

INDIGENOUS INITIATIVE APPLAUDED

Federal Attorney-General Robert McClelland has praised the Victorian legal profession for a groundbreaking initiative intended to raise the participation rate of Indigenous Australians in the law.

The *Law Institute of Victoria and Victorian Bar Indigenous Equal Opportunity Briefing Policy* encourages law firms to consider using Indigenous barristers for court work.

The main objectives of the briefing policy are to promote equal opportunity for Indigenous barristers; offer the choice for legal practitioners and their clients to brief Indigenous barristers at the Victorian Bar; and increase awareness of Indigenous barristers practising in Victoria.

Mr McClelland commended both the LIV and the Victorian Bar for developing the briefing policy and setting up the Indigenous Barristers Directory.

“These timely and practical tools will raise community awareness and encourage people to look more broadly at the pool of talented barristers than might have otherwise been the case,” he said.

Indigenous barrister Hans Bokelund said he hoped the briefing policy would in the short term raise awareness among the profession that there were Indigenous barristers, and in the long term create opportunities and a pathway for Indigenous students.

“Under the policy you are not guaranteed work, but, like the Victorian Bar’s *Equal Opportunity Briefing Policy*, you are likely to get a foot in the door. Then it is on individual merit if you get recurrent briefs,” he said.

“One of the underlying challenges for [Indigenous barristers] has been that we have not got the critical mass, but from little things big things grow.

“Hopefully, in time there will not be a need for such a policy.”

Mr Bokelund said the policy, introduced in September last year, could encourage interstate Indigenous practitioners to move to Victoria and have the flow-on effect of Indigenous representation in the judiciary in Victoria, where there are currently no Indigenous judges or magistrates.



SUSAN GORDON-BROWN

The Law Council of Australia (LCA) has followed Victoria’s lead by recently introducing a policy of its own to increase the number of Indigenous Australians in the legal profession.

The policy will guide the LCA’s approach to issues affecting Indigenous Australians in coming years in areas including criminal justice, human rights, land rights, native title, customary law, legal education, reconciliation and other fields.

It will see Indigenous associations, Australian law schools, law practices and the state and territory law societies and bar associations working to develop pathways for Aboriginal and Torres Strait Islander people into legal practice.

Further information about these policies is available at www.liv.asn.au, www.vicbar.com.au and www.lawcouncil.asn.au.

LAUNCHING PLACE: Indigenous barrister Hans Bokelund, Colin Golvan SC, Indigenous barrister and Victorian Bar committee member Munya Andrews and LIV immediate past president Danny Barlow at the launch of the briefing policy.

IN THIS EDITION

Indigenous initiative applauded ...	1
Rising to new communication challenges	2
Cyber-comment common sense	2
New national consumer laws	3
VCAT’s 10th birthday report card	3
Protecting the vulnerable	4

RISING TO NEW COMMUNICATION CHALLENGES



The growing popularity of social media tools such as Facebook, blogging and Twitter is introducing new communication challenges for lawyers.

Good communication is the hallmark of a good lawyer. Understanding a client's instructions when they are emotional or distraught, negotiating with hostile opposition or arguing a complex point of law in open court are all valuable day-to-day communication skills regularly honed by a lawyer.

Developing meaningful relationships, sharing information and ideas and helping lawyers keep up with current and emerging trends are all recognised benefits of keeping connected via social media sites.

Now lawyers are beginning to embrace the benefits that social media can provide, both personally and professionally, and trends show a slow but steady growth in the use of social media options sites by the legal profession.

Increasingly, lawyers discuss legal issues with Facebook groups and help other like-minded professionals by blogging about a legal precedent. Twitter is increasingly used by firms to update clients.

And these benefits are not just restricted to the Gen-Y legal set.

A lawyer more accustomed to dealing with associates and writs, rather than apps and wikkis, could still benefit from applications such as Eponym (an easy-access glossary of

medico-legal terms) or Jott (which transcribes a short message into text).

Keeping up with changes in the law as well as the diverse needs of the community we live in are constant challenges for lawyers delivering quality legal services to their clients. Lawyers who embrace these faster-paced, more mass methods of communication are able to reach their clients and potential clients more effectively and can access a wide variety of resources to assist them.

Similarly, clients benefit from greater and faster access to information from their lawyer and can develop a better relationship with them through the ongoing contact available on social networking sites.



CYBER-COMMENT COMMON SENSE

The explosion of anonymous blogging has led to a rise in defamatory comment online but not a similar increase in defamation cases coming before Australian courts.

Litigation arising from blogs found to have invaded privacy, injured reputations or breached confidentiality represents a fast growing area of the law across the globe, especially in the United States.

The legal framework exists to deal with internet libel here, but Australian courts have yet to set a consistent standard due to

a lack of cases.

Few Internet defamation cases against bloggers or publishers have made it into an Australian court.

Local experts say the grey areas for Australian courts include whether existing laws are keeping up with technology and how traditional defamation and privacy laws would be applied by judges to internet cases.

The level of punishment meted out to bloggers and publishers remains largely untested. Where the bounds of free speech actually lie online is yet to stabilise.

Blake Dawson partner Dr Gordon Hughes said it was debatable whether existing laws were equipped to deal with the increased capacity for defamatory, mischievous and misleading comment from unidentified sources.

"The extent to which a cause of action for invasion of privacy arises at common law in Australia is still uncertain. There have been indications given in various courts that such a cause of action might exist, but uncertainty remains," he said.

Middletons senior associate Christien Corns said that under Australian law, internet publishers were as accountable for posting defamatory material as conventional publishers.

"The legal framework exists to prevent bloggers and publishers from getting away with too much. It is a question of how the courts are going to use that framework and how tough they will be on online publishers," Mr Corns said.

However, he said the nuances of defence multiplied when dealing with "innocent dissemination", re-publishing a rumour from another blog site, fair comment, hyper-linking and inadvertently breaking suppression orders.

Another major stumbling block has been determining the publishers, especially if publication occurred in Australia but the internet service provider is not within reach of the Australian courts.

NEW NATIONAL CONSUMER LAWS

Australians are among the highest consumers of credit in the world, so any new legislation that regulates the credit services industry is bound to have widespread implications.

On 1 July 2010, a new national consumer credit regime comes into effect. It replaces various federal, state and territory laws that deal with unfair credit contracts and the regulation of the financial services industry and aims to consolidate the law and provide better protection against unfair practices.

The *Trade Practices Amendment (Australian Consumer Law) Act 2010 (Cth)* also offers a more comprehensive means of dealing nationally with unfair terms in consumer contracts and gives greater powers to the Australian Securities & Investments Commission (ASIC) and the Australian Competition & Consumer Commission (ACCC) for licensing and regulating credit providers.

With any consumer credit contract, it is important that you understand your



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obligations under any financial agreement before signing it and are aware of all the terms relating to repayments and the incurring of interest, your rights to terminate the agreement and any penalty provisions that may apply.

Beware of the fine print and make sure you understand all the terms, even if they appear “standard”. If a term in a credit contract is deemed unfair and able to be voided, it does not necessarily enable you to get out of the whole contract. The remaining terms of the contract can still be valid and enforceable.

If you experience difficulty in meeting your obligations under a credit agreement, don’t just ignore it and hope that it will go away. It won’t.

Instead, be proactive and contact your credit provider to discuss any concerns and possible solutions. Your lawyer can assist you if you need to renegotiate an agreement and advise you on ways to protect your credit rating.

You can get further information about the National Consumer Credit Protection Reform Package at www.treasury.gov.au/consumercredit/content/legislation.asp. Other useful websites include the Consumer Action Law Centre (www.consumeraction.org.au), ASIC (www.asic.gov.au) and ACCC (www.accc.gov.au).

VCAT’S 10TH BIRTHDAY REPORT CARD

When the Victorian Civil and Administrative Tribunal (VCAT) was established in 1998, it was seen as a way to provide the community with a cheaper, faster and more efficient “one-stop shop” for resolving a range of disputes.

An amalgamation of various smaller tribunals, VCAT was the first “super tribunal” of its type. It plays a very important role in resolving everyday, but sometimes very complex, disputes in people’s lives. These can include the purchase and supply of goods and services, discrimination, guardianship and administration, domestic building and subdivision plans, consumer credit and Freedom of Information issues.

To coincide with the 10th anniversary of VCAT in 2008, the Attorney-General requested that a review of VCAT be carried out by its then president, Justice Kevin Bell. The review focused on examining access,

operational and jurisdictional issues to assess whether VCAT has been effective in delivering on its aims for quicker and cheaper justice to the community.

Justice Bell carried out a long and extensive consultative process, meeting with community groups and stakeholders across Victoria to hear firsthand about the experiences of VCAT applicants and other user groups.

Justice Bell’s report, released by Attorney-General Rob Hulls earlier this year, makes 78 recommendations for the ongoing operation of VCAT, including:

- the appointment of a coordinator to assist self-represented parties;
- the need for an improved city site for VCAT;
- better access for regional and country users through the establishment of branch offices and circuit sittings;

- community education programs;
- fee waiver guidelines for those economically disadvantaged; and
- more efficient strategies to reduce delays.

Justice Bell said the review also recognised that lawyers were an important part of the legal process.

Given that VCAT finalised 81,000 cases in 2008-09, it is important that it is well resourced and best equipped to deal with the major challenges it faces. The government’s response to Justice Bell’s recommendations will play a major part in this important tribunal’s future operations.

The president of VCAT is a Supreme Court judge and that role is currently held by Justice Iain Ross, who succeeded Justice Bell earlier this year.

For more information, visit the VCAT website at <http://bit.ly/7Tkoxy> or read Justice Bell’s full report at <http://bit.ly/dntzwj>.



PROTECTING THE VULNERABLE

Guardianship laws play an important role in protecting the vulnerable in our community. They allow a trusted person to make decisions for and on behalf of someone unable to make important decisions on their own or to advocate for their rights.

The people most affected by guardianship laws include those with a disability, the disadvantaged, the elderly and children.

A review currently being undertaken by the Victorian Law Reform Commission (VLRC) will help ensure that the law in this area keeps up with the changing needs of those it seeks to protect.

Victoria's guardianship laws are found in various pieces of legislation, most notably the

Guardianship and Administration Act 1986 (Vic) (G&A Act).

The VLRC review seeks to examine the effectiveness of the *G&A Act* and, in particular, whether the appointments of guardians and administrators are still effective.

Broader questions about the use of the term "disability" in the *G&A Act* and whether the law should be focusing more on other concepts such as "capacity" or "vulnerability" are specifically referred for consideration in the government's broad terms of reference.

The VLRC must also consider how the *G&A Act* interacts with other laws that deal with substituted decision making. It will

ensure that both the current law and any proposed changes remain consistent with Australia's human rights obligations and the Victorian Charter of Human Rights and Responsibilities.

The review, led by VLRC chair Professor Neil Rees, is the first such examination of Victoria's guardianship and administration laws in more than 20 years. In particular, it will consider:

- the role of guardians and administrators;
- the need to balance the protection of a person with impaired capacity by a guardian or administrator with the person's exercise and enjoyment of their human rights;
- the alignment of guardianship and administration law with other relevant laws;
- the role of informal decision making for an adult with impaired capacity;
- the functions, powers and duties of the Public Advocate;
- the role and powers of the Victorian Civil and Administrative Tribunal and the appointment of guardians and administrators; and
- consideration of existing laws that deal with medical research, non-medical research, medical and other treatment of a represented person.

In March 2010 the VLRC released an information paper about guardianship and administration law. The paper explains the operation of the law in Victoria and calls for submissions on what parts of the law do not work well and why, what works well and how it can be improved.

The submission deadline is 14 May 2010. A final report is due to the Attorney-General by 30 June 2011.

For more information, visit the Victorian Law Reform Commission website (www.lawreform.vic.gov.au) or the Office of the Public Advocate (www.publicadvocate.vic.gov.au).

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This newsletter is not intended to be the definitive
analysis of legislation. Professional advice should
be taken before any course of action is pursued.

