consultative Forum – 5 September 2014

President-Elect, Rocky Perrotta represented the Society at a meeting of the Consumer Law Consultative Forum, one of the aims of which is to improve knowledge and understanding of consumer law and keep abreast of developments.

Welcome Reception for Aboriginal Students – 6 August 2014

The President spoke at a Reception hosted by Hunt & Hunt to welcome Aboriginal Students who are studying the Certificate IV in Legal Studies course at TAFE in Port Augusta. The Society has been instrumental to the development of the course. The Minister for Aboriginal Affairs and Reconciliation, the Honourable Ian Hunter MLC, spoke to the students, who were in Adelaide for work experience and hosted by legal firms. The Society is keen for the Government to continue its funding for the delivery of the course, which aims to provide a pathway to a legal career for Aboriginal students.

Shadow Attorney-General – 12 August 2014

Morry Bailes, Tony Rossi and Stephen Hodder attended a meeting convened by the Shadow Attorney-General to discuss the workers compensation legislative changes.

Advance Care Directives

The President has written to the Minister for Health, the Honourable Jack Snelling MP, outlining Members' concerns with the Advance Care Directives Act and Regulations that came into effect at 1 July 2014. The President has invited a meeting with the Minister. **B**



Society commemorates WWI centenary

By Michael Esposito

I'm pleased to introduce this special World War I commemorative edition of The Bulletin. This year marks 100 years since the outbreak of The Great War – a human disaster of incomprehensible proportions that changed the world forever.

In the Bulletin we look at the South Australian legal profession's contribution to the war. A number of lawyers and law students served in the war – 12 of them were killed in action. Some who survived were never the same again.

Perhaps the most famous South Australian lawyer who served in World War I was Arthur Blackburn, whose bravery and skill belied his wiry frame. He landed at Anzac Cove on 25 April, 1915, is believed to have made it further inland than any other Australian soldier.

Blackburn was awarded a Victoria Cross –

the highest Commonwealth military honour for gallantry.

His incredible story is told by granddaughter Helen Wighton, a lawyer herself, who has also generously allowed photos from the precious Blackburn family collection to be reproduced in this publication.

The Bulletin also has features on Lance Hargrave and Angus Salier Ferguson. Hargrave survived the war and joined family firm Knox and Hargrave (now Cosoff Cudmore Knox) and went on to become Lord Mayor of Adelaide in 1957-60. Ferguson was a promising lawyer who was killed in action in 1918. Historian Peter Moore describes Private Ferguson's war experience, from his enlistment to his untimely death in France.

Former Law Society President Margaret Kelly provides an in-depth history of the Law Society during World War I, including its establishment of the Red Cross Bureau in 1916.

Other articles include a piece on the laws of battle since world War I, an account of the divisive conscription debate in Australia during the war years, and a feature on five local legal practitioners who served in the First World War.

Special thanks to our librarian Lorna Hartwell, Elizabeth Olsson (Mellor Olsson), Margaret Kelly (Wright Chambers), Andrew Piper (State Library of South Australia), and everyone else who assisted with the information gathering that made this special edition possible. **B**

Letter to the editor

Dear Sir

In your last issue, you published an article by Michael Esposito on His Honour, Justice Tim Anderson.

In the article, Justice Anderson was quoted as saying

“Because the young barristers have to earn a living, they have to take work from Legal Services. They get the brief at very short notice, and get paid a minimal fee for it, so they're not as well prepared as they should be”.

I am sorry to have read that it is Justice Anderson's view but on behalf of the Legal Services Commission, I reject any claim that the lack of preparation is due to the fee paid by the Legal Services Commission.

His comment that young barristers *get the brief at very short notice* may be correct in some circumstances but it is not, in the experience of the Commission, the normal situation and the combination of circumstances referred to by Justice Anderson, ie receiving a brief at short notice, being paid a minimal fee and

not being properly prepared, if those circumstances do occur, they are not the fault of the Legal Services Commission.

The Legal Services Commission scale of fees is a matter of public record and if solicitors, or barristers, do not want to accept work through the Legal Services Commission and be paid on that scale, then they can refuse to accept the assignment.

The Legal Services Commission does not expect nor will it condone a lack of preparation in respect of legal aid assignments any more than a Judge would accept lack of preparation due to inadequate fees.

Furthermore, young barristers do not in my experience come to a case underprepared. My experience with young barristers is that while some may attempt to do too much too soon, most conscientiously and diligently represent their client.

In this regard, I refer to the recent decision in *R v. Crawley & Ors* [2014] EWCA Crim 1028, the decision of the United Kingdom Court of Criminal Appeal where the Court said at [57]

“The criminal justice system in this country requires the highest quality advocates both to prosecute and to defend those accused of crime: in addition, they are the potential judges of the future. The better the advocates, the easier it is to concentrate on the real issues in the case, the more expeditious the hearing and the better the prospect of true verdicts according to the evidence. Poor quality advocates fail to take points of potential significance, or take them badly, leading to confusion and, in turn, appeals and, even more serious, leading to potential miscarriages of justice. We have no doubt that it is critical that there remains a thriving cadre of advocates capable of undertaking all types of publicly funded work, developing their skills from the straightforward work until they are able to undertake the most complex”.

Yours faithfully

Michael Abbott AO QC
Chairman
Legal Services Commission

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A lawyer of promise

By Peter Moore

Angus Salier Ferguson

Admitted to practice on 26 April, 1915

Killed in action on 5 May 1918



“We shall remember them” is a hollow gesture if we do not know the names and stories of the profession’s servicemen. Angus Ferguson was one, and here is his story.

Twenty-six at the outbreak of the war, Angus Ferguson was fit and single, a prime candidate for recruitment by the 1st Australian Imperial Force. He had attended a private school, was a Protestant, a graduate of Adelaide University and an articled clerk with an Adelaide firm. On all counts he was typical of South Australian lawyers in general and also of those who joined up and saw active military service during the Great War. On other counts, he was an exception to the rule. He was not born in the State, but in Launceston, the only son of Frederick Ferguson, the town’s stationmaster and Deputy Commissioner of

Taxes, and Lillian, daughter of a Tasmanian Legislative Councillor. The family moved to Western Australia when *pater* took to the stage as a musical performer, playing the organ in various Anglican parishes between shows, until his sudden death in 1906. At the end of that year,

Angus sat his final examinations at the Christian Brothers’ High School in Fremantle. He won a valuable scholarship that enabled him to enroll in Arts at Adelaide University (in the absence of a university in Perth). Angus and his widowed mother re-settled in North Adelaide. He graduated B.A., with first-class honours in Classics, and started law the following year, 1910. That March he also entered articles with Leonard Bakewell, a third-generation lawyer, and partner in the prestigious firm of Bakewell, Stow & Piper at Cowra Chambers. From the start, Angus made his name as a sportsman and student. Throughout his university days he coxed and rowed with the fours and eights (going on to preside over the State Rowing Association) and was treasurer for the University Sporting Association. He played lacrosse in the 1913 premiership team and swam competitively too. At the Law Faculty he debated with the law students’ association and, extramurally, joined the Pickwick Club for young men with literary preoccupations. Law degree in hand by Christmas 1912, his articles shortened from five to three years, he became entitled to admission in early 1913. Arthur Piper KC moved his admission on 26 April after which the Chief Justice, Sir Samuel Way, welcomed him as ‘an excellent scholar’. Angus stayed on with the Bakewell firm as a managing clerk.

At the outbreak of hostilities, he no doubt reviewed his choices. One was to stay at his post. The five-member partnership, the State’s largest, may have asked Angus to hold back until they were sure they

could cover his absence. Bayard Piper, by contrast, had served his articles with his father at the firm, and was entitled to admission by early 1915 but wanted to join up immediately, rather than taking his turn as managing clerk. Circumstances like these must have played out right through the profession, determining men’s responses. A fellow-clerk, W. A. Norman recalled that “Angus had a widowed mother and hesitated for some months whether his duty to his mother or to his country was the more important”. This and criteria like it excused men from volunteering according to the standards of the day. That might explain why Angus resorted to a second choice, that of helping 30-odd lawyers and clerks form their own Legal Rifle Club in March 1915. He fired with them for a few months (although it is not known whether he was part of the squad that was defeated in its only known competitive match, one with the Ladies Rifle Club). A quarter of the Club’s members enlisted, or tried to, probably contributing to his feeling that he could do more than muster at a firing range. His third choice was to join the Citizen’s Military Forces. This he did in June as enlistments soared after the news from Gallipoli broke at home. In November, he obtained a provisional lieutenancy in the 80th (Gawler) Infantry Regiment. But the pressure to join up finally prevailed. He was goaded, too, telling William Norman “how frequently white feathers were either sent to him or placed in his way”.

In February 1916, six weeks after receiving his commission, he took the AIF oath at the Exhibition Camp. He was a fortnight shy of turning 28. At Mitcham Camp over nine months the Private became a Sergeant and Second Lieutenant in steady succession. Allocated to reinforcements for the 48th Battalion, he sailed from Port Adelaide by the *Seang Bee* in February 1917. It is hard to believe that he was not farewelled

by his profession, with fine words spoken, poems recited, songs sung, and a parting presentation made. Records of such occasions are scant, though Leslie Gordon received a wrist-watch from colleagues and William Denny a pair of binoculars from parliamentarians. Bakewell, Stow & Piper, surely, held a do. We know that Angus was fully kitted out. Was he given the electric torch, pipes and cigarette-case and -holder that he took with him; those prismatic binoculars in a leather case, with a letter (wishing him well, probably); or that automatic revolver ('NOT Government property')?

Angus and his reinforcements landed at Devonport at the beginning of May and underwent further training at the AIF's Codford and Tidworth Camps on the Salisbury Plain in Wiltshire. In France by early July and at the front within the fortnight, his full lieutenant's commission followed in August. By then the 48th was a battle-hardened part of the 4th Australian Division. The Battalion was relieved and returned to the trenches several times over the winter, with the result that Angus was able to take leave in England for New Year 1918 and the fortnight following. Perhaps this gave him a chance to wear the collars and ties, and socks and evening shoes, and use the silk handkerchiefs he had in his suitcase. He packed them away when he returned to the firing line in mid-January. Private Alvin Zerna from Marrabel joined Angus' B Company on 1 April and soon

liked him: "He was my Plat[oon]. Officer and a good one, for he looked well after his men.' Private Zerna was about to repay the compliment. That Spring brought the last German offensive, during which the 48th occupied the Cluchy Line near Villers Bretonneux, crucially blocking the road into Amiens. 'The weather was good & by [1 May] the men had made themselves very comfortable," wrote the Battalion's diarist, Major 'Johnny' Moyes, rich with ironic formality.

Orders arrived for an attack on nearby Monument Wood in the early hours of the 3rd. B Company's task was to hold the right and was in the jumping off position by 1.45am. At 2am a two-minute artillery barrage was to be put down on the German positions. It proved to be neither "thick nor accurate" and "extremely difficult to judge when [it] finished". "Nevertheless", continued the Major, "at 2.2am (sic) the men moved forward. Immediately the enemy opened [fire] vigorously with machine guns. ... On the right, "B" Company had advanced & their left platoon had got through to the objective. ... Finding that it was impossible to reach & consolidate on our objective, it was attempted to form a line from the left to the right of the Monument, thence South ... to the southern end of the wood back to the right of the objective. Before this could be done, the enemy having a numerically superior force, counterattacked & we were forced to withdraw our lines to the original

front lines, after inflicting heavy casualties on the enemy."

Early in the fighting, Angus' unit was forging ahead with its part in the attack. Machine gun fire struck him in the shoulder, and he could not get away without help. Plucky Private Zerna went to his aid "and as we were going back, he leaning on me, he was shot through his helmet and head and was killed instantly. He dropped and did not move or speak again." Angus was buried the next morning not far away. His remains were subsequently re-interred at Adelaide British Cemetery in Picardie, just off the main road from Amiens to Villers-Bretonneux. A cross was erected to his memory, according to Corporal Leonard Giles from Semaphore. Back home it fell to Bakewell, Piper & Stow, who held Angus' will, to prove it. When the paperwork went through in August 1918 his estate was sworn at under £780. By then the French Republic had bestowed upon Angus the Croix de Guerre. It fell to the Battalion commander to bring the decoration back to Adelaide and present it to Angus' mother, Lillian. She expressed herself proud to have it.

Angus leaves no posterity, no children or nieces and nephews. He was a lawyer of promise, and a soldier of promise. Lest we forget. **B**

This is an edited extract from Peter Moore's upcoming book "A Legal Cohort". To order the book, contact sales@crossingpress.com.au

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SA's legal profession in World War I

By Margaret Kelly, Wright Chambers; former Law Society President

This year is the centenary of the outbreak of hostilities in World War I. We can expect a deluge of historical material on the topic for the next four years.

Why promote an interest in military history or indeed World War I? Is it not just war mongering and the lauding of violence? To my mind, war is always a bad idea, and World War I is a prime example of tragic waste of life.

There are many reasons to commend the study of our history as a profession, including what was undoubtedly one of the most significant events of the 20th century, World War I. As citizens of a democracy, where our national government has the power to send our young men and women into harm's way, we have a responsibility to understand what that entails. At least a superficial idea of our nation's military history helps inform that collective decision.

I do not argue that a study of history provides the answers to these significant national decisions. No two situations are alike. A study of our history in terms of the events leading to war, its subsequent prosecution and resolution will give us an idea of the questions we should be asking.

As members of the profession from which a great number of our political leaders are drawn, I would argue that we have a particular responsibility to understand those lessons that history can teach us.

War changes all who participate in it and usually not for the better. One of my particular interests is the study of the legal careers of surviving veterans and the changes they made to the law and its practice. The generation of young men from our profession who served in World War I were, if they survived, the senior members of the profession by the time World War II came around and many cases saw their sons (and daughters) go off to war.

As legal professionals, it is important to have some understanding of what veterans of conflict and their families have been through, in order to properly assist them on their return to civilian life, the legal disputes surrounding their physical and psychological needs and the consequences of their service. A number of our clients have also experienced war as civilians in

many and varied war zones from such diverse places as Southern Italy in World War II, to present day Southern Sudan. An understanding of the historical events affecting the lives of our clients puts us in a much better position to act on their behalf.

Finally, a little self-reflection is no bad thing. The study of the history of our profession at times of war prompts questions of how we would react if faced with the same circumstances. It provides us with an opportunity to re-evaluate our work and contribution to the community.

The legal profession in 1914

The legal profession 1914 was a different creature from that which we know today. It was very "WASPish" in its composition and entirely male. The *Female Law Practitioners Act* had been passed in 1911, permitting properly qualified women to be admitted to practice as a barrister, attorney, solicitor and proctor of the Supreme Court.

The first female lawyer in South Australia was Mary Kitson. She was admitted to the bar on 20 October 1917 and practiced as a barrister with the firm Poole and Johnstone, two years later becoming a partner. The second female lawyer admitted in the State was Aileen Ingleby in 1921 and Dorothy Somerville was admitted in 1922. The feminisation of the law was not even contemplated in 1914.

The Profession at that time was quite small. Its members considered themselves sons of the Empire, as well as loyal Australians and overwhelmingly younger members of the profession and law students volunteered for service during World War I. The Honour Boards in the Supreme Court list some 51 members of the profession and 28 students who served. Of that number, 11 died on active service.

In 1917, membership of the Law Society stood at 117. Whilst the membership did not include all members of the profession and law students, it can be seen that the number of volunteers represented a considerable proportion of the profession at the time.

Lawyers were firmly established in the upper middle class at a time when the class system was alive and well, even in Australia. They lived for the most part in

gracious villas in leafy suburbs and their children attended private schools. Generally speaking the legal community supported the war and saw leadership in the forces and at home as a social obligation. Enlistments were high as well as charitable work by lawyers and their families.

The practice of law was conducted with much greater formality in terms of correspondence and modes of address. The Annual General Meeting of the Society in 1914 was held on 31 July, about a month after the assassination of Archduke France Ferdinand of Austria at Sarajevo and only four days before the outbreak of war.

The first item of business in the Annual Report concerned the health of the then Chief Justice Sir Samuel Way.¹

"It is with feelings of intense gratitude that we note the continued and rapid progress towards recovery of our esteemed Chief Justice. Each and every member of this Society and the Profession watched with a sense of grave anxiety the stages of the trying ordeal through which by the Grace of Providence and his own wonderful courage and fortitude His Honour has happily but recently passed and we earnestly trust that His Honour's reward may be such a complete return to health and vigour that he may still further enlarge upon his already illustrious career in the high judicial office and the duties of which he has proved himself so imminently qualified to fulfil and with such complete satisfaction to all concerned."

Way had become ill in 1914 and was diagnosed with cancer. Although his health deteriorated he continued to work as Chief Justice until December 1915. He died on 8 January 1916.

Other matters raised in the Annual Report included the Law Society's Bill for Incorporation which included disciplinary powers. The Annual Report describes the surprise and keen disappointment of the members that the Bill had not been introduced as a Government measure during the current session of Parliament, as Cabinet did not altogether agree with the financial proposals of the Bill.

Other issues are also reminiscent of current controversy including complaints about unqualified persons issuing process in the Local Court and the practice of "touting" for work at the Police Court. A resolution was carried drawing the attention of the Attorney-General to the great increase in the volume of business in the Law Courts and suggesting whether improvement could be made to the constitution and practice of inferior courts. The Council approved the early closing of offices at 12.30 pm on Saturdays.

During the War

By the time of 1915 Annual Report, things had changed dramatically. At the Annual General Meeting on 28 July 1915, the report began thus:²

"It is with mixed feelings of regret, pride and sorrow that we have to refer to the existing ghastly strife among nations. Regret in that civilised nations should necessarily be in the throes of a life and death struggle for the supremacy of right and justice over autocracy and might; and a mutual trust and confidence in ultimate success for all for which the British Flag now, and we hope ever shall be the symbol. Pride and sorrow in that so many brave souls, relations, intimates, brother professionals and friends should sacrifice their lives and their all in this calamitous struggle for supremacy. To those members of the profession and articled clerks, who have volunteered, we tender our very sincerest congratulations and earnest good wishes for their safe return and we



Lady Galway & Sir Josiah Symon. Source: State Library of SA

trust that their splendid example may be followed by many others so long as the need for men exists."

This meeting took place after the Gallipoli Landings but just before the calamitous August Offensive in that theatre of war.

On account of the war, it was considered inadvisable to hold the annual dinner in 1914 and members were asked to consider how that portion of their annual subscription devoted to the function should be applied.

Practitioners had to cope with an increasing

amount of statutory law both from the State and the new Commonwealth Government. This was particularly the case in respect of wartime legislation. The Murray Law Library contains a volume published by the Commonwealth entitled "Manual of Emergency Legislation" comprising all Acts of Parliament, Regulations, Proclamations, Orders, etc relating to and made in consequence of the War.

There was at least one supplement published bringing the total to 862 pages. The Legislation included such matters as a War Census, banking transactions

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SA's legal profession in World War I (cont)

with branches of enemy firms, prohibited exports, the offer of pardon to deserters and the power to requisition horses. Several pages are devoted to the suspension of trademarks of enemy proprietors involving a range of products from fencing wire to typewriters, manufactured in enemy nations.

The Law Society and War Effort

During the War years a number of specific donations were collected to support the War effort. Following a suggestion from Messrs Lewis of Gawler and Sir Josiah Symon, the Profession determined to present a motor ambulance for use at the front. The sum of £556.11 was readily subscribed by the Judges and members.

Financial assistance was also collected to "Relieve or assist in the relief of the heroic but starving Belgian nation". This was in response to an urgent appeal by Lady Galway through the President. Again, there was a liberal response from the Judges and the Profession with members being urged to make a regular subscription. In the four months between March and June 1915, a total of £473.00 was raised.

However, the most important War work for the Law Society was in connection with the Red Cross Information Bureau. This work had his origins in New South Wales, undertaken initially by a barrister, Langer Owen KC and his wife Mary, a well known and passionate supporter of the Red Cross in New South Wales. Mary was determined to assist in those searching for information about missing and wounded soldiers fighting far from home.³ Thousands of worried relatives and friends across Australia were desperate for information about their loved ones. The Army's system

of dealing with Casualty Notification often by telegrams, was not up to the task of providing the detailed information so earnestly desired by bereft families.

Red Cross searchers investigated individual cases of those who were missing by locating comrades of the missing or dead soldier and taking a witness statement. The Red Cross also fielded inquiries about Prisoners of War. The inadequacy of Army records, the incapacity and disorientation of wounded men and the large numbers who simply disappeared particularly in shellfire, meant a huge gap of information. The families of men missing in action alternated between hope and despair amid a fog of rumour and misinformation. Legal forensic skills were particularly useful in this search for facts.

Langer Owen established the Red Cross Inquiry Bureau's first Sydney office in July 1915. Once an inquiry had been made by a member of the public at the Bureau's office a cable was sent to a designated Red Cross searcher overseas. Soldiers were interviewed abroad and amongst the wounded recovering in hospitals at home. After evaluating the evidence, relatives were invited to the office to be given a likely account of what had happened or a letter was sent.

One of those searching for information was William James Isbister, a South Australian barrister who had travelled to Egypt to assist with charitable work among the soldiers.

The Law Society's Annual Report to the AGM of 9 February 1917 records that during the past year a request had been received by Sir Josiah Symon, the President of the Society, from Lady Helen Munro-Fergusson, the President of the Australian branch of the British Red Cross Society inviting the legal profession of the State to undertake the organisation and work of the Enquiry Branch of the Red Cross.

Sir Josiah became the organiser and following a meeting of members of the profession the Red Cross Information Bureau was established and opened on 1 January 1916 at the Verco Building, North Terrace. Dr WA Verco provided the premises free of cost. Office furniture was supplied by Messrs John Martin and Co Ltd. Four of five clerical assistants were engaged.

The voluntary attendance of members of the profession was considerable. In December 1916 alone, approximately 138 cable inquiries were forwarded to Red Cross Commissioners and 320 letters were dispatched from the Bureau. Several casualty lists had been indexed on a card system to assist with the inquiries. However, the report, whilst noting this assistance, expressed disappointment that the whole burden of the work has fallen upon the shoulders of some 20 members and urged other members of the profession to volunteer assistance.

The work of the Information Bureau (as it was called here) went on after the War ended, the costs of the work being funded by donations from the Profession and members of the public. A similar effort was repeated by the Profession during the Second World War.

An example of the work is contained in the Bureau's Annual Report for the year ending 31 December 1917. It records the work of some 17 voluntary solicitors, eight female voluntary workers and two typists. Amongst the names of the volunteer solicitors are JM Napier, GC Ligertwood, TR and WS Bright and AS Blackburn VC. The report appends some letters from members of the public in testimony to the Bureau's efforts.

Snowtown
10 July 1917

Sir,

I thank you most kindly for your letter of this evening. You cannot tell how overjoyed we, his parents, are at getting such good news. There is a chance that our dear one will now return to us. How good it is to have kind friends to take up these cares for us. Again, thanking you. The first time I am in town I will call on you to thank you in person.

Yours faithfully".

Aldgate
September 7, 1917

The Secretary of the Red Cross Bureau,

Dear Sir,

I received your letter yesterday regarding Sergeant _____ and kindly



accept my grateful thanks for your prompt information. It is a great relief to know where he is wounded and that he is doing well. I think your Bureau is a splendid thing, and is deserving of everyone's admiration. If it were not for your splendid help we would spend many an anxious time waiting for news of our loved one.

As good as the Military authorities are they cannot go into details and then it is that we are able to come to your Society for help, and from my experience I cannot speak too highly of the great help it has been to myself.

*Once again thanking you,
I remain yours sincerely”.*

This work could be emotionally draining for men and women worried about friends, sons and brothers at the front. They had their own sorrows.

The 1917 Annual Report refers to the death of two members of the profession, Messrs J Gordon and Hadrian Moody and articled clerk Errol Cruickshank.⁴

Sadly as early as 1917, thought was being given to the provision of a Roll of Honour to be erected in the Supreme Court building upon a suggestion emanating from the Chief Justice and the other Judges. Again, contributions were sought from members of the profession.

Many members of the profession provided free direct assistance to those in uniform, particularly in regard to the preparation of wills. Returning soldiers were also provided with legal assistance, often free or at little cost. Sometimes assistance was provided many years after the War.

The Adelaide Advertiser of 28 November 1934 records that one Athol Joseph Parsons had been charged with being found drunk in King William Street. Mr KV McEntee appeared for Parsons on instructions from the Law Society. Evidence was given that the defendant smelled strongly of liquor, that he was unable to stand without support, he claimed to be the subject of fits and turns. Mr McEntee said that the defendant had carried a Turkish bullet about in his brain from 1915 until 3 years ago. He had served with the 15th Battalion in Gallipoli where he had received this wound. Since the operation when the bullet was removed, he had suffered severely with fits and lapses of memory. Having heard the evidence, the Magistrate dismissed the charge against Parsons.⁵ He was one of many veterans whose war did not end in November 1918.

The South Australian Legal profession, although small in number, answered the patriotic call to arms in 1914 and for the duration of the war. Older barristers and solicitors who remained at home carried an increasing burden of legal work as well



Australian soldiers and Red Cross workers at a hospital in Egypt. Source: State Library of SA

considerable charitable work. It is apparent that they also made significant financial donations to various charities associated with the War effort.

Their work for the Red Cross Information Bureau endures. After the war the records were provided to the Australian War Memorial where they provide a treasure store for historians and family researchers. This may be their greatest legacy of the War years. **B**

Endnotes

- 1 Annual Report of the Council of the South Australian Law Society 1914
- 2 Annual Report of the Council of the South Australia Law Society 1915
- 3 See Tony Cuneen “What Has Happened to Our Dear Boy?” Wartime Vol 46 Australian War Memorial.
- 4 The Law Society of South Incorporated an Australian Red Cross Information Bureau (South Australia Division) Annual Report and Balance Sheet for Year 1917.
- 5 Adelaide Advertiser Wednesday 28 November 1934 page 12

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Arthur Blackburn VC – a lifetime

By Helen Wighton*

Arthur Blackburn graduated from the University of Adelaide Law School in 1913 and worked as a lawyer in Adelaide for most of his civilian life. He was an ordinary man who did some extraordinary things in the two world wars that blighted his life and the lives of so many of his generation.

In this article I can offer only brief glimpses of his military achievements against an abbreviated professional and personal background.¹

Arthur survived Gallipoli and the Somme and then, in World War Two, campaigns in Syria and Java and three-and-a-half years as a prisoner of war of the Japanese. He served in both wars with distinction, earning a Victoria Cross at Pozieres in 1916 and the CBE (Military) for distinguished service in Java from 1942-1945.

The First World War changed his life in ways he could never have imagined when he enlisted. It took away many of his friends and exposed him to terrible atrocity. It also taught him how to work in a team, to take responsibility for others and to make tough decisions. It led to his leading a life of public and private commitment to those who returned from the war and to the families of those who didn't. It left him with such a strong sense of duty that he served his country in yet another World War.

Arthur was born in 1892 at Woodville, just before the Australian commercial banks collapsed and Australia lapsed into a severe economic depression (a precursor of what was to come in the 1930s). But by the time he was eight, women had been enfranchised in South Australia and the Commonwealth of Australia was born.

Arthur was the youngest of the seven children of Canon Thomas Blackburn, rector of St Margaret's Anglican Church on the corner of Woodville and Port Roads, and Harriette Blackburn, daughter of Port Lincoln magistrate John Stewart Browne. Harriette was Thomas's second wife, marrying him in her early twenties while he was still rector of St Thomas's Church

at Port Lincoln. Harriette took on the care of the widower's three sons, aged 11, 13 and 14. The boys had spent most of their childhood in Honolulu, where Thomas had been the senior priest and chaplain to the Bishop before taking up the post in Port Lincoln. Harriette and Thomas had four more children over the next five years - two boys, a girl and then, last, Arthur, born at Woodville.

It must have been chaos at the rectory, not only because of the seven children but because Arthur's father's work and interests so absorbed him. Thomas not only maintained the thriving and fashionable Woodville parish for 26 years, but wrote and published religious and philosophical papers and books, wrote poetry, composed cantatas and, above all, was an internationally eminent coleopterist. By the time Arthur was a child, Thomas was collecting and classifying beetles throughout the State and was the honorary curator of entomology at the South Australian museum.²

Arthur was sent to Pulteney when he was 10. Two years later, in 1904, his young mother died. He was moved to St Peters College when he was 14 and graduated in 1909. He then enrolled in the law degree at Adelaide University and had his first taste of military life as a student member of the South Australian Scottish Regiment (compulsory military training having been introduced in 1911).

In 1912, when Arthur was 20, his father died, and Arthur and his two brothers and sister moved together to a boarding house in North Adelaide. They were supported by a trust fund set up by their father from the proceeds of the sale of his beetle collection to the British Museum, achieved through years of painstaking negotiation with its curator in long, detailed, handwritten letters that crossed the world by ship.

Arthur was articled to C B Hardy, and after graduating in 1913, worked for Nesbit and Nesbit. He had a job, a carefree social life and was in love with Rose Kelly from Woodville.

All this was cut short by the outbreak of war in Europe when Arthur was 22. He and many of his friends and his two brothers Harry and John immediately enlisted, Arthur on the first day. His favourite step-brother (and god-father) Charles, then 39, enlisted as a medical officer. His sister Margaret went to London to work as a nurse aide in military hospitals and later as a clerk in the War Office, during which her fiancé was killed in action in France.

Although Arthur was hardly the ideal specimen of a soldier, being small and skinny and decidedly unathletic in appearance, he made up for it with a surprising physical strength and endurance, with enthusiasm and energy and a keen intelligence. But he and his friends were so young, so naïve.

Arthur landed at Gallipoli on the first day as a 10th Battalion scout, in the second Australian boat to hit the shore. His letters at the time describe going right under the waves several times before reaching the shore and vivid descriptions of the scramble up the cliffs under fire. On that day, too, he and fellow South Australian scout Philip Robin made it through the sniper fire to what historians later claimed was the furthest point inland ever reached during the campaign. Philip was killed two weeks later. Arthur remained at Gallipoli for seven months of fighting.



Arthur Blackburn (second from left) outside Buckingham Palace after receiving his Victoria Cross from King George V

of service



Private Arthur Blackburn (bottom row, centre) with fellow newly-enlisted members of the 10th Battalion. Four men in this photo were killed within a week of the first landing at Gallipoli - Private Bertie Stokes (top row, middle), Lance Corporal Philip Robin (top row, extreme right), Private Thomas Whyte (bottom row, extreme left) and Private Malcolm Teesdale Smith (bottom row, extreme right). Private Wilfred Jose (bottom row, second from right) was killed in France two years later. Arthur's fellow survivors were Sergeant John Gordon (top row, extreme left), Private Guy Fisher (top row, third from left), and Private Eric Meldrum (top row, second from right)

By April 1916, the then Lieutenant Blackburn and the rest of the 10th Battalion were in France, living the daily hell of the Somme battlefield. One day, at Pozieres, three long months later, Arthur did some outstandingly brave things which were to win him the Victoria Cross. The official Australian war historian, Charles Bean, records him as leading a unit of 70 men (an unusual responsibility for a lieutenant) when ordered to capture part of German trenches OG1 and 2. The aim was to prevent the annihilation of Australian divisions that had become separated during the previous day. He achieved that mission over seven hours, going out seven times under direct rifle and artillery fire, somehow getting back to report the German positions and get reinforcements for the soldiers who had died beside him, only to be ordered to do it all again. This was one particular day in many months of such days that continued on through the battle of Mouquet Farm and more, and during which he was promoted to Captain. In late August 1916 he succumbed to pleurisy, then a life-threatening condition, and was evacuated to hospital in London and then sent home by hospital ship to Australia in December 1916.

Arthur's letters home to his family from the various fronts were loving but circumspect and careful not to reveal the true horrors of this war. His letters to his friends gave a more accurate picture, but although they often expressed a wish for the war to end, still took the line, predictable for someone from a deeply religious family who had attended a patriotic school, that it was his duty to fight on for God, King and country, come what may.

Miraculously, all the Blackburn boys returned from this war. John, three years older than Arthur, was blinded in the trenches and returned to a lifetime of severe disability. He was knighted for his services to Braille. His stepbrother Charles became a distinguished surgeon, for which he too was knighted, and was, among other things, Chancellor of Sydney University.

Arthur married Rose in 1917 and went to work for solicitors Fenn and Hardy. In 1918, at the tender age of 25, and before the war's end, he entered politics on a returned soldier welfare platform that included, I am sad to say, calls for the weeding out of hostile enemy aliens.

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Arthur Blackburn VC – a lifetime of service (cont)

Nonetheless, Arthur had a great respect for South Australian soldiers of German ancestry, including the Heuzenroeder brothers, one of whom was killed beside him at Pozieres. And in 1918 Arthur junior and Sir Joshua Symons KC and Arthur Piper KC in the defence of a commodities trader, Snow, who was accused of trading with the Germans. Snow was convicted but the court found that he had acted naively, with no intention of benefiting the German war effort.

But Arthur's main efforts as a politician were directed towards proper mental health care for the shell-shocked, free public transport for the wounded, State support for children orphaned by the war and war widows, and land for returned soldiers. Indeed, he went out of his way to intervene for and support returned soldiers and their families for the rest of his life. Leaving Parliament after three years, he continued to work for returned soldiers as President of the Returned Soldiers League and with his lifelong, hands-on commitment to Legacy.

He had by then begun a family of his own. Later he set up in private legal practice with his friend Bill McCann, working from offices in the Executor Trustee building in Grenfell Street. McCann had also distinguished himself on the Somme and had survived being shot in the head at Pozieres the day before Arthur and his men were ordered to take over, and in the same trenches.

Arthur was still in private practice, by then also holding the position of Coroner, when he went off to fight yet another long war. During 1941 he formed and commanded the 2/3rd Machine Gun Battalion, and led the unit in Syria as a Lieutenant-Colonel and later as a Brigadier, accepting the surrender of Vichy forces in Damascus in June 1941.⁵

In January 1942 he and his battalion, along with many other Australian troops, including Edward (Weary) Dunlop, were ordered to embark on the *Orcades* for an unknown destination. Arthur was the officer commanding troops on board. Their equipment (vehicles, machine guns, boots) was to follow in another ship. The ship never arrived. In charge of the Australian forces, Arthur told his officers before landing in Sumatra on the day Singapore fell:

Gentlemen, you will realise that this is a suicide mission and I leave it to you to decide what you say to your troops, but I suggest you spend 10 minutes or so to settle down and absorb the situation before you call your orders group and talk to the men.⁴

For their landing in Sumatra, the troops were armed with a motley collection of borrowed rifles (including some from the Boer War), clubs and sticks. By the time they landed in Batavia, the situation was little better. The Australian forces, called "Blackforce" in honour of their commanding officer, had "no artillery support, no signals troops, few armoured cars, and no tanks"⁵ with which to defend the allied airfields and to hold the invading Japanese to cover the Dutch retreat.

Eventually the Australians were ordered to surrender and were then taken prisoner by the Japanese. For Arthur, there followed three-and-a-half long years of imprisonment starting in Changi (Singapore) but mostly in Moji (Japan), Pusan (Korea) and Mukden (Manchuria). During this time, at enormous peril, he maintained a secret diary (now in the Australian War Museum) recording his and his officers' and troops' experiences.

Arthur was lucky to survive the prison camps, not only physically but emotionally, given the responsibilities he shouldered as officer in command of the Australian prisoners and that he suffered terribly from hearing no word of his family in all that time, the Japanese having held back all his mail. At the time of his capture he had one son in the Australian forces in the Middle East and had left behind a household of one son at University, who he knew was soon to enlist, two teenaged daughters, his wife, his sister-in-law and his mother-in-law.

Arthur arrived home a frail skeleton of 40 kilograms. His condition was not helped by his having been flown straight to Australia to assist the military authorities locate army records left in Java instead of travelling by slow hospital ship. His attendance at the Japanese War Trials in 1946 as a witness did not help either.

That year, he was awarded the CBE (Military) for distinguished service in Java.



Arthur (right) with other officers, in 1916, probably having just been made full Lieutenant

Arthur did not resume his position of Coroner or take up full time private practice again, for health reasons, but his professional life remained active. Among other things, he was State President of the Returned Soldiers League between 1946 and 1949; a Conciliation Commissioner in the newly established Commonwealth Court of Conciliation and Arbitration between 1947 and 1955; from 1947 until his death in 1960 the Chairman of the Commonwealth Services Canteens Trust Fund; from 1955 a founding member of the Australian National Airlines Commission; and from 1956 a Director of Trans Australian Airlines (TAA) and a member of the new Television Broadcasters Board.

In 1955 he was awarded the CMG for services to the community.

At his death in 1960, aged 68, Arthur was survived by wife Rose, his four children and 15 grandchildren, some only babies, but all greatly loved and who knew him as a kind, gentle and unassuming man. Some of these descendants also took up law. His son Richard was a South Australian Rhodes scholar and a Chief Justice.⁶ One of those grandchildren is a Senior Counsel⁷ and three others are lawyers.⁸ There are now many more descendants—great-grandchildren, great-great-grandchildren, and even a great-great-great grandchild or two. We are all enormously proud of him. **B**

**It is with sadness that the Law Society notes the passing of Helen Wighton. The Law Society expresses its condolences to Helen's family and friends.*

Endnotes

- 1 In this I have relied on two main sources: a private family history called *Peeling the Onion* by my mother, Arthur's daughter Rosemary Wighton; and the biography of Arthur Blackburn written by Andrew Faulkner—*Arthur Blackburn, VC, an Australian hero, his men and their two world wars*, Wakefield Press, 2008. This book contains fascinating detail not only about my grandfather but about many other South Australians who fought in these wars.
- 2 Thomas Blackburn is acknowledged as 'the second most prolific describer of Australian Coleoptera with 3,069 species to his name. Blackburn described 5 clerid genera and 40 species; of these, one genus and three species are now synonyms': *Cleridae of Australia* <<http://www.cleridae.info/people/past/blackburn/>>
- 3 I have not mentioned Arthur's involvement with the Australian militia between wars and cannot do justice to his involvement in the Second World War in this short article. Arthur's biographer, Andrew Faulkner, presents that involvement in its historical, military and social context in his book *Arthur Blackburn, VC, an Australian hero, his men and their two world wars*, Wakefield Press, 2008 (op cit).
- 4 Arthur Blackburn, *Report on operations in Java*, AWM54 559/2/2, p 1.



Arthur arriving home in 1945 from POW camp to his wife Rose and his daughters Margaret (left) and Rosemary (right)

- 5 Andrew Faulkner, *Arthur Blackburn, VC, an Australian hero, his men and their two world wars*, Wakefield Press, 2008.
- 6 Sir Richard Blackburn (1918-1987). Dick became South Australian Rhodes scholar in 1940 but had to defer the scholarship until after the war. He eventually became a judge of the Northern Territory Supreme Court, then a judge and later the first Chief Justice of the Supreme Court of the Australian Capital Territory, and was also a judge of the Federal Court.
- 7 Tom Blackburn SC.
- 8 Henrietta Wighton, Emma Forbes and me.



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The Development of international

By Geoff Skillen, Chair, National IHL Committee

Australian Red Cross' centenary is also the centenary of the outbreak of World War I. The initial goal was to care for sick and wounded soldiers, to support their dependents and to assist overseas civilians caught up in war. Little could the new Red Cross branch have grasped the horrors the next four years would bring, with new means of warfare unleashed and a generation of young Australians devastated. By the 1920s, changes in international humanitarian law (IHL) in response to World War I were afoot. This is the intertwining story of Red Cross and IHL – practical response to need, and legal efforts to increase protections in war – developing in parallel, over 100 years.

During World War I, poisonous gases were used with devastating effect by both sides, starting with their use by Germany against French troops in April 1915. They floated silently and invisibly across the trenches, and even brooded deeply in bomb craters. Standard issue gas masks were often ineffective in offering full protection. While countermeasures were devised against the types of gases initially used, by the war's end gas had resulted in huge numbers of casualties, notably those of Russia on the eastern front. The First Hague Peace Conference in 1899 adopted a declaration concerning asphyxiating gases, where parties agreed "to abstain from the use of projectiles the sole object of which is the diffusion of asphyxiating or deleterious gases". But in most cases the gas used was not delivered by projectiles, but was simply released, in the expectation that prevailing winds would carry it to enemy lines.

The 1907 Hague Convention on Land Warfare prohibited the employment of "poison or poisoned weapons". In February 1918 the International Committee of the Red Cross (ICRC) issued an appeal to the warring parties, noting this prohibition, and concluding that "asphyxiant or poisonous gases are without any doubt one of the poisons forbidden under the Convention".

In 1925, a conference held in Geneva under the auspices of the League of Nations adopted a protocol prohibiting the use of these types of gases and bacteriological methods of warfare.



Stretcher-bearers wearing gas masks in a French trench. In February 1918 ICRC launched an appeal against gas. Source: ICRC Library

Australia ratified this instrument early, on 24 May 1930. The protocol has since been augmented by the Biological Weapons Convention of 1972 and the Chemical Weapons Convention of 1993.

Post-war Australian Red Cross was fully involved in the care of returning sick and wounded soldiers, establishing convalescent homes, hostels and sanatoria, in agreements with the Department of Defence and Repatriation. A network of Anzac Hostels provided care for the totally and permanently incapacitated, such as amputees, nerve and shell shock cases. The effects of gas were especially horrendous, and death came cruelly, ultimately from chemical pneumonia and pulmonary oedema. Valiant Red Cross Voluntary Aides nursing such patients night and day well learned the truth of Lady Munro-Ferguson's words: "Peace will not close the hospitals; the sick and wounded will be the last to demobilise; therefore Red Cross workers must be the last to quit their posts."

While there are records of the use of hot air balloons to drop bombs before World War I, rapid progress in aerial navigation before the Second Hague Peace Conference of 1907 had led to the adoption of a declaration that prohibited "the discharge of projectiles and explosives from balloons or by other new methods of a similar nature". However the United Kingdom and the United States were the only major powers to ratify the declaration. While there are generic provisions in the 1907 Hague Regulations on land warfare that would apply to attack or bombardment from the air, there was nothing specifically applicable to bombardment from aircraft.

World War I provided the first real showcase of air warfare. Both sides used aircraft and Germany used zeppelins to bomb enemy positions and, on occasions, civilian targets. In 1914, Britain had only 110 warplanes, but by the war's end, it had produced, together with France, 100,000 more. Germany produced 44,000.

humanitarian law since 1914



A ward in the 2nd Australian Casualty Clearing Station near Steenvoorde, France, November 1917. Source: Australian War Memorial

World War I clearly showed the potential for widespread destruction by aerial bombardment and led to the drafting of the Hague Rules of Air Warfare in 1923. However, the rules were never adopted in legally binding form. Still today no treaty specifically governs the conduct of warfare in the air, although aerial operations must comply with the cardinal principles of modern IHL - military necessity, distinction, and proportionality.

It can be argued that in World War I the principle that attackers must distinguish

between combatants and civilians and between military objectives and civilian objects was less needed than in later conflicts, as proportionally there were far fewer civilian deaths. At the conclusion of the war there were an estimated 10 million combatant deaths compared to 6 million civilian deaths, and in fact most civilian fatalities were due to famine or disease, such as the Spanish flu, rather than directly from military action. Today's estimates are as high as 10 civilian casualties to every one combatant.

In 1914, it was understood that undefended, or open cities (so-called because defensive efforts had been abandoned), would not be bombed or otherwise attacked. Apart from this, there was nothing in the law governing armed conflict akin to the principle of distinction.

There are striking differences in the law governing armed conflict today compared to IHL in 1914. The same may be said of Australian Red Cross. In 1914, it was focused on equipping and staffing military field hospitals. Today it is intimately involved in the development of the law, advocating for a more humane battlefield. Both Australian Red Cross and IHL have been dramatically transformed over the 100 years.

Geoff Skillen served as a legal officer in the Australian Defence Force from 1975 to 1998. From 1995 to 1998 was the Director-General of Defence Force Legal Services. From 2003 to 2010, he was the Principal Legal Officer in the Office of International Law, International Human Rights section in the Attorney-General's Department.

*This article first appeared in the August edition of the IHL Magazine of Australian Red Cross. **B***



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Court of battle: Lawyers who served in

Louis Arnold Whittington



“Members of the legal profession, old P.A.C. and University boys, and hosts of others, will mourn the loss of a bright young life, so full of promise; but all can take pride in the fact that he passed away in glory” read the Chronicle’s glowing obituary for Louis Whittington when the Adelaide newspaper reported that he was killed in France on 12 October, 1917. The only thing was, he was still alive. He was shot in the right arm and taken as a prisoner of war in Belgium on 12 October, 1917. He was imprisoned in Germany but repatriated to England on 19 December, 1918, and returned to Australia in February 1919.

The Chronicle corrected the record in its 8 December, 1917 edition, reporting: “A splendid surprise has come to Mr. and Mrs. Peter Whittington, of Hyde Park, who had been mourning the supposed loss of their son, Lieutenant L A Whittington, officially reported as killed in action about three weeks ago. On Wednesday information reached the Red Cross Bureau that Lieutenant Whittington was wounded and a prisoner in Germany.”

Whittington was articled to Anderson and Gordon and admitted to the Bar in December, 1911. He was then chief clerk at Messrs Poole and Johnston and was a solicitor on Naracoorte when the War began. After the War, he joined the law firm Holland and Whittington in 1927. He then practiced law under the name of L A Whittington and Davies, and retired in 1965. He also served in World War II.

Whittington was a lecturer at University of Adelaide for 22 years and Vice-President of the Law Society of South Australia.

His premature obituary, while mistaken, was nevertheless revealing – especially the following passage: “Louis Whittington hated war just as Leslie Gordon did, but both saw their duty clearly. It is a strange coincidence that two such heroic spirits should have come from the same lawyer’s office... Soldiers under Lieutenant Whittington loved him. He was a strict disciplinarian, but his kindly humane ways won the hearts of his men.”

Harold Eric Moody



Harold Eric Moody was a gifted student and lawyer whose potential was never realised. It’s both a personal and professional tragedy that this exceptionally talented individual was killed in battle at the age of 23.

Moody was admitted to the Bar in March 1914 and worked for law firm Varley and Evan at Yorketown. He was one of the first South Australians to enlist, but he contracted measles and didn’t leave Australia until August, 1915. He joined the 3rd Field Artillery Headquarters in Gallipoli on 3 September and was promoted to Lieutenant on 15 October. He played a significant role in the Allied troops’ evacuation.

Moody served in Egypt before being sent to France in March, 1916. He was involved in the Battle of the Somme and was part of the 1st Division of the AIF that captured Pozieres. Moody was killed by a German aircraft bomb attack as his contingent pushed towards Mouquet Farm.

In a letter to his fiancé in late 1915, Moody wrote:

Do you know I don’t know what it will be like when I get back. I’ve almost forgotten I’m a solicitor and an LLB. I don’t know what on earth I’ll do.

Dr Donald “Dabbo” Kerr



Kerr’s is a tragic story of a prodigious talent who was tormented by what he experienced at War. Kerr was a brilliant law student and won the prestigious Stow Prize at University of Adelaide. He was also a McCulloch History Scholarship recipient at St Peter’s College. Kerr was a solicitor at Eagle Chambers when he enlisted on 3 August, 1915.

Kerr joined the 50th Battalion in Egypt before being posted to France with the 10th Battalion. Kerr was up against it from the beginning, battling influenza on his arrival in Europe. He worked as a stretcher bearer and was shot in the neck, back and jaw. He returned to Australia in February, 1917 and was discharged in June that year.

Kerr was awarded the Military Cross for “Conspicuous

courage, endurance and self-sacrifice near Moquet Farm between 12th and 15th August, 1916, in attending to and bringing in wounded men. He continued cheerfully and unceasingly to dress and carry wounded until severely wounded himself on the 15th August, 1916”.

When he returned to Adelaide, Kerr entered into partnership with law firm W & T Pope. In 1919, he became the youngest person in the Commonwealth to complete a Doctorate of Laws. Kerr was known as a lawyer of immense ability and had much literature published. He wrote numerous books, including *The Law of the Australian Constitution* and *The principles of the Australian land titles (Torrens system)*.

Kerr committed suicide on 30 January, 1928, aged 35.

The Great War

William Joseph Denny



William Joseph Denny was responsible for several major reforms both before and after serving in World War I. He was admitted to the Supreme Court in 1908 and was Attorney General and Minister for the Northern Territory in the Verran Government in 1910-12. During this time he negotiated the Northern Territory's transfer to Commonwealth rule. He was also the architect of the *Women Lawyers Act* 1911.

Denny enlisted for the War on 17 August, 1915, aged 42, as a Private and was posted to Egypt in 1916. In June that year he was promoted to Lieutenant and fought in France with the 5th Divisional Ammunition Column and then the 1st Divisional Artillery. Denny fought at Fromelle and was hit by gunfire in Ypres on

15 September, 1917, suffering nerve damage and a vernal hernia on his right arm. He was awarded a Military Cross for his efforts.

In 1919, Denny published his book "*The Diggers*" and a year later he married Winefride Leahy. They had one son and three daughters together. After the War, Denny served as Attorney General and Minister for Housing with the Gunn/Hill Government in 1924-27 and the Hill Government of 1930-33. Of the numerous reforms he introduced post-war, perhaps his best known one was the Thousand Homes Scheme at Colonel Light Gardens.

Denny practised law until his death on 2 May, 1946.

James Leslie Gordon



James Leslie Gordon was another outstanding lawyer who could have made an extraordinary contribution to the legal profession if he survived the War.

Gordon was the only student to ever win the Stow Prize – for excellence in the study of law at University of Adelaide – four times. Three-time winners of the prize receive a Stow Medal. After University, Gordon was articled to his uncle Sir John Gordon's firm.

Gordon served with the 4th Field Ambulance and was promoted to Staff Sergeant. He was killed in action on 24 July, 1915, aged 31.

With the Gordon family desperate to know if their two sons, James and Kenneth, were alive, Sir John Gordon cabled the Minister for Defence to request urgent information. His second cable, sent after receiving no response the day before, read:

KINDLY REPLY MY TELEGRAM RE SEARGEANT GORDON MOTHER IN AGONY SUSPENSE

He received the following reply:

REGRET CONFIRM RECEIPT OF DEATH OF FIFTY-SEVEN STAFF – SERGEANT JAMES LESLIE FOURTH FILED AMBULANCE ON FIRST INSTANT NO OTHER PARTIUCLARS AVAILABLE AT PRESENT NEXT-KIN ALREADY ADVISED.

It wasn't until February 1919 that the family were officially notified that James had been killed in action and buried in Gallipoli.

In September, 1917, a Court of Inquiry declared that James' brother, Private Kenneth Douglas Gordon, was killed on the day of the Gallipoli landing.



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Community service in the face of personal tragedy

Those who served with him regarded Eric Wilkes Talbot Smith as a man of great courage. He was one of the first to land at the Gallipoli peninsula, and like many of his comrades, was wounded by Turkish soldiers on 25 April, 1915, and died five days later.

Lieutenant Smith was on the machine guns, and resolutely stuck to his post until severely wounded. He was sent to Alexandria but died on 30 April, just 23 years old.

Lieutenant Colonel Weir wrote a letter to Talbot Smith's mother on 7 May, 1915, which in part read:

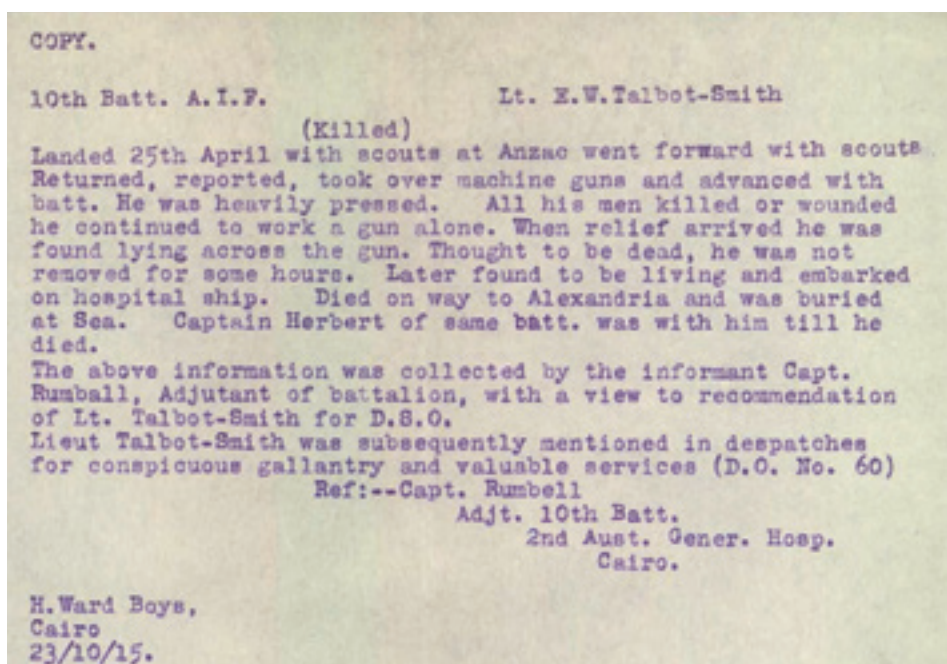
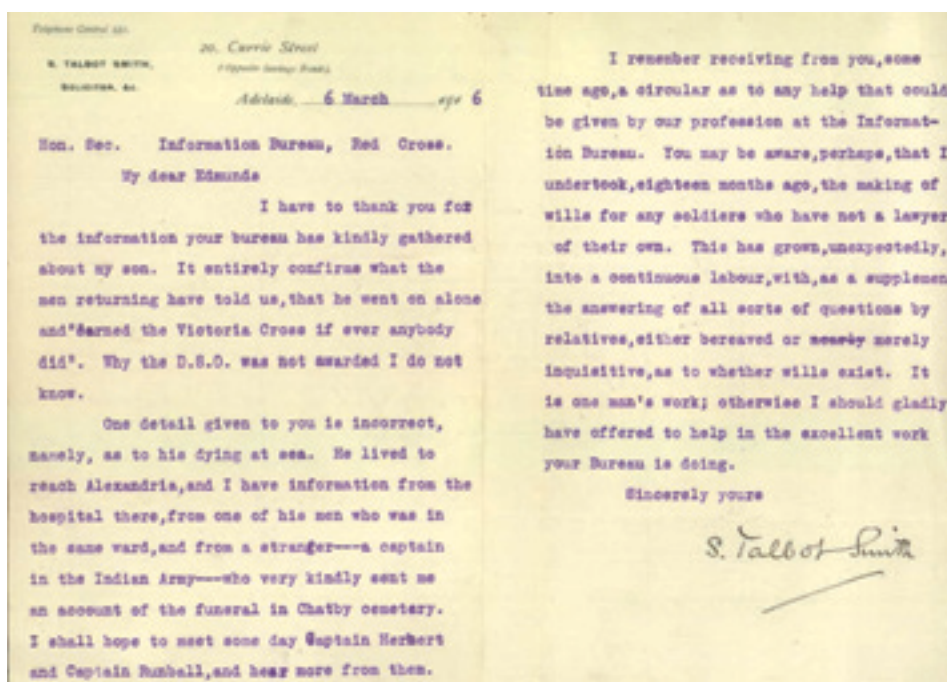
Your son Eric died at his post bravely fighting for the Empire. He was among the first to land on, Sunday, April 25, at about 4.25 am. He had charge of the scouts, and went about his duty in a fearless manner. After he had done all that was possible with his scouts, he took charge of our machine guns, and was in the act of firing one when he was wounded in the head ... Eric was a soldier who would most certainly have distinguished himself had he been spared.

Lieutenant Smith's father Sydney Talbot Smith was a prominent lawyer and tireless community worker. He studied law in the UK but practised in Adelaide. He entered a partnership with his uncle in 1886 but was a sole practitioner for most of his career.

During World War I, Sydney drew up thousands of wills for Australian soldiers on a pro bono basis.

The top letter is from Sydney after hearing news of Eric's death. The letter was sent to the Red Cross Bureau, which had assisted Sydney in investigating his son's fate.

Below that is Red Cross Bureau correspondence from Captain Rumbell, corroborating Talbot Smith's death. **B**



Source: State Library of SA

War letters immortalised

When Harold Flinders Mitchell enlisted in August 1916 to serve in the War, he had two daughters under six. The youngest, Roma, would become the first female judge in Australia.

Harold was a lawyer in Renmark before joining the AIF. He excelled academically at St Peter's College and married Maude Imelda Victoria Wickham in 1908, at which time he was studying law. Harold's father was Samuel James Mitchell, an auctioneer, draper and Mayor of Port Augusta before joining the legal profession. Samuel became the first judge of the Commonwealth Bankruptcy Court in South Australia and the first judge of the Supreme Court of Northern Territory.

Harold was killed in the Battle of Dernancourt in France on 5 April, 1918, by machine gun fire. He was 32 years old.

The letter below was just one of several eyewitness statements provided by Harold's comrades, testifying to his demise. The statements were sourced by Red Cross workers at the scene of the conflict and relayed to loved ones in South Australia via the South Australian Red Cross Bureau.

Digitisation of Red Cross Bureau correspondence

The Red Cross Bureau helped family members find out about missing or wounded soldiers, and researched 8033 inquiries from 1916 to 1919. An

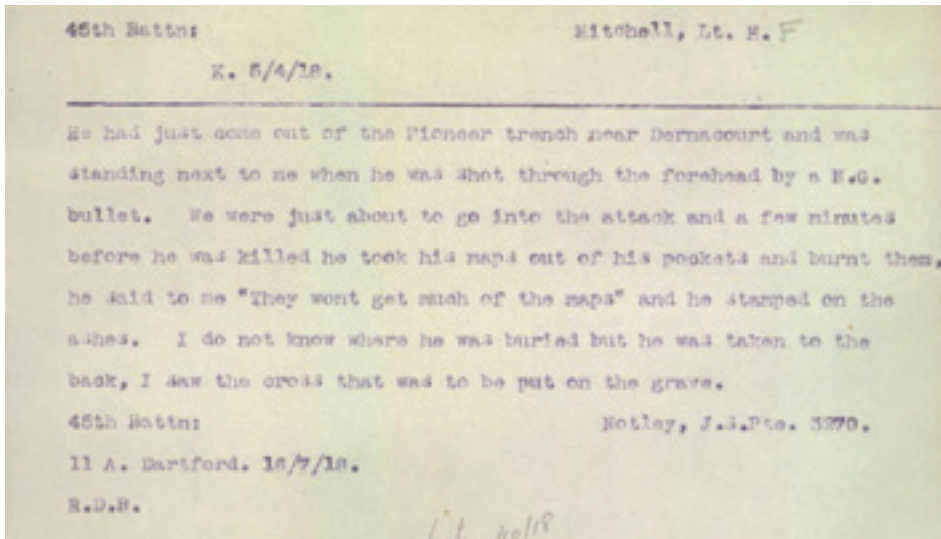
envelope was created for each inquiry, containing information about each soldier inquired about, letters from the requesting family, eyewitness statements about the soldier's last known whereabouts, and in most cases, the fate of the soldier.

These "packets" of information are being digitised by the State Library of South Australia and will highlight South Australia's contributions to World War I. This online resource is expected to be available early next year.

These packets provide an insight into the realities of the war that other official documents don't. Letters sent by family members, for example, are full of restrained emotion and humanise the soldiers and their family members, highlighting the impact their absence had on society back home.

The State Library's holding of Red Cross Bureau packets are unique in Australia. While the Australian War Memorial holds copies of the Australian enquiry records from the London Red Cross Bureau, its collection does not include letters from families or friends.

The web resource will enable people to search a range of criteria for packets, which will be available to download in digitised format. Members of the community will also be able to contribute additional information, such as family photos and letters. **B**



One of several eyewitness statements attesting to Harold Mitchell's death, sourced by Red Cross volunteers and sent to Mitchell's family in South Australia. Source: State Library of SA

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The conscription debate during

By Jack Hetzel-Bone, Boylan Lawyers

Conscription during World War I was a divisive issue in Australia both inside and outside parliament. It caused a divide in the Labor party of such a magnitude that it was split in two. This ultimately led to the creation of the National Labor Party which, combined with the Liberal Party, formed the ruling Nationalist Party. William Morris Hughes, a strong nationalist and dogmatic supporter of conscription, was Prime Minister through that turbulent time. He put two referendums on conscription to the people of Australia, both of which were defeated.

From 1911 the Commonwealth Government had the power of domestic conscription under the *Defence Act*. However this power was restricted to defence of the nation, and only on Australian shores. Military training was already mandatory for men aged 20 to 60. When war broke out in Europe in 1914, Prime Minister Andrew Fisher pledged allegiance to the British government and Australia's support for the War. Fisher was opposed to conscription, believing voluntary enlistment sufficient to aid the mother country and conscription a divisive issue that would disrupt Australia's war effort. At the start of the war voluntary enlistment boomed, spurred by a sense of national pride. Enlistment offices had to turn people away.

The Commonwealth Government, spearheaded by the then Attorney-General William Hughes, passed the *War Precautions Act* which gave the Governor-General widespread power to make laws by regulation to secure the public safety

and defence of the Commonwealth. The Government used this power for censorship, to exercise control over newspapers, and to penalise the spreading of reports that would cause unrest. The Government even used this power to fix the price of bread, which the High Court held in the case of *Farey v Burvett* [1916] HCA 36 was a legitimate exercise of the Defence Power. According to the official Australian history of World War I, the scope of the *War Precautions Act* was so extensive that it is believed conscription could have been introduced by passing regulation, and might have occurred if politically favourable to do so.

In September 1915 a war census was undertaken to ascertain Australia's resources for men and materials. On 26 October, 1915 Fisher announced his appointment as High Commissioner in London. The Attorney-General, William Morris Hughes, succeeded Fisher as Prime Minister on 27 October. In November he announced the intention to pledge a further 50,000 troops and maintain a monthly quota of 9500. Strict controls on leaving the country were implemented, and men were not allowed to leave without a passport. Applicants for passports were questioned, scrutinised, and placed under pressure.

In December 1915 Hughes released a manifesto entitled "a call to arms", designed to increase voluntary enlistments. Propaganda aggressively promoted patriotism, targeting the Australian people's sentiment and fear. Posters promoting enlistment exaggerated the threat to Australia and depicted enemy forces invading. Others shamed enlisters by stating mothers would only be proud of them if they enlisted, or that their fathers would like to boast about them as a soldier. Despite these efforts voluntary enlistment did meet the demands for increased reinforcements.

Hughes sailed to England in January 1916 to attend an Imperial Meeting with other leaders of the Allies, to return in July 1916. During that time pro-conscription bodies such as the Universal Service League and Australian Natives Association were established to promote conscription.

Meanwhile, strong anti-conscription sentiments continued to build in the Labor Party.

Hughes returned from England and, despite believing that full support was necessary for the war effort, did not declare in support of conscription. Although Hughes had a majority in the House of Representatives, he would not be able to pass the necessary amendment to the *Defence Act* through the hostile Senate (including from his own party). Yet the casualties of war placed increasing pressure on Australia to produce reinforcements. In the battle of the Somme the Australian Imperial Forces suffered casualties of 28,000 men. It became painfully clear that voluntary enlistment could not keep up.

The proposal was made to break up a new Australian unit, the 3rd Division, which was being trained in England so as to provide reinforcements to other ground troops. General Birdwood, commander of the ANZAC forces, did not approve of this, believing Australia could provide further men. He and his staff generated a figure necessary for reinforcements: 20,000 troops immediately, with 16,500 infantry for three months after that.

The British Government adopted General Birdwood's recommendation and made the request on 24 August, 1916. This prompted Hughes to announce on 30 August his intention to call a referendum on conscription. On 14 September, Hughes moved the second reading speech of the *Military Service Referendum Bill*. On the same day, the bitter divide in the Labor party that had previously bubbled under the surface erupted, and the minister for Trade and Customs resigned.

The supporters of the referendum believed conscription was required to properly reinforce the Australian Imperial Forces, and a failure to provide compulsion was unfair on the volunteers who risked it all. There was also a widespread fear that Australia would be invaded if the Allies did not win the war. The objectors to the referendum held varied views. Some believed that although there was a threat



A poster urging Australian men to enlist

World War I

of invasion, the war effort was adequately addressed through voluntary enlistment. Others thought the danger to Australia was remote considering the location of the conflict. Others were conscientious objectors. Archbishop Mannix of Melbourne was an Irish-Catholic who was Hughes' loudest opposition to conscription. He believed Australia had done more than enough and should not be involved in the war. It is thought he, and other Irish immigrants, were coloured in their views of the English government because of the Irish uprising against England. The Easter Uprising in 1916 and England's execution of IRA operatives shortly thereafter further fanned the flames of anti-English sentiment, which in turn, influenced discussion of Australia's involvement in the War.

The Commonwealth Government already had the power to legislate for conscription and could do so if an amendment to the *Defence Act* was passed through both houses. Therefore the referendum was not used in accordance with the intention of section 128 of the Constitution, as no change to the Constitution was proposed. Instead, the goal of the referendum was to gauge public opinion on conscription. Hughes believed if it were passed with a majority then it could sway the opinion of senators who opposed conscription.

In early October 1916 and anticipating success at the upcoming referendum, the government exercised its power under the *Defence Act* and called on all unmarried men aged 21 to 35 to register and if fit to go into a camp.

Three ministers in the Hughes government resigned the day before the referendum in protest of Hughes, who created a regulation under the *War Precautions Act* to ask voters in the referendum questions concerning whether the person had reported to military service (if eligible) and whether he was born somewhere that Britain was then at war with.

The referendum was held on 28 October 1916 and was defeated with 1,087,557 "Yes" and 1,160,035 "No" votes. South Australians who voted were 57.6 per cent

opposed to conscription, with the second highest "No" votes, second only to New South Wales. Hughes contacted the British government and advised that the requested reinforcements would not be possible. Following the defeat of the referendum two more ministers of the Hughes government resigned, reducing the government to four ministers.

A Labor party meeting was held on 14 November, 1916 where a no confidence motion was put forward against Hughes. Hughes walked out of the caucus meeting with 23 of the 65 members of the caucus in tow. Hughes ceased to be leader of the Labor party and, with his followers, split from the party. Hughes resigned as Prime Minister on 14 November but was commissioned by the Governor-General to form a government from his new supporters. A Nationalist government was formed on 17 February, 1917 from the National Labor and Liberal parties. Shortly thereafter, three senators who opposed conscription departed the Senate for various reasons, amid allegations of manipulation by the Nationalist government. The Government had a majority in the Senate if the president voted. Hughes suggested parliament be prolonged in the face of an impending election. The motion failed in the Senate and Hughes called a double dissolution on 6 March, 1917.

The election was held on 5 May, 1917. The Hughes Nationalist government won all 18 Senate seats and increased its House of Representatives majority to 33 seats. It soon became clear that voluntary enlistment was still not providing enough reinforcements to sustain the war effort. On 24 May the Australian War Office advised 15,000 troops were required immediately, with a further 5000 for November and December. In October, 1917 General Birdwood advised 5500 troops were required per month. It is thought General Birdwood, the Army Council, and Australian Authorities in London inflated the figures quoted in August 1916 to put political pressure on the Australian government to introduce conscription. It is also possible voluntary

enlistments would have been sufficient to cover Australia's requirements. In September and October 1917 the Australian Imperial Forces sustained heavy casualties, with 38,000 men lost in the third battle of Ypres, 7000 lost at Messines and 10,000 at Bullecourt. During this time voluntary enlistment had continued to fall.

On 20 December, 1917 a second referendum was held to gauge public opinion on conscription. Like the first referendum it was not a proper use of section 128 of the Constitution. Unlike the 1916 referendum, the Hughes government had the majority in both houses, and therefore could have passed an amendment to the *Defence Act*. However due to the political climate the decision was made to put the question to a referendum. The second conscription referendum was unsuccessful, with "Yes" getting 1,015,159 votes to "No" 1,181,747 votes.

On 8 January, 1918 following the defeat of the referendum Hughes tendered his resignation to the Governor-General. However two days later the Governor-General commissioned Hughes to form a new government and Hughes subsequently reinstated the same government as had been in power immediately prior. This ended the Hughes' push for conscription, although he developed a voluntary ballot similar to a conscription ballot for voluntary enlistments. The Great War ended on 11 November, 1918 and the issue of conscription in Australia would be forgotten until 1939, at the start of World War II. **B**

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Official History of Australia in the War of 1914-1918 – Australian War Memorial Website.



The Law Society's War Memorial Plaques were made in 1946, with money raised at a dinner for the return of ex-servicemen. The voluntary contributions towards paying the dinner expenses of the ex-servicemen were so generous that there was enough left over to commission the World War I and World War II plaques. The plaques were probably first placed in the Murray Law Library, on each side of the portrait of Sir George Murray, when the Society was housed at the Exchange Building, 26 Pirie St. They now hang proudly in the Law Society's new premises on North Terrace, just outside the library. Serendipitously, the Society's new premises has great historical significance with regards to the Law Society's involvement in World War I. The Verco Building, which sits directly below the Law Society's current offices, was where the South Australian Red Cross Bureau operated. The Bureau was established by Law Society President Sir Josiah Symon and was funded by the legal profession. It helped many family members and friends find out about missing or wounded soldiers. Interestingly, the Verco Building was designed by an engineer from Melbourne. His name? John Monash (later General Sir John Monash). Photo: Tom Roschi Photography

Society commemorates WWI centenary

On 4 August, The Law Society held a commemorative event to mark with the 100th anniversary of the outbreak of the Great War.

President Morry Bailes spoke about the circumstances leading up to the outbreak of the War, explaining the tensions between nations, the complex web of alliances, and the assassination of Arch Duke Frank Ferdinand, heir to the Austrian Empire, which bought international hostilities to the fore.

As Mr Bailes surmised: “The cause of The Great War was each country’s attempt to gain and preserve their power, never mind the cost of its citizens.”

Former Law Society President Margaret Kelly spoke about the Law Society of SA’s involvement in World War I, while Elizabeth Olsson from Mellor Olsson gave a presentation of South Australian lawyers who served in the War, with a particular focus on those who were killed in battle.

Five members of the South Australian legal profession (including John Mills who graduated at University of Adelaide but practised in Perth) and seven local law students died on active service during the War. Several had proven to be exceptional lawyers and brilliant pupils, and one can

only wonder what kind of contribution they would have made to the legal profession if their lives had not been so tragically cut short.

Ms Kelly’s speech focused on the Law Society’s activities at home during the war. The Law Society in fact played a significant role during World War I, having established the Red Cross Bureau which operated out of the Verco Building on North Tce.

Steve Larkins, Deputy State President of the South Australian branch of the RSL, spoke about the exciting RSL Virtual War Memorial Project, an online database of information about South Australians and Northern Territorians who served in conflicts from the Boer War onwards. The online repository will have information on thousands of service personnel who are not listed on any memorial or honour roll, and will consolidate official records with user generated information to build a comprehensive portrait of servicemen and women. The virtual memorial is due to be complete in time for the Centenary of Anzac next year.

The commemorative event concluded with a reading of The Ode by the Hon Kevin Duggan AM QC. **B**



The Hon Kevin Duggan AM QC (left) and Law Society President Morry Bailes



Elizabeth Olsson (left) and Margaret Kelly, who both delivered presentations at the Society’s World War I commemorative event



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The Hargrave family: World War I and beyond

By Mia Hargrave Bell, Manager, Limitation of Liability Scheme

Working on the Law Society's Oral Histories project inspired me to look at my own family history. I was delighted to find a direct connection to one of the oldest law firms in Adelaide, and very proud to name amongst my distant relatives a Military Cross earned at Gallipoli. It has certainly made the anniversary of World War I more poignant for me.

We are fortunate that these war experiences are documented through the prolific letter writing from the Front to "Home", and that the letters have been retained for future generations.

Like many Adelaide families, the Hargrave family – and by extension, the family firm of Knox & Hargrave – played their role in both World Wars.

Charles Hargrave, known as CT the Elder, was articled to the firm of Knox & Thrupp in 1871. He became a partner in 1878, and in 1905 the firm became Knox & Hargrave.

Knox & Hargrave was located at Ware Chambers, 112 King William St, and was the longest running family firm in Adelaide. It later moved to Grenfell Street and then merged into Cosoff Cudmore Knox in 2001. Three generations of the Hargrave family were involved in the firm.

Charles Hargrave the Elder had six sons, all educated at St Peter's College, of whom three – Charles "CT the Younger", Nathaniel and Lancelot - joined the firm of Knox & Hargrave.

Gerald Hargrave (another son of Charles Hargrave) served in World War I in the 28th Infantry Battalion. He fought in France and was made a Captain before being invalided.

Lancelot Hargrave enlisted on 11 September, 1914 at just 18 years of age, as a Sergeant in the 9th Regiment Light Horse. Along with his mount "Peter", he served in Gallipoli, and was later awarded the Gallipoli Medallion. He also served in Egypt, Turkey and Jordan, and was made a Lieutenant. He won the Military Cross for his part in the capture of a gun at Huj. The gun will be familiar to those who know the war memorial at Jamestown. Lance's sister Eileen Hargrave was part of the Land Army in Britain during the War.



Lancelot Hargrave and Uesula Howard Lloyd celebrate their wedding with family and friends in 1922. Source: State Library of SA

Writing home to his family, describing Christmas lunch 1918 in Cairo, Lance commented on the rare pleasure of sitting down to a meal with the female company of four Ward sisters (and 35 men):

I've always tried to convey that the hardest part of the last four years has been the banishment from civilization and now at the end of it all I'm of the same opinion...

However the time has come to look to the future a little more than we did when there was always more than a possibility of life being cut short at any old moment, for the temptation on active service to take what the moment offered and hang the rest was very strong indeed and, after all, it was the only way of enduring the transient existence.

Having been articled to the family firm of Knox & Hargrave in 1914, on his return from war Lance studied law at Adelaide University, along with his Light Horse comrade and school friend Paul Teesdale Smith. Lance joined the Hargrave family firm alongside his two brothers. During his career he provided pro bono legal advice to "Toc H", an organisation which assisted blinded servicemen.

Interestingly, Lance also served in World War II, with the Royal Australian Navy as a

Volunteer Reserve Lieutenant. He studied at the Royal Naval College in Greenwich, then served in South Africa in 1942 and then on the HMAS Manoora and HMAS Torrens. He was made Lieutenant-Commander.

Lance went on to become Lord Mayor of Adelaide from 1957 to 1960. He received Queen Elizabeth, the Queen Mother, on her visit to Adelaide. He was instrumental in the establishment of the Adelaide Festival of Arts. The South Australian Cricket Association awards the LMS Hargrave trophy annually to the best player under 25 years.

Lance's life, including his war service, and the social and legal world in Adelaide, is colourfully captured in a biography by Jason Shute, entitled *A Man in War and Peace: The life of LMS Hargrave, MC, VRD*, and I am grateful to Mr Shute for providing information about Lance Hargrave.

Neil Hargrave, son of Nathaniel Hargrave, also joined the firm of Knox & Hargrave and served in the RAAF during World War II. Neil Hargrave was Secretary of the Law Society for two years, and was both a member and the Chair of the Law Society's Property Committee. He was awarded an OBE in 1964.

During World War II, Lance's brother CT felt the burden of running the family



Lance Hargrave when he was promoted to Lieutenant

firm on his own with both a brother and a nephew serving in the war, and wrote on several occasions requesting Lance's discharge so that he could return to assist with running the firm.

A history of Knox & Hargrave, published by the firm in 1988 to celebrate its 150th anniversary, is held in the Law Society Library. **B**

Challenging cancer



Extra transport for cancer treatment

Distance should not equal disadvantage according to Cancer Council SA as it increases services for people from rural communities accessing life-saving cancer treatment in Adelaide.

Cancer Council vehicles, driven by dedicated volunteers, travel to key cancer treatment centres at the Royal Adelaide Hospital, the Adelaide Radiotherapy Centres on South Terrace and Tennyson Centre each week day.

This service has now been extended to include transport to and from the Queen Elizabeth Hospital, Flinders Private Hospital and Flinders Medical Centre.

Cancer Council SA Chief Executive, Professor Brenda Wilson, said that it was extremely important to provide supportive accommodation in a warm, welcoming and friendly environment so people can feel at home during their time in Adelaide.

"We know that South Australians from regional areas experience a range of practical, psychological and emotional challenges when coming to Adelaide for treatment, which can impact on their recovery," Professor Wilson said.

"Providing transport to treatment centres is a highly valued service for our guests and we are pleased to be extending the number of centres that we offer travel to."

Guest at Cancer Council Lodge - Flinders, Mark Westlake, said the transport to treatment centres provided one less thing to worry about in what was a stressful time.

"When I knew I was going to Adelaide for treatment I had a lot of concern about where I was going to stay and where I had to go, and having the Lodge accommodation took those concerns off my mind," Mr Westlake said.

"Having this support available and the transport to treatment centres allows me to focus on getting better."

Your support allows Cancer Council SA to subsidise the operations of Cancer Council Lodge, providing affordable accommodation to people from rural and remote areas undergoing cancer treatment.

For more information visit cancersa.org.au or call our experienced nurses at Cancer Council 13 11 20, Monday to Friday, 8.30am to 5.30pm. **B**

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- Preparing prompt and thorough expert's reports for parties to litigation

Principals and senior staff welcome the opportunity to discuss any issue on a confidential, no cost, no obligation basis.

Principals:
Alan Scott • Andre Strazdins

Directors:
Des Munro • Maris Rudaks • Stuart Otway



Members on the Move



Belinda Richards



Thomas Burke



Amrita Malik



Angela (Xun) Wang



Patrick Coyle

Norman Waterhouse has rewarded four of its most talented lawyers with promotions to more senior positions.

Belinda Richards from the Employment and Industrial Relations, Governance and Regulatory Services teams; Thomas Burke from the Dispute Resolution and Insolvency team; and Amrita Malik from the Family Law team have been promoted to Senior Associate.

Angela Wang from the Commercial and Taxation team has been promoted to Associate.

Chief Executive Officer Michael Taylor said: "These promotions are well deserved and reflect the hard work, expertise and enthusiasm of each of them."

- **Belinda Richards** joined the firm in 2006. She advises clients in a variety of industrial relations and governance issues, which span both the public and private sectors. Belinda holds a Bachelor of Laws and Legal Practice and a Bachelor of International Studies from Flinders University.
- **Thomas Burke** started with Norman Waterhouse as a Law Clerk in 2007. Since joining Norman Waterhouse, he has assisted in a range of commercial

dispute and insolvency matters. He holds a Bachelor of Law and a Bachelor of Arts from the University of Adelaide.

- **Amrita Malik** has practiced almost exclusively in Family Law since her admission in 2009. Amrita offers experience in a wide range of property settlement and children's matters. She has a Bachelor of Laws from Bond University and a Graduate Diploma in Legal Practice.
- **Angela (Xun) Wang** joined Norman's Corporate and Commercial team in 2010 and holds Bachelor degrees in Commerce (Accounting) and Laws. Growing up in China, Angela speaks and writes fluent Mandarin and provides support to the firm's business migration and international business practice.

Janus Lawyers is pleased to announce that **Patrick Coyle** has joined the firm. Patrick joins Michael Janus and will add to the firm's expertise in civil and commercial law and dispute resolution. Patrick has 12 years' experience in a broad range of areas including insurance, estate and estate litigation, company law, professional negligence and employment law. **B**

Call For Papers

LSSA FORUM 2015

Important Dates

Abstract / Paper Submissions Close

Friday 3 October 2014

Notification of Acceptance

Friday 31 October 2014

Final Papers and / or Presentations Required

Thursday 22 January 2015

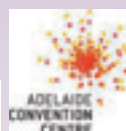
Submission Instructions

All submissions should be provided no later than Friday 3 October 2014. Please address

the submission to the attention of Graham Jobling, Manager (Education), Law Society of South Australia.

Email: natalie.mackay@lawsocietyasa.asn.au

Post: GPO Box 2066, Adelaide SA 5001 or DX 333, Adelaide



R U OK?

By the Mental Health & Wellbeing Committee

On 11 September, many organisations will take the opportunity to ask “R U OK?” as part of the very effective campaign coordinated by the R U OK Foundation. This year’s campaign will continue the theme of “A conversation could change a life” and the results following the 2013 campaign recorded an amazing 5 million Australians who participated in R U OK day. Of those participants, 58 per cent agreed that the prompt of the campaign helped them have a meaningful conversation.

The report that 58 per cent of organisations are unlikely to participate in R U OK day 2014 is astounding. The Mental Health statistics on costs to business continue to be presented to us in the press day in day out and responsibility needs to be taken from the top.

In this month’s article the Mental Health and Wellbeing committee share some strategies to not only participate in R U OK day, but to make these conversations part of your daily practice.

Begin steps to develop a culture in your firm that it is okay to not be okay. The bias to Mental Health remains strong

across all industries and the Law Society is committed to assisting firms in developing strategies but it needs to begin from within each firm. As the head of your firm, you should ask your staff: R U OK? Your influence and support of initiatives around Mental Health and early preventative conversations will allow your firm to prosper both culturally and financially.

Not sure of how to start a conversation with someone you think needs help? R U OK day suggests four steps:

- Ask R U Ok?
- Listen without judgement
- Encourage action
- Follow up

Still not sure? Why not let technology be your friend – visit the R U OK day website, download the app from ruokconversationstarter.com or make a joke about borrowing someone’s toothbrush from this year’s R U OK Campaign.

Feeling shy to ask? Research shows that people who have strong relationships are less likely to consider suicide as an option when struggling with life. Conversations

have been proven to save lives.

Feel like you have tried and failed? Try again. Maybe suggest that it’s OK that to not be ready to talk about it yet but please remind them that you will be there when they are ready to discuss it, suggest a catch-up next week for a chat or see if there someone else they’d rather discuss this with.

Over 50 per cent of practitioners in South Australia are in sole or small firms and asking the question of R U OK is more difficult in this environment. As a sole practitioner, make an effort to reach out to a peer in September and establish a regular catch up for a fitness session or coffee or attend the small practice networking sessions available through the Law Society.

Keep in mind the services that the Law Society offers:

- LawCare Counselling Service (Dr Jill): 8110 5279
- Lawyers’ Support Group: Contact Annie MacRae on 8229 0263 or annie.macrae@lawsociety.sa.asn.au **B**



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Police looking for prosecuting solicitors

South Australia Police (SAPOL) has embarked on a new initiative to employ experienced legal practitioners to assist its frontline prosecutors. Prosecuting solicitors will be recruited on a contractual basis and will be attached to prosecution units within SAPOL's Prosecution Services Branch. This is a ground-breaking step away from the traditional police prosecutor who has moved into the prosecution function as their career develops. However, the traditional police prosecutor will continue to be the primary deliverer of prosecution services into the foreseeable future.

Assistant Commissioner, Operations Support Service Linda Williams APM, LLB (Hons), BA, GDLP who is in charge of prosecution services within SAPOL envisages the new prosecuting solicitors undertaking complex and involved prosecution tasks, providing support to frontline police prosecutors. This is a significant change in the way that SAPOL has previously conducted its prosecution business and is guided by SAPOL's Strategic Directions in providing a responsive police service for all South



"This is a significant change in the way that SAPOL has previously conducted its prosecution business."

Australians. Prosecuting solicitors will contribute to the quality and timeliness of prosecutions within SAPOL and will be expected to provide advocacy services in the criminal jurisdiction in respect of proceedings commenced or prosecuted by SAPOL.

Prosecuting solicitors may be required to work in locations of vacancies within the prosecution branch, including both metropolitan and regional locations in South Australia. Their legal training and experience will assist prosecution units by providing legal advice to other prosecutors and police investigators. This will include the examination and interpretation of the criminal law and determining the relevant prosecution methodology for presenting evidence before the court. Naturally they will also be required to appear in the Magistrates' Court and assume conduct of matters at all stages of the court process.

SAPOL will employ prosecuting solicitors to work alongside police prosecutors. A pilot program has been developed and recruiting is currently underway to employ a number of suitable applicants. Those applying for employment with SAPOL must have a degree in law and must be admitted (or eligible to be admitted) as a practitioner of the Supreme Court of South Australia. They must also be in possession of an unrestricted practicing certificate. A sound knowledge of criminal

law, experience in legal practice and the conduct of matters before Courts of Summary Jurisdiction (or higher) within Australia are essential requirements for the vacancy positions.

A truncated training program has been developed in consultation with our internal and external training providers and this will form part of the induction phase for those applicants who are successful. Regular training forms part of SAPOL's ongoing commitment in the professional development of its employees. A dedicated Prosecution Training Unit ensures employees are kept abreast of matters that may impact upon their daily business.

Successful applicants will be remunerated at the Public Sector Classification of Legal Officer 3 (LE3) with the salary range between \$78,072 and \$84,680. It is expected that further employment opportunities as a prosecuting solicitor will arise within SAPOL in the near future.

SAPOL is an equal opportunity employer and conditions of employment are in accordance with the Commissioner for Public Employment Standards and Determinations and the South Australian Public Sector Code of Ethics.

Anyone seeking further information in relation to this initiative are invited to contact the project team on telephone (08) 7322 3811. **B**

Government Gazette digitisation project takes off



We are pleased to announce, coinciding with the 2014 ALLA National Conference in Adelaide, that the first stage of an important ALLA (SA)/AustLII joint project to digitise the South Australian Government Gazettes from 1839 to 1998 will be launched.

In February 2013 the Australian Law Librarian Association SA Division approached AustLII with an ambitious plan to facilitate the digitisation of these Gazettes. This widely utilised resource is currently only available online from 1999 at <http://www.governmentgazette.sa.gov.au/>. Links to the historical gazettes on AustLII will be posted on this site.

This project would not have begun without the support of a Law Foundation of South Australia grant and donations from the State Library of South Australia, Adelaide University, University of SA, ALLA (SA) and Piper Alderman. Piper Alderman also very generously donated their 'sacrificial' copy of the Gazettes for scanning.

We need your help in order to raise a further \$65,000 to complete the project.

If you would like to contribute with a tax deductible donation please contact Louise Langridge, Librarian at Piper Alderman: llangridge@piperalderman.com.au, Lucy Brown, Librarian at Fox Tucker lucy.brown@foxtucker.com.au or Richard Hunter from AustLII: richard@austlii.edu.au

The Government Gazette consists of three distinct sections. Official Government notices such as Proclamations and Appointments to Ministerial Offices, Departments and Statutory Authorities are contained in the front section of the Gazette, followed by various Departmental and Statutory Authority notices such as Mining Claims, Opening and Closing of Roads, Licensing Approvals, Registration of Brands and Rules of Court.

The front section of the Gazette concludes with Regulations passed under various Acts of Parliament. These Regulations contain rules, limitations, provisos, lists of penalties for failure, etc, which have been enacted by Parliament.

The remaining back section of the Gazette contains District Council notices, By-

Laws, Fees and Private Advertisements such as winding up of company notices, Dissolution of Partnerships and lists of Unclaimed Moneys.

ALLA National Conference

The Honourable Chris Kourakis, Chief Justice of South Australia will be opening the 2014 Australian Law Librarian's National Conference which is being hosted by Adelaide this year and will take place from 10-12 September at the Convention Centre. More than 100 law librarians from around Australia will be in attendance for what is the key annual professional development event for ALLA members. It also provides an opportunity for Law Librarians and Knowledge Managers from private practice, academia, the courts, government and not-for-profits to network and develop strategies for continued excellence within the profession. An extremely valuable education program has been developed by the conference organising committee which is comprised primarily of Adelaide based law librarians. For more information visit: <http://alla2014.com.au/program/> **B**

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Justice in Tribunals

By JRS Forbes

4th ed Federation Press 2014 HB \$125.00

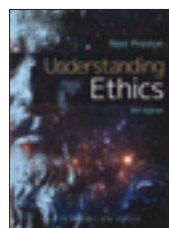
Abstract from Federation Press

Justice in Tribunals is a specialist work on the common law and statutory rules governing decisions of administrative tribunals, executive officers, government departments, professional societies, commercial associations, trades unions, sporting bodies, social clubs and political parties, affecting the rights of individuals. It explains the different procedures used to challenge statutory as well as private («domestic») rulings. Previous editions have been cited with approval by courts in New Zealand and several Australian jurisdictions.

This new edition goes well beyond the generalities of “natural justice” to examine numerous examples of that ideal in action. They are arranged according to various stages of decision-making - notice of the charge or claim, urgent action, legal representation, standards of proof, significance of the law of evidence, procedure at the hearing, errors of law or due process, and the articulation of reasons for a decision.

A special chapter deals with the conduct of public inquiries, such as Royal Commissions, which do not formally determine rights and duties of individuals.

Contact Federation Press: 02 9552 2200
 info@federationpress.com.au
 www.federationpress.com.au



Understanding Ethics

By N Preston

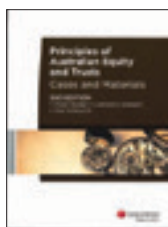
4th ed Federation Press 2014 PB \$39.95

Abstract from Federation Press

We encounter ethical challenges on a day to day basis in matters that involve what we call ethical values. Some of these challenges affect us as individuals but seem beyond our power to influence, such as a political decision about whether our nation should go to war. Other momentous ethical questions confront us in particular situations, such as when a road accident leaves a loved one brain damaged and medical practitioners seek our permission to turn off life support. *Understanding Ethics* introduces the frameworks of moral philosophy to analyse contemporary moral issues and perennial human dilemmas.

While the early chapters of ethical theory remain substantially the same, the rest of the book is expanded with updated references, new case studies and an improved index. The new edition examines particular issues which reflect many of the social, scientific and cultural changes of the last decade, especially in an Australian context.

Contact Federation Press: 02 9552 2200
 info@federationpress.com.au
 www.federationpress.com.au



Principles of Australian Equity and Trusts: Cases and Materials

By P Radan, C Stewart & I Vickovich

LexisNexis Butterworths 2014 PB \$126.00

Abstract from LexisNexis

In *Principles of Australian Equity and Trusts: Cases and Materials* the authors draw together the key cases and materials relating to equity and trusts to illustrate the reasoning processes of the court and the development of legal principles.

Cases are carefully selected, edited and cross-referenced to the companion textbook, *Principles of Australian Equity and Trusts*, to promote a deep understanding of the subject. Both books follow the same chapter order and structure, making it easy to use them in tandem.

In the second, fully revised edition of this cases and materials text, the discussion of the key concepts has been extended, putting the case extracts into their legal context. Helpful analysis of each extract will assist readers to understand why a particular case is important and the principle to be drawn from the decision. Additional cases have been included to ensure alignment with current teaching in equity and trusts.

Contact LexisNexis: 1800 772 772
 customersupport@lexisnexis.com.au
 store.lexisnexis.com.au/store/au



Consumer Protection Law in Australia

By A Bruce

2nd ed LexisNexis Butterworths 2014

PB \$115.00

Abstract from LexisNexis

Consumer Protection Law in Australia provides a clear and detailed explanation of the application and effect of consumer protection and product liability law in Australia.

The second edition is fully revised and details developments affecting the operation of the Australian Consumer Law since its introduction in January 2011, providing readers with a sound understanding of the legislative landscape in which it operates.

It includes an analysis of the recent amendments to the unconscionable conduct provisions introduced by the Competition and Consumer Legislation Amendment Act 2011 (Cth). The regime is positioned within the existing judicial framework and the commentary includes analysis of recent case law decided under the scheme since its commencement, including the High Court decision in *Kakavas v Crown Melbourne Ltd* [2013] HCA 25.

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Profiting from broadened experience

By Michael Esposito

A *Bulletin* article prompted Alex Antic of Duncan Basheer Hannon to nominate for the Law Society Council, and he hasn't looked back.

Mr Antic joined the Council late last year and has relished the opportunity to be involved in matters that he usually wouldn't have much exposure to in day to day practice.

"I thought (being a Council member) would be a good way to test myself as well as having an opportunity to stand up for some of the things I think are important," Mr Antic said.

Different Councillors have different priorities. For Mr Antic, the reputation of the profession is a particular issue that he feels strongly about.

"Through convention and adherence to the rules, lawyers are in my experience transparent, honest people who take their responsibilities seriously and I am puzzled by a suggestion otherwise."

Mr Antic is also passionate about the importance of the Rule of Law and how it should be applied practically, not just discussed as an abstract philosophy.

"It sounds like a cliché but the Rule of Law is critical," he said. "In a society like ours, where we have the ability to make the justice system a priority, the Rule of Law is critical. We need to protect those rights."

Stemming from this is Mr Antic's interest in protecting the rights of the individual. He was one of many practitioners who keenly followed the profession's campaign against the Government's changes to Compulsory Third Party legislation.

"Such rights are hard fought and easily lost. If the legal profession doesn't stand up for those rights, then who will?"

Mr Antic spent the early part of his career in civil litigation, mainly doing work for insurers.

"It was an excellent grounding and it provided me with a broader look at all the various areas of litigation" he said.

He then decided to move into the commercial litigation space and Wills and estates. He said contested Wills could be particularly interesting, albeit often characterised by a sad or bitter family situation.

Of course, as a Council Member, Mr Antic gets to discuss the full gamut of legal issues, and he has been impressed with the level of dialogue and the diversity of opinion around the Council table.

"You would think with a group of lawyers sitting around arguing about emotive issues, you would get all sorts of hostilities, but that hasn't been my experience," he said.

"I've found the Council to be cohesive



Alex Antic

and willing to debate issues and I think that's a really healthy scenario. There are always discussions that are robust but it's a constructive environment".

"On a personal level, being involved in the discussion and commentary on issues that aren't limited to your sphere of practice is a great thing."

The experience has been so rewarding that Mr Antic has decided to nominate for a position as a Councillor in the upcoming Adelaide City Council elections.

"It would be an honour and privilege to be elected to represent the ratepayers of Adelaide with what I hope will be a fresh approach.

"We have a great city, one of the best in the world and I would love the opportunity to help make it even better." **B**

"You would think with a group of lawyers sitting around arguing about emotive issues, you would get all sorts of hostilities, but that hasn't been my experience."

Right place

As a joint winner of the 2013 Law Society Justice Award, Nick Linke is well known for his endless hours of pro bono work, but as **Lindy McNamara** discovers he is also a strong supporter of the local arts scene.

When you are told in advance that the person you are about to interview is shy, modest and humble, you start to worry if there will be much to talk about.

However, the mere mention of a new exhibition by an emerging artist or a recent opera he has seen and Nick Linke's eyes light up and he begins chatting like an excited child. Heaven forbid if you mention his all time favourite band, Radiohead!

"I guess I was brought up to be interested in the arts," he explains of his obvious passion for live music across a number of genres, dance and the visual arts.

"Mum is into the opera and so I went to the opera quite young and it instilled in me a love for the arts and the theatre. My sister is an actor and I guess I am a frustrated would-be artist.

"I'm on the Board of the Adelaide Central School of Art and went to one of their courses once and realised just how hard it is – the course was fantastic, but I decided I would rather spectate," he laughs.

A lead partner in the employment and insurance groups at Fisher Jeffries, Nick

says he has been fortunate to have the support of the firm in pursuing his love of the arts. This has allowed him to take positions on the boards of SALA, the Restless Dance Theatre and the Big Book Club and undertake pro bono work for numerous arts groups. In May he was thrilled to receive a life membership from the Adelaide Youth Orchestras in recognition of his work as their honorary solicitor over many years.

Fisher Jeffries is so supportive of the arts that when it was planning the move to its premises in Gouger Street in 2009, the foyer was designed specifically so it could accommodate art exhibitions.

Nick and fellow partner Karen Thomas have been the driving force behind the gallery, with an exhibition now held every couple of months. Members of the public are encouraged to go and view the works of a new South Australian artist, free of charge, during normal business hours.

"It's a lovely space for art because of the light and the white walls. After our first exhibition it just snowballed. Now we have people approaching us and there is almost a waiting list. For a lot of people we will be giving them their first exhibition, giving

them an opportunity to get their foot in the door," he says.

Helping people is a common thread in Nick's life and for those in the legal profession, he is probably more well known for his untiring pro bono work with JusticeNet and Catherine House.

This desire to give everyone – no matter what their background or story – access to justice led to him being named a joint winner of the *Law Society Justice Award* in 2013, along with the Hon. Robyn Layton AO QC.

A quiet achiever, Nick says he was "very humbled" by the honour.

"I was doubly humbled to be a co-winner with Robyn Layton, who is someone I have always looked up to in this area. She does so much for the world so to receive it with her was actually nicer than getting the award by myself."

Nick admits that being able to help people in need saw him eventually "growing" to love the law.

After high school he started an economics degree at the University of Adelaide, but quickly realised that wasn't what he wanted to do for the rest of his life. He moved across to law and while not completely enamoured with it at the start, he soon developed a passion for his chosen profession.

"It probably wasn't until I had been practising for a few years that I thought I was actually OK at this and it was going to work for me."

And then he began seeing the good he could do through pro bono work at Catherine House and the Housing Legal Clinic.

"From meeting people and seeing their needs, you realise how powerful the law is and how so many people in society feel really disconnected from the law because they don't have access to it.

"This was most starkly apparent when I started grassroots pro bono at Catherine House.



Nick Linke

Photo courtesy Daniel Wiech

“To be there and go to a meeting with someone who has come in from the RAH the night before and has been the subject of domestic violence... they trust you as a lawyer because you give them a sense that there are organs of society that will listen to them.

“That’s when I realised how much of a difference you can make.”

Nick was instrumental in setting up JusticeNet in 2009 and is highly regarded

as someone who will take on the most challenging pro bono cases that no one else wants. He is proud of what has been achieved by the ‘clearinghouse’ in such a short time.

“It’s just gone so well and it’s been the result of really hard work from a lot of people – the committee is fantastic and the profession has absolutely embraced it.”

He believes there probably isn’t another profession that does so much for people “for nothing”.

“And yet we get a terrible rap from the public,” he laughs, shaking his head at the irony.

Aware that it’s not a perfect world and there will always be a need for lawyers to do pro bono work, Nick is glad he is able to help in some small way.

For him, being able to combine his love of the arts with his love of the law has, in the words of Radiohead, “everything in its right place”. **B**

New Members

Haley Aitken	Avishek Gazmere	Madeline Mitchell
Meshal Althobaiti	Lindley Gilfillan	Matthew Morris
Rajita Alwis	Chloe Goldsworthy	Jordan Moulds
Carly Austin	Georgia Gray	Tania Moxon
Jessica Bajger	Imogen Gray	Danny Nemer
Brenda Barnett	Sarah Grimwade	Rosa Nesci
David Beckett	Alexander Hicks	Georgina Nicholson
Jackie Bone-George	Jennifer Hills	Felicity Niemann
Apol Braithwaite	Jonathan Ikonomopoulos	Shihan Ong
Philippa Branson	Karen Ingleton	Tessa Overall
Ellen Calam	Amelia Ip	Michael Pagsanjan
Andrea Carver	Mark Jackson	Jennifer Pears
Daniel Centofanti	Sheena Jackson	Domenico Petraccaro
Courtney Chan	Natasha Jones	Armida Poli
Christopher Chong	Abbey Kendall	Andrew Procter
Khanh Chong Chong	Robert Kennett	Elissa Riach
Mark Clisby	Marina Khoury	Lane Rochow
Oli Cole	Sylvester Kong	Rebecca Ruiz
Simon Collinson	Ben Koziol	Benjamin Rutherford
Bruno Confalone	Meenatchi Krishnadoss	Davide Sartoris
Kym Connell	Madeleine Lamb	Samantha Schiller
Dean Cosenza	Carolyn Larena	Adrian Shackley
Michael Cranwell	Thuy Le	Mitchell Simmons
Arlette Culshaw	David Li	Jemma Smith
Arlen Dabinett	Ian Li	Peter Smith
Rabeca Dula	Stephanie Lian	Tamara Solly
Rebecca Eibisch	Georgia Lloyd	Laura Stark
Jude Ellyett	Zoe Lugg	Amanda Stone
Nicole Evans	Sashi Maharaj QC	Caitlin Swan
Caroline Follas	Kamila Markowska	Rosemary Tedesco
Kathryn Forrester	Debra Martin	Matthew Thompson
Donna Foundas	Robert McDonald	Sally Tyler
Cyril Gabito	James McEwen	Gareth Williams
Lucy Gauvin	Timothy McGrath	
Stephen Gay	Jessica McNamara	

CPD Events

For further details and to register:
www.lawsocietyasa.asn.au
cpd@lawsocietyasa.asn.au
 All sessions that are being held at LSSA, will be held at Level 10, 178 North Terrace Adelaide

**The New Commercial Morality:
 The Boundaries of Unconscionable
 Conduct Under S21 of the
 Australian Consumer Law**
 WED 10 SEPTEMBER
 5.30pm – 7.00pm 1.5 Units*

**The Role and Function of the
 Coroner’s Court**
 WED 24 SEPTEMBER
 5.30pm – 7.00pm 1.5 Units*

Privacy Law Update
 WED 24 SEPTEMBER
 12.00pm – 1.00pm 1 Unit*

**Estate Planning with Inter Vivos
 Trusts**
 WED 1 OCTOBER
 5.30pm – 7.00pm 1.5 Units *

**Total CPD Units are accurate at time of printing and should be taken as a guide only.*

HAVE AN IDEA FOR A FUTURE SEMINAR?
 We invite practitioners to tell us what seminar they would like to see conducted next. Email us at cpd@lawsocietyasa.asn.au with your ideas.

The next step – how to plan your career

By Bonnie Hallion, Fisher Jeffries

Development plans are not something that young lawyers usually think about early in their careers. You're probably too busy still learning the ropes and still figuring out what you actually want to do.

But that doesn't mean it's too early to plan your career. If you don't take responsibility for the success of your career, then who will?

Now is the time to think about what you want out of your career and how you are going to achieve it. This is more than just goal setting. It's about planning your professional development and your future within your firm, or perhaps a position elsewhere.

Many firms ask lawyers to prepare a business plan or professional development plan upon promotion to senior associate or partner. Firms want to see how employers want to improve themselves, what plans they have to bring in clients and how they will add value to the firm. For young lawyers, however, this kind of forward planning isn't always a priority. There are a lot of other things to get your head around – but that doesn't mean you shouldn't start planning ahead.

Here are some useful tips on how to write a development plan.

Self-reflect

Ask yourself the following questions. Your answers can be the basis of your development plan.

1. Skills

- What are you good at and what value does this bring to your practice area or the firm as a whole?
- What skills require improvement and what steps are you going to take to develop them?

“Goals should be specific, measurable, achievable, realistic and time-bound.”

2. Service and professional standards

- Does your employer have specific service and professional standards? If so, how can you incorporate those service values into your practice?
- What service standards do you already meet and what can you improve on?

3. Business awareness

- Do you understand how a legal business works?
- Are you actively involved in planning and running files?
- Can you communicate with clients and colleagues in a timely and articulate manner?
- Do you understand your firm's billing processes?

4. Professional profile

- Do you interact directly with clients?
- If you do not have direct exposure to clients, why not? What steps can you take to get that exposure?
- What is unique about your particular expertise that existing or potential clients will value?
- Are you well-known and respected within the profession? What steps

can you take to heighten your profile within the profession?

5. Areas of expertise

- Do you want to specialise in a particular area of law and why?
- What type of work gives you job satisfaction?
- What steps can you take to develop your interest in a particular area?

6. Clients

- Who are your current clients and how much work do you get from them?
- What action can you take to ensure that your current clients keep giving you work?
- What action can you take to maximise client referrals?
- Have you demonstrated cross selling by referring one of your clients to another practitioner within your firm?
- What potential clients can you target for new work? How can you go about winning that work?

Determine your overall goals

Be specific with your goal setting. Ask questions about your objectives once you have formulated them.

- What can you do to further develop value to the firm?
- What are your “must haves” for your career?
- Can your current firm offer you what you want? If not, what other employers could be a better fit for you?
- What barriers or obstacles might prevent you from achieving your goals and how can you overcome them?

Make sure that all of your goals are SMART. Goals should be specific, measurable, achievable, realistic and time-bound.

Seek feedback from others

Speak to your supervisor and colleagues and ask for feedback both on your

performance and your written development plan. Don't wait for your next performance review in 12 months' time. Seek constant feedback from your mentors so you understand how others perceive you and your work.

Develop action steps

How can you get to where you are to where you'd like to be? Create short and long term goals and make sure you check them every few months to make sure you're on track. Some action steps might include the following:

- Updating your CV;
- Rotating to a different practice area;
- Undertaking further study;
- Joining a professional body, society or committee;

- Doing pro bono work;
- Attending a certain amount of CPDs;
- Attending a certain number of networking or business events;
- Writing client updates or articles for professional magazines.

Write your development plan down

The written plan is the most concrete part of your development plan. You should list the steps that you will take to work towards achieving your career goals and work out a realistic timetable.

Make sure you check in on your development plan every 6 months. That way you can make sure you're on track or remind yourself of what you should be doing to stay focussed on your goals and maximise your potential as a practitioner. **B**

Quick tips with Paul Burgess

By Bonnie Hallion, Fisher Jeffries

In an increasingly tight graduate market, Paul Burgess of Burgess Paluch Legal Recruitment provides answers to commonly asked questions.

Q: What do you look for in an applicant's CV? What makes one person's CV stand out from the rest?

I look for a number of things, but it depends on the particular client I am recruiting for and the specifics of the role. Generally, employers are looking first and foremost for relevant experience. Depending on the nature of the role, this can be quite particular, so there is often little point in applying if your skillset is different from the advertised role.

When selecting graduates or choosing from a pool of relevant experienced lawyers, employers are usually looking for sound or strong academics, experience that

is the most relevant and with the most highly regarded previous employer, career stability, good social and outside interests and a record of achievement in academics, sport, the community or all three!

For more senior applicants, I look for a history of either assisting in winning work or actually bringing in work to a firm, networking and becoming a recognised leader in the area of practice or a leader within the firm.

Q: Do you believe that juniors should stay in their jobs for at least two years, so that it doesn't look "bad" on their CV?

Yes. I think that employers prefer juniors to have spent a minimum of 18 months with an employer and that they will also assess the likely time the employee will spend with them based on the average length of time the employee stays in previous roles.



While there are always bona fide reasons to move before 2 years are up, it's important to not make a habit of it! **B**

Claims against criminal lawyers on the rise

By Gianna Di Stefano, PII Risk Manager



Riskwatch is prepared by Law Claims to assist practitioners in identifying risky areas in practice and to highlight risk prevention strategies to allow for safer, more enjoyable practice. Riskwatch appears as a monthly column in the Law Society Bulletin as well as being distributed on a monthly basis to members of the Law Society's Professional Indemnity Scheme who do not receive the Law Society Bulletin.

In the past, Law Claims' experience was that there were fewer claims in the area of criminal law than other areas of law. This has not been the case in recent times.

Law Claims is extremely concerned given a significant number of notifications/claims that have arisen from the rigid six-month time limit for the bringing of applications pursuant to the *Criminal Assets Confiscation Act* (Act) to exclude property from forfeiture orders.

It is essential that lawyers who practise in criminal law are aware of the time limit to bring an exclusion application under the Act. The "relevant period" for an application is "not later than six months after the start of the day of the relevant conviction".

Practitioners also need to be mindful of the many other time limits set out in the Act. For example, see s 35(1), s 43, s 60, s 62, s 95 and s 97.

A couple of Law Claims case examples are as follows:

Case 1

A claim was brought against the solicitor in relation to the deemed automatic forfeiture of the claimant's property pursuant to Section 74 of the Act.

It was alleged that the practitioner failed

to advise the claimant to make application to exclude that property from automatic forfeiture within the applicable time limit. The claimant sought the full amount of the forfeited property (being the sale proceeds of a house property) plus interest and costs. In this matter the insured ought to have advised the claimant before the expiration of the **six-month time limit** in which to bring an application to either exclude the property (or sale proceeds) from the operation of the restraining order or to apply to exclude the property (or sale proceeds) from forfeiture.

In this case the practitioner overlooked or gave no consideration to the relevant provisions of the Act until after the expiry of the **six-month limitation period**. Accordingly, liability was certain against the practitioner.

Case 2

An allegation was made against a practitioner for failing to protect the client's property from a restraining order by not filing appropriate documentation within time. The application made to extend time was made but the application failed.

This case involved criminal and confiscation of profits matters. The criminal matters were extremely complex and involved multiple major indictable information laid in various Magistrate Courts over a period of time and then finalised in the District Court over an extended period of time. There were also numerous other summary and minor indictable criminal charges proceeding in multiple Magistrates Courts.

The practitioner failed to apply to the Civil Jurisdiction of the District Court to extend the time for automatic forfeiture or to exclude property from the restraining order.

The applications filed by the practitioner had in fact been filed within time of the most recent conviction. It had transpired however that there had been a conviction in the District Court in relevant matters very early in the piece and, as a result of this conviction, the time for automatic forfeiture had passed and the matter was out of time.

In all of the claims that have been notified where the practitioners have not filed the relevant application within six months of the date of conviction the common theme seems to be the same, namely, the claimants have multiple charges and different conviction dates and, they are sentenced at a date considerably later.

The practitioners have become embroiled in the criminal charges and sentencing issues and they overlook the filing of the relevant application within six months of the date of conviction.

There have been various court decisions indicating that there is no prospect of obtaining an extension of time beyond the six-month period.

Consideration ought to be given to the judgment of Tilmouth J, delivered on 18 July in the matter of *Director of Public Prosecutions v Hall [2014] SADC 156*.

The principal issue for resolution in that case was whether an extension of time could be granted in which to bring an application for the exclusion of property from the ambit of forfeiture, after forfeiture to the Crown had taken place under s 74(1) of the Act. His Honour held that no extension of time could be granted. Although ss 47 and 48 of the *Limitation of Actions Act* is capable of application to the 6 month time limit under the Act, as that period is 'essential' to the nature and purpose of the forfeiture mechanism under the Act regime, s 47 does not apply and there is no resort to s 48.

These recent cases highlight the same underlying causes of claims faced by non-criminal practitioners – namely, limitation periods and missing a deadline. Perhaps another reminder to ask yourself how well you know your critical dates and deadlines and ask yourself how you might improve how you go about making sure you know the critical dates relevant to your practice area?

For any queries about this or other risk management services offered by Law Claims, contact PII Risk Manager Gianna Di Stefano on 8410 7677. **B**

Superannuation and the Federal Budget

By Andrew Proebstl, Chief Executive, legalsuper

In the weeks leading up to the Federal Budget, which included release of the National Commission of Audit (NCOA), the Abbott Government set up community expectations that this would be a “really tough one”. And in that sense there were few surprises when Treasurer Hockey delivered his first budget speech to Parliament on 13 May.

The extent to which the budgetary burden has been spread right across the Australian community is evident in the following broad tax and spending indicators:

- Government receipts (all taxes) will rise from 23 per cent of GDP (the amount of goods and services produced by Australia in a year) in 2013/14 to 24.9 per cent in 2017/18.
- Government spending will contract from 25.9 per cent of GDP to 24.8 per cent.
- And so, the budget deficit – according to Treasury’s projections – will fall from close to \$50 billion in 2013/14 to \$2.8 billion in 2017/18, moving Australia towards a surplus in years following.

With the deluge of information in the budget papers and the many subsequent commentaries, it can be hard to cut through it all and see how individuals and families will be directly affected by income distribution – or redistribution - measures.

So, at a high level, the main changes are:

- A 2 per cent Deficit Tax introduced for three years – a tax on individuals earning over \$180,000 p.a.
- Pension age rising to 70 by 2035 and lower rates of indexation for annual pension increases.
- Fuel excise to be indexed (from August 2014).
- Tighter means testing of Family Benefits.

“This is good news from an individual member’s point of view, as previously contributions that exceeded the non-concessional cap were taxed at the top marginal rate.”

- Paid parental leave – six months at full pay (means tested and capped at \$100,000 pa.).
- A \$7 co-payment for visits to the family doctor, \$5 of which will be allocated into a new medical research fund

What about superannuation?

Turning to the superannuation industry, this budget introduced very few changes which were not already on the cards.

Most importantly, there were no changes to the taxation of superannuation benefits, contribution caps, or the preservation age. This is welcome given the volume of changes in recent times, however it is possible that the Abbott Government will look again at superannuation in the foreseeable future bearing in mind the super system is being indirectly considered by two current reviews: The Financial System Inquiry and the Tax White Paper.

Key superannuation changes

Change to timing of the increase in the Superannuation Guarantee (SG) rate to 12 per cent

There will be a further one year delay in the timetable for increasing the SG rate to 12 per cent. The Government has announced the SG rate will increase from 9.25 per cent to 9.5 per cent as from

1 July 2014 as currently legislated and giving certainty to employers and employees. The rate will then be frozen at 9.5 per cent for four years until 30 June 2018, before increasing annually by 0.5 per cent until reaching 12 per cent in 2022–23.

Ability to withdraw excess non-concessional contributions

On the positive side in the budget is relief from the excess contributions tax. What this means is from 1 July 2013, if a superannuation member exceeds the non-concessional contribution limit, there is now the option of withdrawing the excess amount (plus any earnings) rather than incurring penalty tax.

This is good news from an individual member’s point of view, as previously contributions that exceeded the non-concessional cap were taxed at the top marginal rate.

Finally, the Federal Government has confirmed its intention to axe the Low Income Superannuation Scheme (LISC). This directly affects people earning less than \$37,000 per annum who previously qualified for LISC payments.

We will all need to watch and wait for the reviews currently underway to form their recommendations on possible further changes to the superannuation industry. **B**

Gazing in the Gazette

A monthly review of Acts, Appointments, Regulations and Rules compiled by Mellor Olsson's Elizabeth Olsson.

4 July 2014 – 3 August 2014

Acts Proclaimed

Criminal Law (Sentencing) (Character Evidence) Amendment Act 2014 (No 5 of 2014)

Commencement: 3 August 2014

Gazetted: 31 July 2014, Gazette No. 57 of 2014

Acts Assented To

Criminal Law (Sentencing) (Character Evidence) Amendment Act 2014, No. 5 of 2014

Gazetted: 10 July 2014, Gazette No. 52 of 2014

Child Sex Offenders Registration (Control Orders and Other Measures) Amendment Act 2014, No 6 of 2014

Gazetted: 10 July 2014, Gazette No. 52 of 2014

Lady Kintore Cottages (Trust Property) Amendment Act 2014, No. 7 of 2014

Gazetted: 31 July 2014, Gazette No. 57 of 2014

Appointments

Legal Practitioners Disciplinary Tribunal

Member: (from 10 July 2014 until 9 July 2017)

Gregory Travers Brown

Anne Burgess
Liesl Jane Chapman
Jonathan Charles Clarke
Gary Davis
Michael John Dean Dawson
Lesley Hastwell
Patsy Alison Kellett
Robert Lindsay Kennett
Debra Ruth Lane
Sandra Gail Lilburn
Sashi Jass Maharaj
Simon Patrick O'Sullivan
Domenico Petraccaro
Maurine Teresa Pyke

Presiding Member:

(from 10 July 2014 until 9 July 2017)

Maurine Teresa Pyke

Deputy Presiding Member:

(from 10 July 2014 until 9 July 2017)

Sashi Jass Maharaj

Gazetted: 10 July 2014, Gazette No. 52 of 2014

Independent Commissioner Against Corruption

Review Agency pursuant to Telecommunications (Interception) Act 2012

for the for a three year term commencing on 24 July 2014 and expiring on 23 July 2017

Kevin Duggan

Gazetted: 24 July 2014, Gazette No. 55 of 2014

Equal Opportunity Tribunal

Panel Member: (from 8 August 2014 until 7 August 2017)

Elizabeth Anne Bachmann

Gazetted: 31 July 2014, Gazette No. 57 of 2014

Rules

Supreme Court Fast Track Rules Adoption Rules 2014

Gazetted: 10 July 2014, Gazette No. 52 of 2014

Supreme Court Fast Track Supplementary Rules Adoption Rules 2014

Gazetted: 10 July 2014, Gazette No. 52 of 2014

Magistrates Court Rules 1992 Amendment No. 49

Gazetted: 31 July 2014, Gazette No. 57 of 2014

Magistrates Court (Civil) Rules 2013 Amendment No. 6

Gazetted: 31 July 2014, Gazette No. 57 of 2014

Regulations Promulgated (4 July 2014 – 3 August 2014)

Regulation Name	Regulation No.	Date Gazetted
Development Act 1993	201 of 2014	10 July 2014, Gazette No. 52 of 2014
Tobacco Products Regulation Act 1997	202 of 2014	10 July 2014, Gazette No. 52 of 2014
Prices Act 1948	203 of 2014	17 July 2014, Gazette No. 53 of 2014
Petroleum and Geothermal Energy Act 2000	204 of 2014	17 July 2014, Gazette No. 53 of 2014
Australian Road Rules	205 of 2014	31 July 2014, Gazette No. 56 of 2014
Road Traffic Act 1961	206 of 2014	31 July 2014, Gazette No. 57 of 2014
Road Traffic Act 1961	207 of 2014	31 July 2014, Gazette No. 57 of 2014
Rail Safety National Law (South Australia) Act 2012	208 of 2014	31 July 2014, Gazette No. 57 of 2014
Passenger Transport Act 1994	209 of 2014	31 July 2014, Gazette No. 57 of 2014
Motor Vehicles Act 1959	210 of 2014	31 July 2014, Gazette No. 57 of 2014
Heavy Vehicles (South Australia) Act 2013	211 of 2014	31 July 2014, Gazette No. 57 of 2014
Criminal Investigation (Covert Operations) Act 2009	212 of 2014	31 July 2014, Gazette No. 57 of 2014
Road Traffic Act 1961	213 of 2014	31 July 2014, Gazette No. 57 of 2014

Family Law Case Notes

By Rob Glade-Wright, *The Family Law Book*

Property – High Court holds that husband should be held to his promises to transfer a property to his lover

In *Sidhu v Van Dyke* [2014] HCA 19 (16 May 2014) the High Court (French CJ, Kiefel, Bell, Gageler and Keane JJ) considered promises by the appellant husband to transfer to the wife's sister-in-law (with whom he had had a sexual relationship) a cottage on a rural property in the homestead on which the husband lived with his wife. Relying on his promises the respondent lover was prevailed on by him not to pursue her own husband for property settlement and she carried out work on the cottage and adjoining property. In the Equity Division of the Supreme Court of NSW the respondent won an appeal from the first instance decision to the NSW Court of Appeal which held the appellant estopped in equity from resiling from his promises on which the respondent had relied to her detriment, ordering him to pay her a sum equal to the value of the property promised. Upon the appellant's appeal to the High Court, French CJ, Kiefel, Bell and Keane

JJ discussed equitable estoppel and the evidence at paras 58-78, concluding at para 86:

“... no reason has been identified by the appellant to conclude that good conscience does not require that [he] be held to his promises. In particular, it is no answer for [him] to say that the performance of his promises was conditional on the completion of the subdivision and the consent of his wife to the transfer to the respondent. His assurances to [her] were expressed categorically so as to leave no room for doubt that he would ensure that the subdivision would proceed and that the consent of [his] wife would be forthcoming.”

Children – Parenting order suspended to allow mother to relocate to Thailand for 18 months despite “Level 2” travel warning

In *Eades & Wrensted* [2014] FCWA 15 (5 March 2014) Walters J granted an application by the mother of children (10 and 4) for suspension of a parenting order

(5 nights per fortnight to father) to allow her to relocate from Perth to “City A” in Thailand for 18 months where her partner had obtained employment. The mother proposed 6 trips to Australia during that time. The father opposed the application, citing “political unrest in Thailand ... the amount of travel, the effect of the relocation upon the children's schooling ...”. Walters J (para 72) concluded that “the sojourn [would] not result in [his] having anything other than an ongoing, meaningful relationship with the children” and was satisfied (para 192) as to “the father's reference to City A's unsavoury reputation ... that the mother and Mr D [would] ensure that the children are insulated from the city's seamy side”. As to travel advice Level 2 issued by DFAT (“exercise a high degree of caution”), Walters J (para 208) accepted the mother's evidence that she and Mr D were “responsible adults who [would] do everything in their power to ensure that the children [were] not exposed to any unacceptable risks”. **B**

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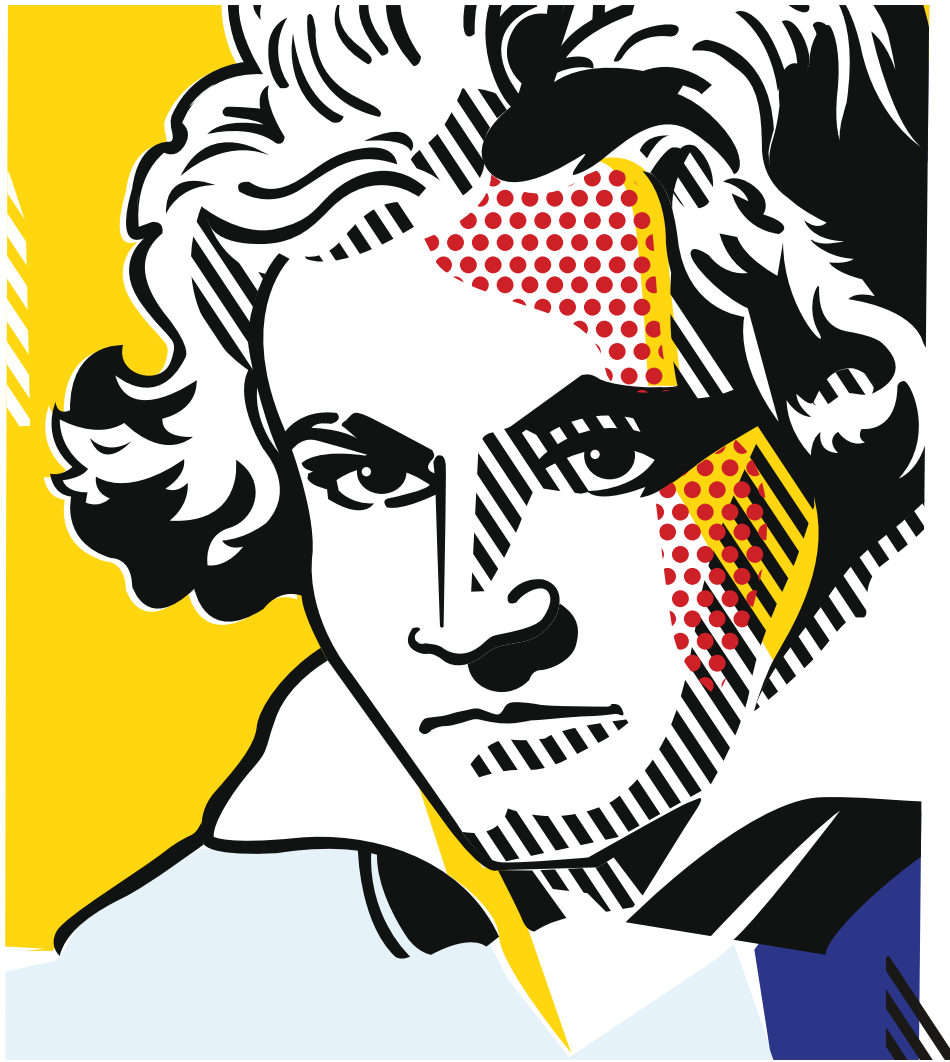
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