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NOVEMBER 2020

YOUNG LAWYERS SPECIAL EDITION

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LIV COVID-19 ADVOCACY ON BEHALF OF MEMBERS

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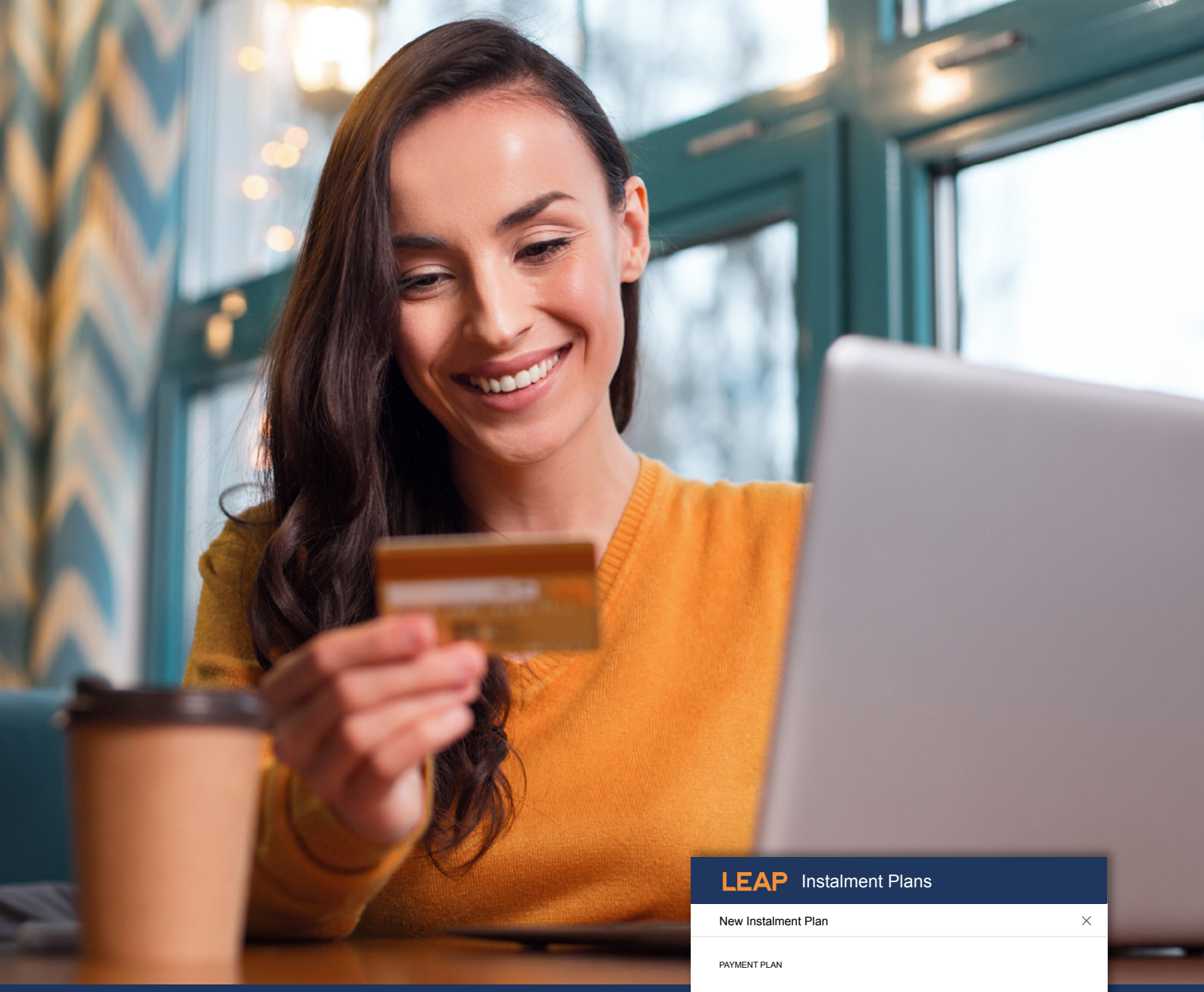

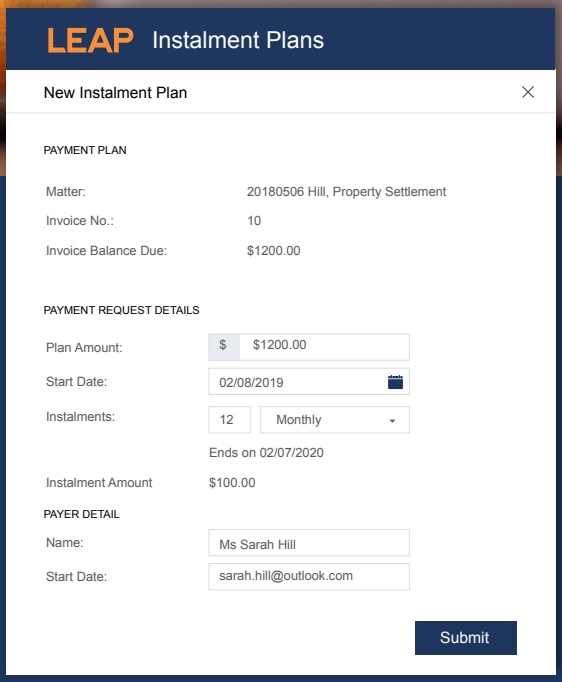

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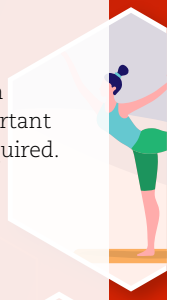

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Young Lawyer contributors

Jacob McCahon

Senior researcher (civil) at the County Court of Victoria.

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Alexandra Harley

Final year of Bachelor of Arts/Laws (Honours) at Monash University.

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Craig Evans

Studying a Master of Laws (Juris Doctor) at Monash University.

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Georgia Whitten

Studying a Master of Laws (Juris Doctor) at the University of Melbourne.

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Josh Andrews

Paralegal at Phi Finney McDonald and a third year JD student at Melbourne Law School.

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Young Lawyers

Manager Brad Woolstencroft

younglaw@liv.asn.au

https://www.liv.asn.au/Membership/Young-Lawyers/Get-Involved

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EDITORIAL

Managing editor
Carolyn Ford
03 9607 9319
cford@liv.asn.au
www.liv.asn.au/lij

Production editor
Mary Kerley

Senior journalist
Karin Derkley

Legal editor
Libby Brown

Assistant legal editor
Maria Atwell

Art director
Gillian Quirk

Graphic designer
Jacquie Grabert

SUBMISSIONS

Submissions for legal features, opinion pieces and other articles should go to edassist@liv.asn.au

ADVERTISING INQUIRIES

Advertising sales executive
Greg Pryer
03 9607 9496
advertising@liv.asn.au
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Robert Glade-Wright
Peter Moran
Dr Michelle Sharpe
Dr Michael Taylor

LIJ WORKING GROUP

Gerry Bean
Carolyn Ford
Geoff Gronow
Melissa Macken
Chris Molnar
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140 William Street
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The future of our profession

Young and newly admitted lawyers make an enormous contribution to the work of the LIV in many areas of policy and law.

I am delighted that this is a Young Lawyers (YL) special edition featuring the voices of young lawyers in the Victorian legal profession. It is the first such edition of the *LIJ* and focuses on the contributions, experiences and issues facing our young and newly admitted lawyers. They write thoughtfully on change, resilience, human rights, what excellence means, culture, carer leave and the year that's been, among other topics. It might sound obvious but we can sometimes forget that young lawyers are the future of our profession and overlook that their development and progress need to be constantly encouraged and supported by the entire profession.

Some of you may be unaware that our young and newly admitted lawyers make an enormous contribution to the progress, innovation and adaptation occurring across the profession and to the work of the LIV in many areas of policy and law. Over the years, I have been lucky to have worked with many leaders of YL as their Council liaison representative and have witnessed first-hand the ideas, enthusiasm, energy, camaraderie and support that our future lawyers demonstrate in order to learn and create opportunities, build networks and help and support each other. This resilience and innovation have been demonstrated so well this year during the challenges of COVID-19. Take, for example, the #2020visionforadmission campaign, an online forum for messages of support for those new to the profession.

The LIV recently surveyed its student and graduate LIV members in relation to cultural diversity. While it was a small sample, nearly 50 per cent of respondents spoke a language other than English and only 66 per cent were born in Australia. This compares with recent data collected by the Victorian Legal Services Board and Commissioner which found that in the profession as a whole only 22 per cent spoke a language other than English and 78 per cent were born in Australia. The data suggests that our students and law graduates coming into the profession are likely to have increasingly diverse backgrounds and experiences than our existing profession. The face of the profession is changing, and this should be seen as an immense opportunity to learn and embrace new ideas and approaches to problem-solving, progress and growth. The best decisions are made using diversity of thinking and we should not forget that our young lawyers have new and diverse experiences and can add fresh insights to any discussion about how to improve the present and shape the future of our profession.

I was recently speaking with YL president Alice Cooney and she emphasised that it is incumbent on our leaders to create space for young lawyers and for them to see the consequences of their voices being heard and valued. While it is true that young lawyers have grown up as "digital natives" and are comfortable communicating in the virtual world, we have all learned from the COVID-19 period that you cannot underestimate or substitute the importance and power of face-to-face connection and communication as a means of supporting, mentoring and guiding our young lawyers in their careers, collaborating with them and learning from one another. Part of our mentoring and guidance in this super-fast world of digital technology, social media and online interactions is to remind our young and newly admitted lawyers that, though technology and social media are hugely important, there is much to be gained by meeting people in person. The ability to build strong and lasting client relationships and to be that trusted adviser to your clients is vitally important. Remember to treat your career as an opportunity for continuing growth as a professional through technology and human connection.

It is inspiring that so many of our members are committed to supporting young and newly admitted lawyers in any way they can, whether through mentoring, training, work experience or other formal or informal means. At a time of such uncertainty for younger people throughout our community, I encourage all LIV members to reflect on how they might be able to give additional support or opportunities to our more junior colleagues as they navigate a changing profession. This includes ensuring young lawyers are always provided with a positive, respectful and inclusive working environment that values their contributions and allows them to feel comfortable to be themselves and share their experiences and ideas. By valuing the different perspectives of our younger and newly admitted colleagues, we can learn how to foster a healthy, modern legal profession to better serve our clients and community into the future.

Helping those who come after you is a given for many lawyers. As a profession we support and contribute. That has never been more apparent than this year with advocacy around COVID-19. With valuable input from hundreds of members of committees and sections, the LIV has advocated effectively, contributing to emergency law reform and other changes and initiatives necessary to keep the justice system operating. The advocacy effort continues. However you are assisting, whether it's guiding a young lawyer or attending a COVID-19 committee meeting, we thank you. ■

Sam Pandya
LIV PRESIDENT *president@liv.asn.au* *@LIVPresident*

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Forced testing a last resort

With the COVID-19 pandemic persisting for much longer than expected, particularly in Victoria where rolling lockdowns have affected us all, it's understandable that there might be calls for legislative reform. But I was saddened to read a call for implementation of widespread coercive testing under the *Public Health and Wellbeing Act 2008* (PHW Act) ("Flattening the curve – Why the law should allow for compulsory testing in a pandemic", *LIJ* October 2020).

Threats to public health do sometimes require drastic measures, but where human rights are impacted, the legal profession should be the first to question whether such measures are proportional and justified. Existing provisions within the PHW Act allow for testing orders in strictly limited circumstances – as is appropriate given the extreme intrusion into human rights that those orders can represent. The history of the response to HIV in Australia has frequently seen calls for curtailment of individual rights in the pursuit of the public good, and the current PHW Act was developed in part through consultation with the HIV-affected community. Notwithstanding that, there are powers to detain and test people in the Act and, while rarely used, they can be highly coercive.

The case of Lam Kuoth is an example. Accused of placing a woman at risk of HIV, Mr Kuoth, a young Sudanese man, was placed in public health detention for almost 16 months before his trial. On appeal, the Court of Appeal accepted that that period "amount[ed] to a term of imprisonment"[1] in a matter where, ultimately, only a community-based order was imposed.

There is a well-developed international discourse about the most effective ways to protect the health of communities while also safeguarding rights. The Ottawa Charter for Health Promotion is globally recognised as a foundational document.[2] The Charter sets out a framework of developing healthy public policy, creating supportive environments, and empowering and educating individuals, as the foundation to effective public health responses.

Victorians have been tested in huge numbers (more than 2.8 million tests). Our second wave wasn't due to low testing, but emerged from outbreaks in workplaces – aged-care homes, abattoirs, and quarantine hotels – where low-paid workers, often with limited education and training, have been on the frontline of the pandemic. Better safeguards for their health and employment would have limited or prevented those outbreaks without the need for forced testing. Coercive responses like forced testing and detention should only ever be a last resort, if they are used at all. ■

Paul Kidd, director, HIV Justice Network (Amsterdam), lawyer, Fitzroy Legal Service.

1. *Kuoth v The Queen* [2010] VSCA 103.
2. World Health Organisation, The Ottawa Charter for Health Promotion (21 November 1986) http://www.who.int/healthpromotion/conferences/previous/ottawa/en/.

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E | shannon.jenkins@vicbar.com.au

JULIAN MURPHY

AREAS OF PRACTICE

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M | 0492 911 070
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LIV ACTION SOARS ON COVID-19 DEMAND

AS PART OF THE LIV'S ONGOING RESPONSE TO THE COVID-19 CRISIS IT HAS MADE MORE THAN 200 ADVOCACY SUBMISSIONS THIS YEAR. **BY CAROLYN FORD**

2020 has likely been the LIV's most active advocacy year in its 161-year history. Ordinarily, the LIV makes more than 100 submissions annually, advocating through its committees for law reform and other measures on behalf of legal practitioners and the Victorian community.

By October this year, the number of submissions was more than 200 – many dealing with COVID-19.

With the emergence of the global pandemic, the LIV's advocacy efforts intensified in an attempt to achieve the twin aims of practitioner wellbeing and safety and a continuation of the administration of justice.

Most of the recommendations put to government by the LIV have been implemented in the *COVID-19 Omnibus (Emergency Measures) Act 2020* and subsequent regulations.

Mid-March saw the LIV join the criminal justice sector stakeholder group chaired by State Coroner Judge John Cain, as well as the common law and civil justice stakeholder group chaired by Chief Justice Anne Ferguson. Both groups consider issues arising from COVID-19 at a state and federal level.

The initial emergency advocacy activity, which saw round the clock meetings from mid-March for many months as stakeholders grappled with the significant and far-reaching legal ramifications of the pandemic and put temporary workable solutions in place, has subsided as arrangements for the "new normal" have been entered into. However, the LIV response to the emergency is ongoing, COVID-19 a daily consideration as complex new challenges facing the legal profession arise.

At an online COVID-19 information session for members in late September, LIV CEO Adam Awty explained what the LIV had been doing on behalf of members who were facing unprecedented challenges in delivery of services to clients.

"Representing the needs of members has been the focus for the LIV for the past nine months as we have seen the crisis evolve.

"From the very beginning we have been heavily engaged with the VLSB+C, LPLC, Victorian Bar, the courts and judiciary as well as government, opposition and other stakeholders in the justice sector. We have met regularly and more frequently than we would probably care to count with the Department of Justice and Community Safety and the Attorney-General's office. These forums have been fruitful, particularly around early adoption of digital technologies."

Mr Awty said in finding solutions to problems caused by COVID-19 for solicitors as they try to service clients and administer justice, the LIV had gone about its advocacy quietly and resolutely.

"We are often doing things on members' behalf behind the scenes, advocating and getting a positive outcome for the profession. Not everything is played out on the front page of a newspaper.

"We are always trying to balance the need to push government to address issues and use diplomatic channels to get the best results.

"We have written letters to the Attorney-General about the Omnibus Bill, legal services as an essential service, an extension of the state of emergency and how we re-emerge from lockdown. Our letters, shared with the profession, are built on feedback from the 2500 members on our sections and committees.

"It's important to recognise the outstanding work done by many

PHOTO: DAVID JOHNS

COVID-19 ADVOCACY HIGHLIGHTS

- Seven letters to the Victorian Attorney-General, encompassing:
  - feedback on the Omnibus Bill
  - legal services as essential services
  - state of emergency extension
  - multi-jurisdictional feedback on challenges and opportunities from COVID-19 related changes
  - additional feedback post Stage 4 restrictions, roadmap to recovery.
- Ongoing regular meetings with VLSB+C, LPLC (regulatory and insurance impact), Department of Justice and Community Services and Department of Health and Human Services (stay at home directions, roadmap stages), heads of jurisdictions in criminal and civil justice sectors, the Small Business Commissioner and VCAT, criminal law and youth justice practitioners, Corrections Victoria and others.
- Administration of justice exemption allowing practitioners to attend workplace if matter can't be undertaken reasonably or client can't participate reasonably with online/ teleconference/audio links.
- Appearance at the parliamentary inquiry into the government's response to COVID-19.
- Priority access to court with express pass for LIV members.
- Childcare when necessary to enable court attendance.
- Guidance on remote witnessing and execution of documents.
- Judge-alone trials.
- Media – 64 appearances by the LIV on TV, radio, newspapers and other publications since 15 March.
- More then 200 submissions – January-October – many COVID-19 related.
- Reporting – FAQs, practice notes and information on the LIV website COVID-19 Hub which had 400 updates and reported 63,000 page views March-September.

practitioners through committees and sections around policy development during the pandemic. Their input was absolutely critical in keeping the wheels of justice turning and I want to thank all those involved."

Mr Awty said the issues had been challenging to navigate."We have a broad membership, from Collins Street to Cohuna, from sole practitioners to large firms, from criminal to commercial law. Understanding how they all intersect and then providing feedback to government about how best we manage has been critically important."

As a result of this considered advocacy, "there has been a steady stream of impactful changes coming through – deferral of jury trials, remote witnessing of affidavits and meeting with clients, online court appearances.

"The other key areas we have been pushing for, to keep the justice system working, is exemptions. The LIV together with member advocates have identified specific carve-outs for the legal profession.

"The broad access to justice exemption didn't exist in the original drafting of exemptions, with most focused on the courts. We believed that was too narrow and didn't allow practitioners to discharge their obligations. Now, solicitors and barristers can provide face-to-face support to clients and gain access to offices to get physical items to enable them to administer requirements when the work can't be done any other way.

"We believe these are critically important for practitioners. The justice exemption is there purely because of LIV advocacy.

"Another exemption was access to childcare for those appearing before judicial officers. This was done in consultation with the Victorian Bar, and was another good win.

"Another piece of advocacy we have done is court access cards giving practitioners fast-track access to court and allowing them to avoid the lengthy public security screening process. Another win for the profession."

Mr Awty pointed to other support offered to practitioners – the COVID-19 Hub on the LIV website which other organisations, legal and otherwise, point to as a reliable source of knowledge and information, FAQs, ethics and practice support lines, practice and trust consulting services, live complimentary chats and webinars which had enjoyed 10,000 registrations by the end of September. Some of these target regional and suburban practitioners and topics have included cash flow management, practice continuity and effects of COVID-19 in family law. "As soon as we have the information we update our Hub to make sure answers to key questions are available for members as soon as possible. We try to make sure we are getting as much information out to practitioners as we can."

March-September, the LIV recorded 800 COVID-19-related calls on top of thousands of general practice inquiries. There was a significant increase in wellbeing calls to the employee assistance program (EAP) also. "We are very conscious that this isn't just an economic crisis and a public health crisis. It is also a social crisis and does have an impact on individuals. We have been encouraging members to use the EAP when needed. It's disturbing to see a spike, but heartening that people are asking for help."

Mr Awty said the LIV continues to advocate and that the focus has shifted to offices and how the profession, which "has done the right thing during lockdown", will work in the future. "We think as officers of the court and with regard to duty to clients, practitioners and the legal profession should be seen in a different light. There should be an easing of restrictions, particularly for sole practitioners who don't come into contact with anybody, enabling access to offices outside emergency requirements. This would enable more effective working from home.

"This is a challenging time for the entire community but we are conscious that the legal profession needs urgent consideration as to how we get it back up and running again. There is going to be a backlog in the courts and tribunals. How do we get safe and reasonable movement back to a working environment for the profession in coming months? We continue to ask these questions and suggest solutions on behalf of members."

LIV president Sam Pandya said a great deal had been achieved in 2020."Advocacy on behalf of members is a central and vitally important role of the LIV and this year has seen that demonstrated in myriad ways. Many of

the COVID-19-related recommendations made to government, based on input from practitioners across the profession, have been accepted and are now being effectively used in practice. It is a source of pride for LIV members that our advocacy has influenced and shaped the laws under which our practices have continued operating and the community has continued to be served by a responsive profession and legal system.

"The profession has come together, working quickly and collaboratively and forging a way forward to ensure access to justice and pathways for practitioners to safely meet their obligations to the court and to their clients. I'm proud to lead and be part of the Victorian legal profession which has rallied in extraordinary circumstances and we will take the best of what we have learned into the future," Mr Pandya said.

Leaders respond to LIV advocacy

Victorian Attorney-General Jill Hennessy

"I commend the LIV for its constructive work with the government and the relevant agencies to ensure the legal profession and the justice system provide the essential services.

" . . . I look forward to continuing to engage with you on the impacts of the COVID-19 pandemic on the legal profession."

Chief Justice Anne Ferguson

"We asked the profession to change the way they worked almost overnight, and they did so.

"We are grateful for the Law Institute's participation in the forums held with the courts, the broader legal profession and civil and criminal justice stakeholders. Those discussions helped us to ensure that a good deal of the important litigation work in Victoria was able to continue, largely in a virtual environment.

"We are also very grateful to the LIV for its work in rapidly communicating to its members about the many changes we made in response to COVID-19. That open dialogue went a long way to enabling solicitors to understand what was happening and adapt quickly."

Victorian Legal Services Board CEO and Commissioner Fiona McLeay

"Over the past six months the LIV and the Victorian Bar have worked closely with the government and legal industry to ensure lawyers have been able to meet the needs of Victorian legal consumers while supporting the government's efforts to tackle COVID-19. While this has been a challenging time for the legal profession, the advocacy of both the LIV and the Victorian Bar has meant that many of the Victorians who were in need of legal support over this incredibly difficult period were able to get this."

Victoria Legal Aid CEO Louise Glanville

"Victoria Legal Aid supports the mixed model of legal assistance and recognises the importance of our partnerships with private practitioners and community lawyers across the state. Their wellbeing is as important to us as that of our staff and the people we represent and advise."

"All of us have been affected by the coronavirus pandemic, both by the virus itself, but also the consequences of this for the justice system. The LIV's ongoing work to provide timely, expert support to the sector has been highly valued by clients and legal assistance partners throughout this time."

Maurice Blackburn Lawyers CEO Jacob Varghese

"Our firm has been grateful for Adam Awty's leadership throughout the COVID crisis.

"As a major firm we continue to benefit from the LIV's advocacy, which has grown in influence in recent years. We have also appreciated the LIV's work to keep access to justice moving during this time.

"Just as important, Adam personally has been committed to the safety of lawyers and their clients. We greatly appreciate his work to get this balance right."

Lander & Rogers chief executive partner Genevieve Collins

"This year during COVID-19, the LIV has excelled in responding to the needs of its members. Significantly, the LIV has advocated strongly and effectively with key players on behalf of legal practitioners, ensuring we can continue to serve our clients, and the community retains access to justice in challenging times."

MinterEllison managing partner Melbourne Matthew Hibbins

"The senior leadership team of the LIV is accessible and responsive, but never more so than during COVID-19. They understand the key concerns of practitioners and have been instrumental in forging a workable path for the profession. We appreciate their advocacy and terrific support at this challenging time."

Allens managing partner Richard Spurio

"The LIV has been an important voice for the Victorian legal profession throughout the pandemic and we've appreciated their engagement with us and their broader advocacy. Beyond the logistical challenges of working remotely, the LIV has continued to play an important role in focusing on wellbeing across the profession, especially during the past months.

The support provided by the LIV has been invaluable during what has been such a challenging time for many."

Victorian Bar CEO Katherine Lorenz

"It's been vitally important during COVID that the legal profession has been able to speak with one voice about the impact of COVID on those in the community seeking to access justice, and to underline the impact that government restrictions on the profession has had on providing assistance and advocating on behalf of those in need.

"Working collaboratively to advocate for clarifications on restrictions, such as the ability to access chambers for urgent and priority work, or for members to access childcare when appearing in virtual hearings at home, has meant that thousands of members of the community have been afforded the professional and dedicated representation on which the administration of justice relies. The Bar thanks all those at the LIV, in the profession, the courts and the government, who have enabled that to happen, and we will continue to advocate for appropriate and COVID-safe easing of restrictions on the profession."

Southern Solicitors' Law Association president Celina Roth

"A man has no more character than he can command in a moment of crisis."

"From my perspective as a suburban practitioner and for the last 13 years, president of the Southern Solicitors' Law Association Inc (SSLA), I apply this philosophy to the LIV's response to the unprecedented and challenging times imposed on us all by the pandemic.

"The substantial reduction in membership fees is a recognition and alleviation of the hardship some LIV members are experiencing. The provision of free high standard and quality bi-monthly webinars, specifically tailored for suburban and regional practitioners, the arranging and running of the SSLA's monthly Zoom meetings (all flawlessly organised by relationship manager Jess Date) provide enormous assistance not only in enabling us to acquire the required CPD points but also as a means of connection with other members of the profession, at times of anxiety and isolation with their insidious impact on mental health and wellbeing.

"Clearly, we are members of an institute that is there to assist and support its members in ways and at times when it is most needed. On a personal note, I must express my gratitude to CEO Adam Awty for his understanding and preparedness to offer constant and often immediate response in dealing with issues facing small practices and for tirelessly advocating on our behalf. This is true power of association.

Ballarat & District Law Association president Toby Permezel

"The LIV has performed admirably in advocating for the legal profession during COVID-19. As a fortunate by-product of COVID-19 and the seismic shift in the profession to doing things electronically, there has been a considerable closing of the gap for regional practitioner accessibility as well." ■

LIV CRIMINAL LAW SECTION

"In early March 2020 the probability of the pandemic impacting the workings of the justice system became a reality. Courts began to reduce the numbers of people attending court which meant new and radical ideas to facilitate the administration of justice.

"On 19 March the first weekly justice sector meeting was held, chaired by Judge John Cain and attended by all heads of jurisdiction and major criminal justice stakeholders. From the LIV, the CEO, president, senior policy lawyer and representatives of the Criminal Law Section attended. The first lockdown loomed. Government gave assurances the criminal justice sector was an "essential service". A coordinated effort by all service providers was needed to ensure the justice system continued to operate in a safe and manageable way. This work was integral and innovative and it sustained the criminal justice system as Victoria went in and out of lockdown.

"As the pandemic gathered pace, the LIV COVID-19 Hub was created to ensure up-to-date information – practice directions, Chief Medical Officer directives, court forms – were available for all members of the legal sector across all jurisdictions.

"The LIV has been continually consulted in forming initiatives such as on the papers applications, emergency case management, fast tracking of homicide cases, online court hearings and judge-alone trials. It continues to work with heads of jurisdiction and others towards reintroducing jury trials in the higher courts and re-listing committal hearings.

"The LIV has also been a major contributor, along with Victoria Police, the Office of Public Prosecutions, Corrections Victoria, Victoria Legal Aid and Court Services Victoria towards developing a "Courts Beyond 2020" concept paper as an agreed statement of future operations. This is another example of how all justice sector members have collaborated at a time of major delays in a system already under pressure.

"We have been consistent advocates for decarceration and emergency management days in response to the impact of COVID-19 on prisons and youth justice centres. We have continued to closely monitor the operations of Corrections to safeguard the wellbeing of persons held in custody during very difficult times without family contact, substantial disruption to rehabilitation and mental health during periods of isolation and quarantine.

"Throughout the pandemic, we have been consulted by government organisations and the Attorney-General's office when they were anticipating major reforms to emergency powers legislation and the impact of COVID-19 on prisoners.

"I would like to thank all the justice sector's major stakeholders for their tireless work and for the ongoing inclusion of the LIV as representatives of the Victorian legal profession with a seat at the table."

Melinda Walker is co-chair of the LIV Criminal Law Section and an LIV accredited specialist in criminal law.

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Post-pandemic expectations – WHAT IS WORKING AND WHAT IS NOT?

COVID-19 IS SHIFTING PERCEPTIONS OF WHAT IT TAKES TO PRACTISE LAW. THIS PANDEMIC IS A TURNING POINT.

ALICE COONEY

It is hard to imagine that a young lawyer could comfortably begin sentences with "back in my day", but the pandemic of 2020 has made that a reality.

When I was 16 my grandma started law school at the age of 70. I was impressed, although too young to really appreciate it. She would get up at 5am and study for a few hours before reverting back to usual grandma things. I remember the adults talking about her having to undertake a mandatory wholly-online subject at the age of 73. She had worked as a social worker and was a mother of six, so I had not seen much of her on the computer. It was her personal battle and it is with pride that I speak of my grandma who graduated as a young lawyer at the age of 75.

We all expect our own career battles. I didn't think that I would face one until I had reached a point in my career when I was really senior or the technology of the courts had surpassed my knowledge or I had turned 70 – but this pandemic is a turning point.

Change can be imposed on us, or we can choose it. A transformation of our skillset can be welcomed or resisted. Success is what we make it. With the hindsight of almost nine months of pandemic life, what should we keep doing as lawyers and what should we be immunised against?

Culture of 'presenteeism'

This pandemic has shifted perceptions of what it means to be a productive lawyer, regardless of whether you are still in training or your reputation is established. We have a profession that requires you to show up to that meeting and to fight peak hour traffic to attend court on time believing that advocacy is only effective in person and that a client will feel better supported only if you are there. I recall a story where a lawyer was flown to Japan for a lunchtime meeting and returned home in one 24-hour period, just because the prevailing wisdom was that someone should be there. At the time I thought that was so glamorous, until I considered the toll on your body.

The fiction that you must be present to be productive has been demolished by the pandemic. You might prefer to be there, you might find it easier, you might miss the four solid walls of your office, but you don't have to be there, and that is a huge change for lawyers.

ADOBE STOCK

"The fiction that you must be present to be productive has been demolished by the pandemic."

Admission

The photo outside the Supreme Court, the lunch hosted by the mover, the ceremony, the austerity of the building – we miss it. Young lawyers want their day of commemoration at the Court in the time-honoured tradition of a formal court hearing. Tradition is the foundation of our legal practice and while we might be able to cope with losing some traditions (like the removal of wigs), others are too great a moment to lose. The Supreme Court of Victoria and the Victorian Legal Admissions Board should be commended for their work in continuing admission on the papers, but – when we can – I hope we celebrate together as a community. The digital arms of the profession are wrapped tightly around the 2020 new lawyers and our learned friends are just as important and honoured (even if they didn't get the courtyard photos those of us admitted previously were afforded).

Supervised legal practice

The Victorian Legal Services Board and Commissioner (VLSB+C) monitors compliance with supervised legal practice, making sure our new lawyers are trained and supported as they commence their career.[1] Not only is the restriction intended to protect the community by ensuring that we have lawyers of the highest calibre, but it also provides support to young lawyers at a time when the learning curve is steep.

The Uniform Law does not define supervision, however the VLSB+C considers an appropriate supervisor will:

- be appropriately experienced
- not be subject to supervised legal practice restrictions
- provide regular support and feedback sessions
- have authority in respect of work performed by the supervised practitioner and be able to direct, amend, override or intervene in relation to the legal work performed.[2]

The VLSB+C policy does not specifically require the supervision to occur in person, but before the pandemic a remote supervision arrangement required prior approval from the Commissioner. This requirement has been suspended and a COVID-19 template plan released (https://lsbc.vic.gov.au/resources/remote-supervision-during-covid-19-template-plan).

While this article is not calling for the VLSB+C to review any policy, some new lawyers may be better supported by not needing approval to be supervised remotely. This may include those who have come to the law with previous work experience, those who care for children or family members or those who have a disability or a geographical restriction. Two things the pandemic has highlighted is the varied skillsets of lawyers and that supervision with technology is effective.

SNAPSHOT

- The idea that you must be present to be productive has been demolished by the pandemic.
- The pandemic has highlighted two things: the varied skillset of lawyers and supervision with technology is effective.
- Some new lawyers are finding the isolation is impacting their ability to learn effectively as they are no longer able to turn to the person next to them for quick answers to their questions.

Flexible working and training

Flexible working arrangements are a great step forward for the profession and had already been embraced in many workplaces. Most young lawyers, however, do not work flexibly. The competition for employment means the culture of presenteeism is reinforced from the start of your career. There is great rigidity in how most believe that training should be delivered: you will only learn if you are present and modelling best practice can only be done when you can directly observe.

Optimal learning is said to be based on 10 per cent verbal instruction, 20 per cent watching the behaviour and 70 per cent doing the work.[3] How does this work in an environment where you get 1 per cent verbal and 3 per cent watching (sharing a screen over video), and just trying your best to get through the day? New lawyers are finding the isolation is impacting their ability to learn effectively, with one saying, "I don't always know if I am right because I cannot ask the person next to me in the office or discuss concepts with my colleagues". Flexibility in work can be brilliant, but those who still don't know how they best work in a legal environment are finding the transition to a remote world very difficult.

Mental health and working from home

The gleam of access to court from my lounge room has quickly worn away after months of seeing accused's faces and countless Zoom meetings. A prominent member of the profession recently told me, "our home is our work now, we are no longer 'working from home'". The legal community has taken positive steps recently to better support each other in the complexity and constant pressure of our work. The forced removal of subtle supports like coffee with a colleague, walking to court or meetings and being able to leave work at the office and to travel home, has and will continue to have a far reaching impact.

Given all these pandemic changes, the most important focus is to stay connected to colleagues. Everyone is having some form of personal battle and although we are not all in the same boat, we are in the same storm. The pandemic will not be the basis for all transformation in the profession, but we have been given an opportunity to change how and why we work. I hope one day my grandchildren might be proud of how their grandma negotiated these challenges. ■

Alice Cooney is the YL president and a Criminal Division lawyer at the County Court of Victoria.

1. *Legal Profession Uniform Law 2014* (Vic), s49.
2. *Law Institute of Victoria Ltd v Maric & Anor* [2008] VSCA 46 (19 March 2008) and *Cornall v Nagle* [1995] 2 VR 188 as noted in Victorian Legal Services Board and Commissioner's policy – Supervised Legal Practice, p3.
3. Morgan W McCall Jr, Michael M Lombardo and Ann M Morrison, *The Lessons of Experience: How successful executives develop on the job*, 1988, Simon & Schuster.

The invincible summer: LEARNING TO DEAL WITH REJECTION

FINDING A JOB IN A COMPETITIVE MARKET IS NOT EASY AT THE BEST OF TIMES. IN THE WAKE OF THE COVID-19 PANDEMIC, MANY LAW STUDENTS AND GRADUATES WILL NEED TO DEAL WITH REJECTION.

ADAM WAKELING

I graduated from university into the global financial crisis and struggled for six years to find a job. This is what I learned from the experience.

Graduating into a crisis

Everyone who lives through a major event has some image which defines it for them. For me, the global financial crisis (GFC) will always be shocked Lehman Brothers employees (or rather, former employees) sitting on the Wall Street footpath holding the contents of their desks in boxes. It was September 2008, and I was standing in Good Guys in Browns Plains, Queensland, where I worked as a casual, watching them on dozens of TV screens across the shop's back wall. I was two months out from graduating, watching an economic crisis unfold.

Even at this stage, before the global economy went really pear-shaped, I was no stranger to rejection. In 2004, shortly after I started my arts-law degree at Griffith University, I applied to join the Army Reserve. But my eyes weren't good enough for the Army, so I needed to find another way out of Logan City. I kept studying and got a series of jobs selling appliances. In 2007, my penultimate year, I applied for clerkships without success. I wrote to small firms, got one interview with a nice sole-practice family lawyer, but he had no idea what work he would get me to do. I applied for non-legal jobs in government and the corporate sector, and came up short. So, two months out from graduation, I was still selling vacuum cleaners. My friends were then mostly in firms or with guaranteed graduate jobs. I was left hoping something would come up.

Escaping the recession

Over the next few months, I lost contact with my friends from university. I was busy with the Christmas sales, and since they had gone on to graduate jobs, we now lived in different worlds. I kept applying for legal roles, but got nothing. Finally, in May 2009, I had had enough. I packed my bags and went to Canada. I had friends there who owned a farm, needed a farmhand, and had a vacant trailer on their property. The last tenant was on the run from his parole officer. I moved in and started a new life as a farm labourer. I stayed for two years, on and off, except when I went travelling through western Canada and the United States.

Many of the jobs I did were difficult, dirty and dangerous, and nobody did them if they had any better options. I worked alongside men who had spent most of their adult lives in prison, recovering and relapsing drug addicts, and people who couldn't get any better jobs because they had never learned to read. I was accepted into this strange society in a way I have never been accepted anywhere before or since. I was in the club of the rejects. I lived in a trailer with a hole in the roof and no central heating, and in winter slept in a cocoon made from quilts I bought at an op shop. It was a simple life, and I was content for a while.

I did consider giving up on professional life altogether, but eventually I tired of finishing work covered in blood and manure and returned to Australia in early 2011 to take another shot at a graduate role. Not wanting to stay in Logan City, I packed my car and drove south. And when I got to Port Phillip Bay, I stopped. Melbourne seemed like a nice city, and I wondered if I could make something of myself here.

ADOBESTOCK

Living with rejection

Shortly after I arrived, I went to my first LIV Careers Fair. After living on a farm for so long, I found the city bewildering. A lot had changed in two years – rock music had dropped out of the top 10 and everyone seemed to be wearing slim-fit clothes and talking on smartphones. I had more focus and drive than I had two years before, but faced a grim graduate job market and stiff competition from newer graduates. I went through the same process of applying for graduate roles, looking up jobs online, and writing to small firms, once again without success. I did a bit of door-to-door sales to make some money, but my first winter in Melbourne was cold, miserable and hungry nonetheless.

Eventually, I landed a graduate role in a large company. I was thrilled. But I quickly realised I had walked into a mirage. The graduate program was a front for a dead-end low-paying data-entry and call-centre role. The workplace was dysfunctional, employees were sullen, and management was living a fantasy. I had never had a professional job before, so I assumed this was all normal.

One day a few months in, a minor legal problem came across my desk. At university, the law had seemed abstract to me, but in the real world I suddenly found an enthusiasm for it that I never had before. I began studying a masters of commercial law at Monash University part-time, and became determined to get a graduate position using my postgraduate study and professional work experience. Determination became obsession. But the market was too competitive, and none of my applications even got an interview.

Because I didn't like my job, I looked for something else to do with my time. I began writing on Australian history, and on Thursdays counted down the hours to 5pm when I could leave the office and go to the State Library for research.

It seemed like I was walking up a sand dune, taking steps but not getting any further. In mid-2012, after all my graduate job applications were rejected for the second year running, my father was diagnosed with terminal cancer. I flew back to Brisbane and found him lying on a plastic-covered bed in a crowded ward, unrecognisably frail. In our last conversation, he asked me how I was doing. I lied and told him I was doing well. I realised I was looking at my own future – struggling through life and dying an undischarged bankrupt, never having gotten ahead.

I was promoted to team leader at work, but then given the job of outsourcing the team's work to the Philippines and making my team members redundant. I finished my first manuscript but got a series of rejections from agents and publishers. All my graduate applications for 2013 were rejected again, still without an interview. I tried to turn my diary entries from Canada into a book but got nowhere. My mother's mental health, never very good, worsened – she would eventually take her own life. My bed broke and I couldn't afford to replace it, so I had to get used to sleeping on an angle.

Overcoming rejection

But then a few things happened. They seemed insignificant at the time, but proved critical in the long run. My work hired a new manager, and after I helped him find some stationery, he seconded me to work on a project with him. That project was making the organisation compliant with changes to the *Privacy Act*, and it was my first step in what would become my profession. I began writing a new manuscript which would evolve into *The Last Fifty Miles*, my first published book. And I joined the SES as a volunteer.

At the start of 2014, the project finished and I was made redundant from work. Like the Lehman Brothers employees, I was left standing on the footpath holding a box. I had little savings, and as my severance paperwork said I had quit my job I couldn't apply for Centrelink benefits. I had nowhere to go and was facing homelessness if I couldn't find a new job quickly. I was 27, and out of university for more than five years. I didn't know it then, but I was finally on a path to success.

I joined the LIV as a student member because I was hungry and there were sandwiches there, and began to build my professional network and skillset. With the SES, I deployed to the 2014 Northern Grampians bushfires and felt a sense of achievement. Then I got a contract job with WorkSafe as a result of my experience with the privacy project – I learned that I had beaten 40 other applicants. For the first time, I wasn't the one being rejected. Albert Camus once wrote: "In the middle of winter, I found within myself an invincible summer" and I finally understood what he meant. After that, I got my full-time job with State Trustees, which has been a great and supportive employer these last six years. *The Last Fifty Miles* was published by Penguin. I completed PLT and was admitted. With my new money I bought a proper bed and new bedding, and I felt like a king.

"Like the Lehman Brothers employees, I was left standing on the footpath holding a box."

ADOBESTOCK

Conclusion

There are no guarantees in life, but here are some things I wish I had known when watching the GFC unfold on that wall of TV screens back at Good Guys in Browns Plains.

- Be flexible. Don't give up, but don't beat your head against the wall. If something doesn't work try something else. I realise in retrospect that I had become obsessed with getting a graduate position in a law firm and hadn't considered the alternatives.
- Have goals outside work. If your work life goes badly they will give you something to live for. For me, this was writing and the SES, both of which I've taken further than I ever expected.
- Inform yourself. You need to look for opportunities, but the information is out there. Find a mentor and become involved in the LIV. I'm amazed at how ignorant I was of studying, building networks, the legal job market, and life generally when I was a university student – knowing what I know now I realise I could have found a job easily.
- Look after your mental health. With all due respect to Friedrich Nietzsche and Kanye West, what doesn't kill you doesn't necessarily make you stronger. Ongoing stress and rejection can easily send you into a downwards spiral, particularly if you have a pre-existing condition. In the case of my mother, I watched helplessly as the walls closed in around her. Fortunately, mental illness is far better understood now than it was when I was a student, and many more resources are available.

Today's graduates face a far more serious crisis than I did 12 years ago. Many will become familiar with rejection over the next year. Those who have had mostly smooth and successful academic careers through high school and university might be facing their first significant setbacks in life. There is no point in platitudes – they will have a hard time.

If you are in this position, remember that being a law graduate still makes you better off than most people. The information you need is out there, and you can surprise yourself with your own drive and resilience. You too can find an invincible summer. ■

Adam Wakeling is team leader of Compliance and Assurance at State Trustees and was the 2018 and 2019 co-chair of the LIV Technology and the Law Committee. His most recent book, *Stern Justice: The Forgotten Story of Australia, Japan and the Pacific War Crimes Trials* is available at Law Books.

WHAT TAKES US FROM *merely capable*

VICTORIAN LEGAL AWARD WINNERS DEMETRIO ZEMA AND COLLEEN CHEN SHARE THEIR THOUGHTS AND INSIGHTS ON FORGING YOUR OWN PATH.

RADU CATRINA

Given the barriers to entry and the competitive nature of the legal profession, lawyers already belong to a high-performing group. But what lessons on success can young lawyers learn from those who have already achieved it?

I can vividly recall one of the seminal scenes of my legal career, which would shape both my immediate perspective and future objectives. A few months into practising family law, I was sweating in a tiny conference room in the Sunshine Magistrates' Court, squashed between my client, about half-a-dozen members of their extended family and an interpreter. Our case was probably hopeless, the client's instructions changing constantly and the hearing due to start in minutes. Seeing my angst, counsel leaned across the table, quietly chuckled and said to me among the din, "Don't worry, for the first 12 months you're a liability. But then you become an asset. And then, in about five to 10 years, you start to feel like you know what you're doing".

Of course, counsel was exaggerating, but my experiences as a young lawyer have largely reflected those words. Over the years, cluelessness and terror slowly morphed into competency and consistency and, with persistence and dedication, to proficiency.

As my skills, knowledge and confidence have improved, what has remained constant is the curiosity to understand the ingredients that constitute success. What takes us from capable to distinguished? How do we make it?

"Age should not be a limiting factor," Law Squared founder and director, and 2018 Victorian Legal Award Rising Star of the Year and 2017 runner up, Demetrio Zema says. "I was 28 when I founded the firm and had about five years' post admission experience. I had a vision of what I wanted to achieve, but I couldn't see an opportunity within the law, so I had to create it myself."

Colleen Chen, winner of the 2017 Victorian Legal Award Law Student of the Year, was similarly an early-starter. At 22 and still a student she helped found Interns Australia in October 2013. "Many organisations were using unpaid interns to do billable work. My co-founders and I felt it exploitative and decided we had to do something about it. We reached out to friends and organisations where necessary, but there was a lot of learning on the job."

If it was self-belief and a vision of what they wanted to achieve which catalysed them into action, what kept them going? What habits and practices did they incorporate into day-to-day life and operations?

"Supporting others has been an instrumental part of getting me to where I am. They grow with your support and in turn they can help you and grow the community you're a part of," Ms Chen says.

Mr Zema places a lot of emphasis on consistency and being active. "Being constantly active is very important. We seek active lawyers at Law Squared. Law school teaches you to be passive, to move systematically through the ranks, but I think it's dangerous to believe that passivity and time will necessarily yield results. Had I taken that approach, I wouldn't be where I am today.

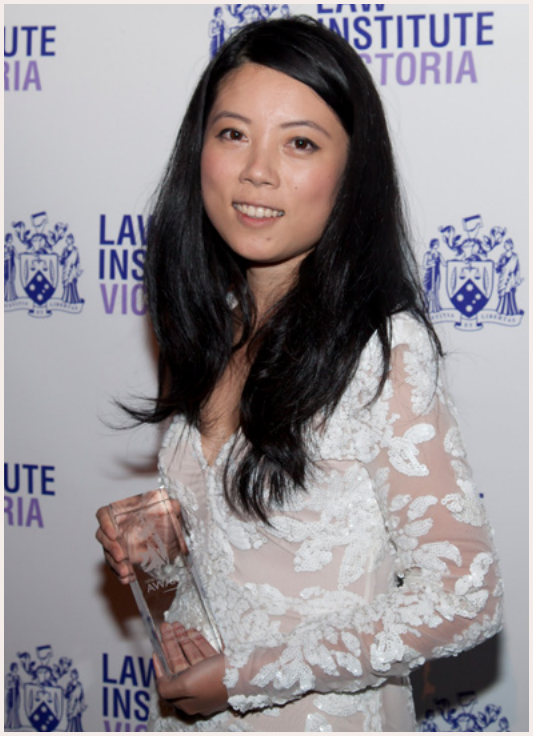
"I think it's important to look for inspiration outside of the law. I read widely and rely on external resources for a lot of my learning."

Despite their trailblazer status, Ms Chen and Mr Zema speak of the importance of mentors and people to learn from and emulate. Mr Zema draws on his family – migrants who have been in business for 40 years, and have instilled in him a rigorous work ethic as well as the business acumen of the advisory board for Law Squared.

SNAPSHOT

- Role models are important for the goals and values they embody and to help you understand what you're working towards.
- Mentors are also important – providing support by giving you perspective and sharing their own experiences.
- Failure is inevitable, particularly when you take risks. Don't be deterred by setbacks. Instead, use them as learning opportunities.

to distinguished?



Colleen Chen

Demetrio Zema

"Role models are important for the goals and values they embody and for helping you understand what you're working towards. Mentors are also very important – they save you a lot of time, provide great support by giving you perspective and sharing their own experiences, struggles and adversity. They can make you more confident about your own passions," Ms Chen says.

There are always the overlooked aspects of success to consider, including the flipside – failure. But both Mr Zema and Ms Chen describe failure as inevitable, particularly when you take risks and urge young lawyers to not be deterred by setbacks, to instead use them as learning opportunities, a chance for growth and reflection. What can initially seem like failure can later be revealed as a forced pathway to other opportunity.

Mr Zema takes an even more pragmatic approach, "You learn a lot by trial and error".

He also cautions, "Don't forget about all the sacrifices you make along the way. Travel, family, relationships. You can't have it all and you can't have it immediately, but that is the expectation in the age of instant gratification".

Ms Chen similarly counsels, "Make sure that you know why you're doing things and what you want to achieve. You need to define success on your terms, otherwise you will default to other people's measures of success and might reach a point where you realise you're not happy because you've been chasing other people's values, not your own".

What final words of wisdom can they impart to young lawyers, hoping to follow in their footsteps?

"Keep learning, keep looking for inspiration and use resources outside the profession to make you a better lawyer," Mr Zema says.

"It's a privilege to have a legal education. Enjoy it and try to put it to good use," Ms Chen says. ■

Radu Catrina is a lawyer at Berry Family Law, a member of the LIV YL Executive Committee and co-chair of the YL Editorial Committee.

THREE LAWYERS *and a baby*

YOUNG LAWYERS WANT WORK-LIFE BALANCE AND BEING WITH THEIR CHILDREN IS PART OF THAT. SANIA CICIULLA, LACHLAN CLOAK AND ANDREA DE SOUZA SHARE THEIR EXPERIENCES.

SYLVIE ALSTON

In 2020, young lawyers face innumerable challenges thanks to COVID-19, but being a parent shouldn't be one of them. Young lawyers are seeking genuine work-life balance and being able to take parental leave is part of that. Statutory insurance lawyer Sania Ciciulla chose to work at Hall & Wilcox because of its well known culture of "genuinely promoting work-life balance and promoting quality people – parents or not." Justice Connect Court Programs principal lawyer Lachlan Cloak moved from private practice to an employer that would offer flexible working options. Junior barrister Andrea De Souza signed the Bar Roll as she wanted the flexibility and autonomy that came with being self-employed.

Parental leave history and rights

Paid and/or unpaid parental leave is available. Paid leave is government funded if young lawyers earn under $150,000, whereas employer funded parental leave requires careful reading of employment contracts, enterprise agreements and workplace policies. Under the National Employment Standards (NES), young lawyers who have been with their employers for 12 months or more are entitled to take up to 12 months unpaid leave. Under the *Fair Work Act 2009* (Cth) (FWA) they have the right to return to work in the same position they held prior to going on leave. Employers must notify young lawyers of any change to their role prior to their return. It is also unlawful to discriminate against young lawyers due to their pregnancy or caring and breastfeeding responsibilities.

The first government paid parental leave scheme came into effect in 2011. The LIV, Victorian Women Lawyers and the Workplace Gender Equality Agency have actively sought to address the attrition of women practitioners and the lack of men taking parental leave through training, good practice guides and advocacy to support working parents.

In 2020, under the government scheme, parental leave can be offered over two periods: one fixed 12 continuous week period and one flexible period of up to 30 days, within a two-year period. To be entitled to the government scheme you must satisfy certain requirements including being the primary carer of a newborn or newly adopted child.

Katie McKenzie, People & Culture Director at Hall & Wilcox, observes an increase in males taking primary caregiver's leave, but they mostly take paid rather than unpaid leave. This may be a result of the government's "Dads and Partner Pay" which offers two weeks of paid leave at the national minimum wage. Where there is no employer funded program, other benefits such as return to work coaching, professional membership discounts, flexible working options or onsite childcare may be offered. The Victorian Bar's Parental Leave policy offers no paid leave but provides a chambers rental subsidy and Bar subscriptions discount.

Andrea De Souza

Lachlan Cloak

Sania Ciciulla

Having a parental leave plan

Young lawyers should communicate with others in the profession about what worked for them. Factors to consider are: how long to take, financial constraints, childcare support and the stage of their career.

Ms Ciciulla says that while her firm encouraged her to sign off on a parental leave plan (listing key dates, a handover of files, a preferred method of contact during leave and expectations about her transition back to work) it was not set in stone and its success was a result of ongoing conversations with her supervisor.

Mr Cloak's plan began before having children, when he moved to the not-for-profit sector in pursuit of a family-friendly workplace. At Justice Connect he could only take three months paid leave, but has felt supported working part time or flexible hours, especially with the closure of childcare facilities during COVID-19.

Ms De Souza says that being self-employed allowed her greater flexibility leading up to her parental leave and she was able to work from home or take breaks as needed. Her plan took into account her workload as a junior barrister and the support she would need to put in place such as childcare. She encourages

young lawyers not to take on substantial work while on leave as time with your child cannot be regained. She noted it was difficult to take a significant period of leave given the lack of paid leave, as well as the pressure to continue building her career.

For young lawyers who might be feeling overwhelmed there are other resources. The Perinatal Anxiety & Depression Australia (PANDA) hotline offers support to families across Australia who are expecting or struggling after the birth of a child. Circle In, an online solution, offers free resources – blogs, templates, guides – and a paying platform that supports working parents and employers. Lawyers Lucy Dickens and Jo Alilovic's *Managing the Juggle* podcast and lawyer Catherine Brooks' book *Let's Make It Work, Baby*, both provide professional and personal advice about excelling as a parent.

Keeping in touch and developing new skills

The experience of being a parent can put personal and work goals in perspective and young lawyers can expect to develop new skills. *Circle In* notes parental leave is "akin to a fast-track development program, with a steep learning curve" and employers shouldn't equate the decision to take leave as less career focused. Young lawyers should consider keeping in touch (KIT) while on leave. KIT programs help ensure those on leave don't feel isolated or disconnected from the workplace. Eligible employees under the FWA (by mutual agreement between employee and employer) can access ten KIT days for the purpose of staying connected and assisting the transition back into work. The type of work performed must satisfy this purpose. This could include taking part in a strategic planning meeting or attending a work conference. Employees are to be remunerated for KIT days performed in addition to any paid leave.

Ms Ciciulla welcomed her supervisor's supportive calls while on leave. She believes young lawyers can still be career focused while on parental leave as any plan for career progression or salary review is part of a long-term plan.

Ms De Souza encourages young lawyers to keep in touch. She attended networking functions and discussed co-presenting with some of her instructors. She found it useful to set expectations and keep her instructors informed as to when she was taking leave and when she would be back to accepting briefs. Taking leave doesn't mean a young lawyer has to stop building their personal brand. However, Mr Cloak found himself less concerned about missing out on work, as he came to realise he was learning a whole new set of skills. He was reminded of why he had moved from private practice to Justice Connect, where he helps vulnerable Victorians represent themselves.

Requesting flexible work arrangements and more

Young lawyers should not feel judged for asking for support, such as flexible working arrangements. However, an employer's flexible working policy or culture can only do so much and, according to Circle In, is nothing without cultural change and action to go with it. Although Mr Cloak and Ms De Souza acknowledge there has been progress, paid parental leave policies and attitudes of the legal profession need to change to recognise men and women are parents. Ms De Souza was advised not to tell instructors she was going on parental leave, but to say she was going on holiday or studying. She encourages those in the legal profession to be more open about their caring responsibilities so it's not characterised as an imposition or an indulgence, which will help normalise the conversation about parental leave.

Under the NES, young lawyers have the right to ask for flexible working arrangements provided they have completed at least 12 months of continuous service with their employer. A request for flexible working could be changes to start/finish times, working in a job-share arrangement or working from home. Employers can refuse a request on reasonable business grounds. While there is no general right of review, young lawyers should be prepared to have an ongoing discussion with their employers. Part of a young lawyer's plan to manage their return to work should take into account childcare and any breastfeeding needs. Young lawyers under the *Sex Discrimination Act 1984* (Cth) have the right to ask for arrangements to be made to enable them to breastfeed, express or store breast milk. Some employers will be Breastfeeding Friendly Workplace accredited, but for those that are not, the Australian Breastfeeding Association has helpful resources. Ms De Souza was aware of her right to breastfeed at work, but isn't aware of any courts with breastfeeding rooms and would feel uncomfortable asking for a break in a hearing to do so.

SNAPSHOT

- Young lawyers who have been with their employers for 12 months or more are entitled to take up to 12 months unpaid leave. Under the FWA they have the right to return to work in the same position they held prior to going on leave.
- Where there is no employer funded program, other benefits such as return to work coaching, professional membership discounts, flexible working options or onsite childcare may be offered.
- Under the National Employment Standards, young lawyers have the right to ask for flexible working arrangements provided they have completed at least 12 months of continuous service with their employer.

Conclusion

Young lawyers should be part of parental leave conversations to normalise such talks. As Ms De Souza says, taking a period of leave shouldn't set her career apart from that of her male or non-parent peers. Mr Cloak's story sheds light on how the government paid parental leave scheme for fathers is inadequate. Ms Ciciulla's experience is positive and hopefully is an indication of where the profession is heading. Young lawyers can feel confident about taking and returning from parental leave by knowing their entitlements, implementing a parental leave plan, keeping in touch and utilising flexible working arrangements. However, young lawyers' resourcefulness can only do so much. As Justice Jenni Hill says on the *Managing the Juggle* podcast, the legal profession needs to share their stories (the good and the bad) to broaden perceptions and challenge stereotypes. ■

Sylvie Alston is a lawyer in the Public Interest Law team at Justice Connect. She is a member of the LIV YL Editorial Committee and the YL Refugee Law Reform Committee. She works flexibly as the parent of two.

Too many exceptions ARE PROVING THE RULE

LAW STUDENTS ARE AWARE THAT FUTURE WORKPLACES MAY BE CUT-THROAT ENVIRONMENTS THAT METE OUT POOR TREATMENT, PROTECTED BY A CULTURE OF SILENCE. ALSA IS MOVING TO DISRUPT THIS EXPECTATION.

MARGARET CAI

On 22 June 2020 news broke about an investigation commissioned by the High Court of Australia, which found that former High Court Justice Dyson Heydon sexually harassed six past judges' associates. Chief Justice Susan Kiefel released a forceful statement expressing extreme concern and shame that this could happen at Australia's apex court. For many, however, the occurrence of this kind of abhorrent behaviour in such a powerful institution did not require a stretch of the imagination. If this was not the watershed moment for bullying and sexual harassment in the legal profession, then I'm not sure what would be.

In the weeks that followed, countless commentaries emerged on the widespread cultural failings of the legal profession. Among them were stories – like those about Dyson Heydon – of open secrets within legal circles. The Australian legal profession is rife with bullying and sexual harassment. The data and the anecdotal evidence point to this reality. Law students entering the profession are acutely aware that future workplaces may be synonymous with a cut-throat environment, poor and degrading treatment and a culture that demands people accept it. It is unsurprising that interrelated issues of bullying and sexual harassment, diversity and inclusion, and mental health are paramount concerns for the Australian Law Students' Association (ALSA) and the law students we represent.

Bullying, sexual harassment and the broader legal culture

As students, we are reminded that law is a noble profession. Our law schools and student societies regularly host social justice and equity initiatives. Ethics and professional responsibility form mandatory components of legal studies. Yet, systemic issues like bullying and sexual harassment do not exist in a vacuum. They are fostered by core characteristics of legal practice, like its hierarchical structure and its competitive and male-dominated culture. Such behaviours disproportionately affect women and junior members of the profession. In *Hill v Hughes*, a principal of a law firm was found to have sexually harassed a junior solicitor. The perpetrator aggressively pursued the victim at work, threatened her with redundancy if feelings were not reciprocated and attempted to blame her clothes, perfume and manner for his behaviour. On a broader level, his conduct reflects common cultural themes of entitlement, vulnerability and exploitation. This case speaks to a culture where junior women are often perceived as collateral to men in power – the pretty intern, like the good office, comes with getting the position.

The International Bar Association's landmark global report *Us Too? Bullying and Sexual Harassment in the Legal Profession* revealed that more than 60 per cent of Australian respondents had been bullied and almost 30 per cent had been sexually harassed during their legal career. This largely accords with national studies, where one in two women and more than one in three men reported having been bullied or intimidated in their current workplace. The *Changing the Rules: The Experiences of Women Lawyers in Victoria* report also found that 40 per cent of respondents had personally experienced discrimination while working as a lawyer or trainee. These findings are appalling and, likely still, exclude those who have left the profession as a result of their experiences. As a law student, it is difficult not to be alarmed or disheartened by the statistics.

The Victorian Court of Appeal has previously noted that "an employee who is exposed to sexist, bullying or demeaning workplace behaviour may suffer injury because of the cumulative effect of a series of minor events". An employer's failure to take steps to address these behaviours could constitute a breach of their duty of care. This begs the question: what about the legal profession? In light of the ubiquitous nature of bullying and sexual harassment, why are there not more disputes about it? Hostile and performance-driven cultures reinforce a normalising tendency of certain behaviours in legal workplaces. Judgments like *Koehler v Cerebos* (Australia) and *Brown v Maurice Blackburn Cashman* ultimately reflect the law's assumption that employees in high-stress workplaces can handle those environments. Exclusionary practices which persist around the world also contribute to this expectation. They range from social cliques and sexist jokes to denying complex work to certain demographics. These entrenched attitudes and routines effectively create a culture where unethical behaviours like harassment become palatable and readily dismissed as part of the rough and tumble of legal practice. There should be no surprise that the fear of adverse career repercussions and of not being believed, the lack of accessible complaint processes and the perception of ineffective responses pose significant barriers to reporting. Consequently, the legal profession is not equipped to tackle issues of bullying and sexual harassment.

Experiences or observations of harassment in the workplace logically correspond with negative job satisfaction and lead to increased employee absenteeism and turnover. We already know that the risk of experiencing harassment is amplified by factors including gender, age, sexual orientation, disability and cultural background. It therefore follows that complacent acceptance of bullying and sexual harassment in the legal profession will continue to turn away bright talent and diverse perspectives. As is posited in Jean M Leiper's *Bar Codes: Women in the Legal Profession*, it will ensure that "the law remains the preserve of a particular group . . . whose views have shaped both legal practice and the prescribed routes to professional acceptance" throughout history. The implications of this extend beyond the make-up of our legal workplaces. A legal profession that is devoid of diversity is one that will consistently fail the most vulnerable people.

SNAPSHOT

- In the IBA's *Us Too? Bullying and Sexual Harassment in the Legal Profession* report 60 per cent of Australian respondents had been bullied and almost 30 per cent had been sexually harassed during their legal career.
- Hostile and performance-driven cultures reinforce a normalising tendency of certain behaviours in legal workplaces.
- A legal profession which is devoid of diversity is one which will consistently fail the most vulnerable.

Moving forward at ALSA

There is no longer a place for open secrets about predatory or aberrant behaviour in our profession. In response to significant student anxiety around bullying and sexual harassment, ALSA has adopted an advocacy imperative this year directed at championing the values and changes we want to see within the wider profession. In the aftermath of the Heydon revelations, ALSA participated in the Law Council of Australia's national roundtable into sexual harassment in the legal profession. Together with representatives of peak legal bodies, regulators and other experts, ALSA supported reform to the *Sex Discrimination Act 1984* (Cth) and laws on defamation and occupational health and safety. We also agreed that the introduction of national model harassment policies and the development of training and educational tools were necessary steps to instigating cultural change.

ALSA has planned a student-led national Bullying and Sexual Harassment Awareness Raising Week to continue the spotlight on these issues. While the prevalence of such behaviours is well known, the week will focus on how students and junior professionals can identify harassment, the reporting mechanisms available to victims and the role of bystanders. We will also introduce a new condition for membership re-affiliation, where law student societies and associations must ensure that they have a bullying and sexual harassment policy in place before they can participate in ALSA initiatives and events.

Issues of harassment go hand-in-hand with issues relating to mental health and diversity in our profession. Students entering law school do not exhibit higher levels of distress than the general population. Yet their psychological wellbeing starts to decline from the first year of law school and continues throughout legal practice.

In partnership with legalsuper, ALSA is also launching free online mental health first aid training for students. In equipping them to identify and appropriately respond to peers and colleagues experiencing mental health problems, the hope is for the next generation of Australian lawyers to be conscious of their own and others' behaviours while navigating the legal profession. We will also finalise diversity and inclusion guidelines for Australian student societies and associations to implement within their law schools. This will be shared with our international counterpart, the European Law Students' Association, as a base for the creation of its own policies.

The impetus is on everyone in the profession with a voice to advocate and be accountable for its cultural failings. In recent years, reports like *Us Too?*, *The National Attrition and Re-engagement Study*, *Changing the Rules* and *Respect@Work* have provided significant coverage of the prevalence of bullying and sexual harassment in the legal profession. There is also no shortage of recommendations to address these issues. Further inaction will constitute wilful blindness.

Conclusion

The narratives of bullying and sexual harassment are all too familiar and shameful. As the peak body of Australian law students, ALSA will continue to advocate for the kind of workplaces we would be proud to enter and represent. Our intention is to lead by example. In the past year, our public stand against bullying and sexual harassment in the profession has attracted some negative comments including:

- "Poor snowflakes . . . can't handle the rough and tumble of real life. . . blame harassment . . . blame anything except themselves for not having what it takes."
- "Sweet young things. Why on earth are they doing law?"
- "When some judge roughs you up, what are you going to do, start crying at the Bar table? Your client is depending on you. Harden up."

These remarks reflect the pervasive attitudes that prevent victims from reporting and the legal profession from changing. There is a fine line between the managerial prerogatives in a highly competitive culture and bullying and sexual harassment in the workplace. For students and junior lawyers the structures which affirm significant power imbalances in the workplace often make it difficult to identify and challenge these behaviours. This is particularly concerning when such conduct escalates over time.

In the post-#MeToo era, progress should be measured by doing more, not promising more. After all, at what point in listening to the stories and looking at the statistics do we stop and realise that this behaviour is our cultural norm?

For references and further reading contact president@alsa.asn.au. ■

Margaret Cai is ALSA immediate past president. She is studying a Bachelor of Laws/Bachelor of Communications at University of Technology Sydney.

With the benefit OF HINDSIGHT

SENIOR PRACTITIONERS SHARE THE ADVICE THEY WOULD GIVE THEIR YOUNGER SELVES.

Annmarie Geros

There are many misconceptions about what the practice of law entails. I have often thought, if I could turn back the clock, what advice would I give myself as a newly admitted lawyer – advice not necessarily taught in a university law degree or through practical legal training. Rather, advice that is critical to managing the everyday pressures of practice and building the soft skills often overlooked in the day to day minutiae of practising law. Five key areas emerged from interviews with senior practitioners and barristers asking what advice they would give to junior solicitors.

Put your health first

The first few years of practice are a steep learning curve. We strive to impress and over-achieve, while we focus on climbing the ladder. But at what cost? Happy Lawyer Happy Life founder and lawyer Clarissa Rayward says law is an inherently stressful job. "We must remind ourselves that this career comes with a certain intellectual rigour and human stress". Ms Rayward's approach is one of self-care. She advises setting rituals and routines that allow us to bring our best self to the office, including a positive mindset for success.

Request and implement feedback

Feedback was a constant theme, in particular the importance of not being afraid to ask for feedback no matter how intimidating you think your boss is. Ms Rayward says junior lawyers often look at feedback as personal criticism. Instead, she views it as an opportunity to sharpen professional skills. Similarly, barrister Cath Devine says, "when you stuff up, admit it and fix it". Further, Ms Devine says admitting mistakes shows character and integrity. The key for junior lawyers is to raise their hand and seek assistance when they need it.

SVW Legal lawyer Simone Wimalaratne says we are "not meant to know everything, we are meant to find the answer," and there is no stupid question. Asking for help is simply more efficient.

Barrister Amanda Carruthers says from her experience as a supervisor it is more efficient if juniors explain their methodology and what they have already tried when asking for feedback or raising questions. It allows the supervisor to determine what has been done with the instructions and to assist in teaching the junior how to narrow their search and work efficiently. "It improves the process" and allows the supervisor and the junior to "improve their communication and research skill set". Ms Carruthers says this type of dialogue provides an opportunity for juniors to "stretch themselves" and to have the difficult conversations, which in turn leads to growth.

Work productively and efficiently

As a junior lawyer, there is an expectation that every email and task must be attended to before clocking off. This is an unrealistic and unhealthy expectation. As De Roberto Legal partner Gabrielle De Roberto says on the Ladies who Lawyer Facebook page, "it can wait until tomorrow". In the wake of COVID-19 and working from home, it is critical that appropriate boundaries are set for the work day and junior lawyers must learn to draw a line between home and work and realise that working hours of overtime is not necessarily effective, efficient or productive. Ms De Roberto said in order to do what is best for clients we ought to be well rested.

Pearson Emerson Family Lawyers partner Heidi Menkes says, "If you are sick, take a sick day". Though junior lawyers may feel guilty for taking sick leave, they should rest in order to maintain consistency and productivity in their work.

Similarly, Accenture lawyer Claire Allan says health should come first and that invariably "someone will step into your shoes and do your job".

Record keeping – file notes

Taking detailed contemporaneous file notes not only reduces the risk of liability (for disputed matters and costs), it also forms a point of reference. Ms Carruthers outlines why she considers it important to keep "fastidious contemporaneous file notes" including:

- it forms the clearest record of what happened at the time
- it provides a recollection of what was discussed with your client and their instructions
- it provides a reference for other practitioners who may have a different view of the file
- it may provide an opportunity for you to go back to the client and seek further instructions.

File notes also assist other practitioners to step in if you are unwell or away from the office so the file can run uninterrupted.

Build a network and maintain it

In my experience, the most powerful tool and advice I can share with other newly admitted and junior lawyers is to not only build a network but to maintain it. Contact colleagues, meet them for coffee and pick their brain – they won't mind, in fact they will welcome it.

Key points to remember are that health and wellbeing are paramount, approach senior colleagues for feedback, guidance and support in order to progress and don't work yourself into the ground. ■

Annmarie Geros is co-chair of the YL Editorial Committee and dispute resolution and litigation lawyer at Aitken Partners.

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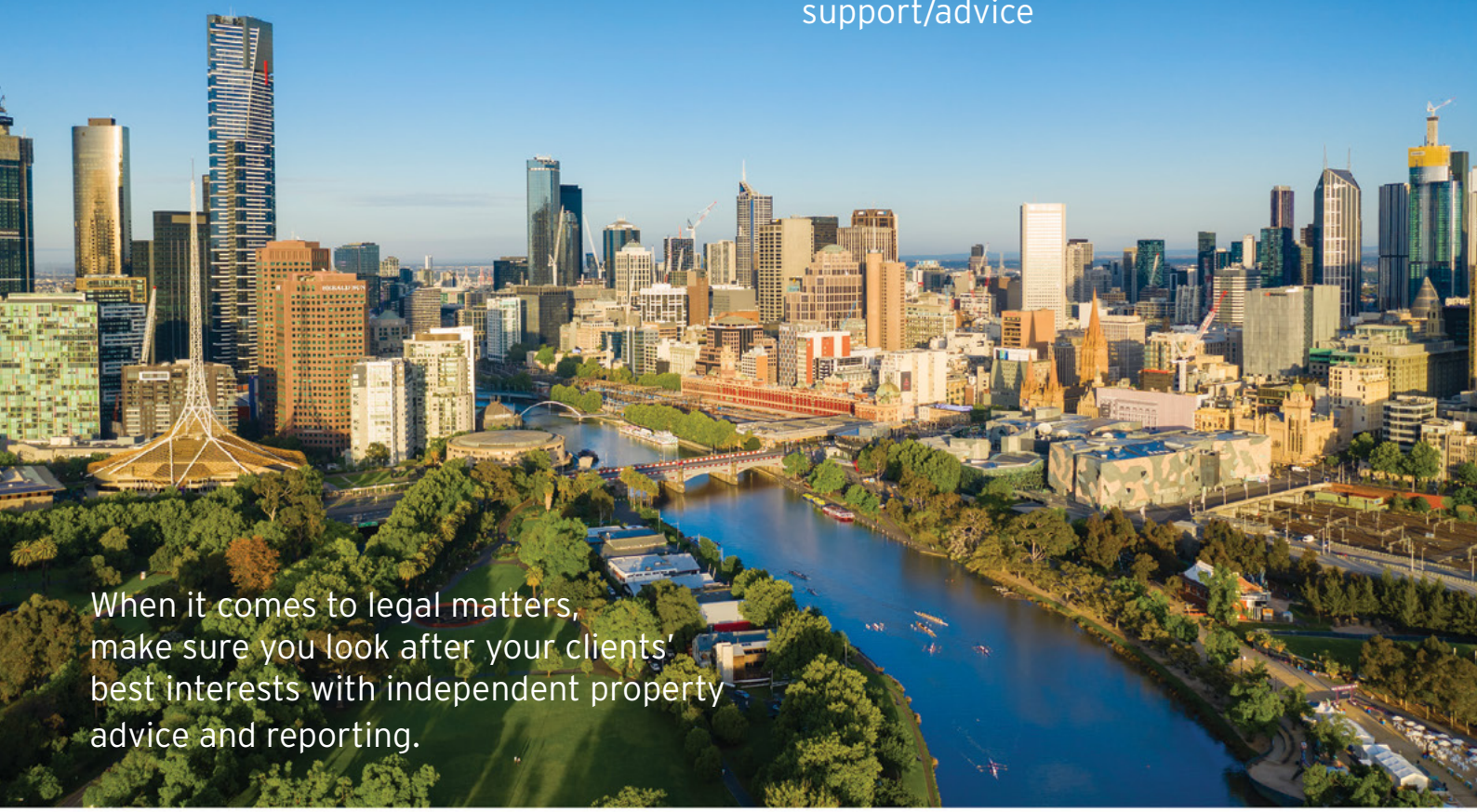

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WHAT ARE LAW FIRMS *looking for in young lawyers?*

COVID-19 HAS MADE IT HARDER FOR YOUNG LAWYERS TO GET THEIR FOOT IN THE DOOR. AS EMPLOYMENT OPPORTUNITIES CONTINUE TO STALL, HOLDSTOCK LAW PRINCIPAL JENNIFER HOLDSTOCK EXPLAINS HOW TO STAND OUT.


ROSE GEORGE

Securing your first practising role in a law firm is one of the biggest challenges faced by young lawyers. As graduate roles offered by law firms continue to stall due to the effects of COVID-19, starting a career via a graduate program is not an option for every young lawyer.

What are alternative ways of getting recognised by a firm?

Holdstock Law principal lawyer Jennifer Holdstock shares insights on what she considers desirable in candidates and the steps young lawyers can take to be recognised.

Ms Holdstock says that having work-life balance is essential for young lawyers to succeed. "The law is very demanding, so to ensure you cope and survive as a young lawyer you need to have a life balance."

Ms Holdstock says that if you don't have something on your resume that indicates a life outside of the law, your resume will make it to the "no" pile pretty quickly. "It doesn't matter to me whether you are sporty, a book worm, a travel bug, have a keen interest in musical theatre or all of the above, but something outside of the law is important to remain a balanced person."

What does a balanced lawyer look like?

Ms Holdstock seeks not only solid grades, but also part-time work experience, participation in community life, extra curricular activities and someone with personal appeal. "I will never hire anyone who has excellent grades but no life experience. Good grades alone do not make an excellent lawyer."

Dedicating a number of years to university, spending sleepless nights finishing off assignments and cramming your notes in before an exam are part of the preliminary process to becoming a young lawyer, but it's important to also use the time at university to start new hobbies, learn new things and get as much experience as possible. Ms Holdstock emphasises that while grades are important to a point, "they don't help you with office chit chat once you start".

To be a good fit, Ms Holdstock says that you need to be able to work and socialise as a part of a team. A part-time job while at school or university gives you essential life skills, such as becoming confident when dealing with difficult customers, learning team work, being able to socialise with your colleagues and contributing to society.

With recruitment processes in the industry having changed drastically due to COVID-19 and rapid developments in technology and in the way law firms practice, standing out and showing law firms your potential can be a challenge.

What is the best way to show law firms you are a good fit?

Contact the firm. "If there's a place you really want to work, email or call the partner directly, show your interest and ask them if they have 30 minutes for a Zoom call," Ms Holdstock says.

Ms Holdstock adds that although the market is tough, there are alternative measures young lawyers can take to land a practising role. Email applications have become mainstream and have grown to be the application route of choice along with the use of cvMail and other internal portals.

Undertaking a Practical Legal Training (PLT) course is a good option for those that have not obtained a graduate program position, Ms Holdstock says. She added that PLT programs include placements at firms, which is a great way of getting a foot in the door.

Finding work in the legal field during student life is a great way to make contacts and gain some valuable experience.

SNAPSHOT

- Work-life balance is essential for young lawyers to succeed.
- Part-time work experience, participation in community life and extra curricular activities can help candidates stand out.
- Undertaking a PLT course is a good option for those that have not obtained a graduate program position.

You've landed yourself an interview. How do you make yourself stand out?

It's important to interview well and familiarise yourself with the firm. "It is very apparent when you interview someone if they have just found out about your firm recently from reading information on the home page," Ms Holdstock says. If asked what you know about the firm remember to be genuine and show a real interest.

It's also important not to be too fixated on the type of law you think you want to do at the start. "Don't narrow down your options too much," Ms Holdstock says. "In your early years, just learn as much as you can. The best skills and experiences make the best lawyers." ■

Rose George is associate to Judge Kevin Doyle at the County Court of Victoria and a member of the LIV YL Editorial Committee.

Expectation versus the reality OF COVID-19

ENTERING THE LEGAL PROFESSION DURING COVID-19 HAS SHAPED THE TYPE OF LAWYER NATALIE DAMMOUS IS BECOMING.


NATALIE DAMMOUS

As I reflect on this turbulent year, I recall starting 2020 with determination and exhilaration. I was set to begin practical legal training (PLT), undertake placement at a law firm, be admitted as an Australian lawyer and – all going well – find a job. Talk about an exciting year.

Pre COVID-19

I began PLT at Leo Cussen as an onsite trainee with the promise of face-to-face delivery of the course. The onsite program allowed me to meet new colleagues and build my professional network. I found the immersive style of learning was equipping me with the skills I needed to enter the legal arena.

However, change was on its way in the form of COVID-19. Leo Cussen had to adapt the delivery of the onsite course to an online variation. This meant saying goodbye to immersive onsite training with my new colleagues and saying hello to studying at home with my dogs. My initial excitement quickly dulled to reluctant acceptance. I was forced to change my expectations and adapt to this new style of learning. Studying remotely was not without its challenges. Onsite, I relied heavily on friends, peers and mentors for strategising and using team work to resolve legal problems. At home, I was forced to step out of my comfort zone and rapidly adjust to independent learning. Without the comfort and familiarity of the people around me, I discovered a newfound independence and resilience. A positive outcome from an undesirable situation.

Admission to practice during COVID-19

Aside from the practical difficulties presented by COVID-19, the most challenging aspect of this year has been managing the expectation of what was supposed to be the most thrilling and profound part of my journey from law student to lawyer – the admission ceremony. Like many law graduates, I have associated the Supreme Court admission ceremony as a rite of passage signifying the end of many years of working towards becoming a lawyer. Due to COVID-19, the traditional ceremonies were unable to proceed and instead the process changed to allow for admission on the papers. While I was disappointed to not have had the traditional ceremonial experience, I am incredibly appreciative of the adaptation that allowed me and many other graduates to complete our legal journey and be admitted to practice.

Employment as a newly admitted graduate during COVID-19

In addition to the challenges of studying online full time, a concern that followed me through the final months of law school and the beginning of PLT was the difficult job market. I had anticipated competition, but this was exacerbated by the effects of COVID-19.

I was being told by many junior lawyers, paralegals and law clerks (friends and colleagues) that they were being made redundant as a result of the economic effects of COVID-19. This meant an increase in the number of applicants in the pool of recent graduates seeking employment.

The stress around finding a job as a graduate lawyer worsened when I realised I was not only competing against other graduates with the same qualifications, but also recently terminated junior lawyers who had experience greater than mine. This continues to be the situation for recent graduates and newly admitted lawyers. My advice is to stay positive.

SNAPSHOT

- Changes to the delivery of onsite courses because of COVID-19 meant saying goodbye to immersive training with new colleagues and pivoting to studying at home.
- A challenging aspect of this year has been managing expectation around the admission ceremony.
- A highly competitive job market was exacerbated by the effects of COVID-19. New graduates are competing with junior lawyers with more experience.

Today

Finishing law school, graduating PLT, becoming admitted as a lawyer and finding your first legal job are significant achievements. Despite the rollercoaster that has been this year, we should not lose sight of these accomplishments. What started off as a year of excitement and promise has transformed into a year of growth and resilience. I now possess skills which will assist me as a legal practitioner. This year has included a Graduate Diploma of Legal Practise, being admitted as a lawyer on the papers and finding a job that I love. Despite the obstacles and challenges, 2020 has delivered the excitement, growth and promise that I had been expecting. COVID-19 may have changed the way that I accomplished my goals, but it hasn't stopped me from succeeding. ■

Natalie Dammous is a law clerk at Baker Jones Lawyers and a member of the LIV YL Social Committee.

SHARED *wisdom*

OLIVIA LILLY AND NICOLE CARTER REFLECT ON THEIR EXPERIENCE IN A COACHING PROGRAM RUN BY VICTORIAN WOMEN LAWYERS AND THE WOMEN BARRISTERS' ASSOCIATION.

Olivia Lilly

Nicole Carter

Every year, a joint initiative conducted by Victorian Women Lawyers and the Women Barristers' Association provides an invaluable opportunity for penultimate and final year female law students to be mentored by successful women in the legal profession. This mentoring program encourages mentors and mentees to meet monthly and devise programs tailored to their needs and interests. Here are reflections from two participants.

Olivia Lilly – mentee

I was fortunate to be paired with Nicole Carter and participate in the program as a mentee in my final year of studies in 2019. It was hugely beneficial for me to spend time with Nicole and gain practical insight into what working in law is like. Nicole assisted with graduate applications and gave invaluable advice regarding writing cover letters and curriculum vitae – highly sought after skills as students embark on professional careers.

Over the course of the program, we discussed topics such as different job paths, opportunities within the legal profession and the difference between being employed in the private versus public sector. As Nicole worked in the legal branch of the Transport Accident Commission, she was able to provide insights about her experience in the public sector. I appreciated having access to a professional and reliable source for this advice, given that the intricacies of topics like these aren't often accessible to law students.

The standout part of the program for me was the discussions I had with Nicole about intangible subject matter, such as the impact of law firm workplace culture and the importance of professional social engagement. Nicole encouraged me to pursue my passion of mental health and wellbeing within the law. I have reflected on these conversations at several junctures in my first year as a trainee lawyer in private practice.

I found participating in the program to be highly beneficial to professional development in myriad ways. I would highly recommend all law students apply for the various programs available throughout their studies. The value of having a professional mentor has been significant and it was the perfect way to complement the theory I learned at university with practical experience.

SNAPSHOT

- Every year a joint initiative provides the opportunity for female law students to be mentored by successful women in the legal profession.
- For Olivia Lilly, having a professional mentor has complemented theoretical university learning with practical experience.
- For Nicole Carter, it was valuable to revisit some of the challenges facing law students and those entering the profession.

Nicole Carter – mentor

I mentored Olivia Lilly as part of the Victorian Women Lawyers and the Women Barristers' Association Law Student Mentoring Program in 2019. The program was extremely rewarding and mutually beneficial for both of us.

Olivia and I initially identified some topics that we felt would provide some structure and ensure we covered some key areas that would practically assist Olivia in her transition from law school to becoming a lawyer. However, we also allowed enough flexibility for any prevailing concerns or interests to be discussed as they arose.

I felt that this program allowed me to share my experiences with Olivia in a genuine, pragmatic way and, in particular, assist her to identify and focus on key priorities that would have the most benefit and impact for her. The topics varied from how to polish your resume and traineeship applications, to managing work-life balance when you start working full time.

One of the topics that resonated with both of us is the importance of wellbeing on the success and longevity of a career in the law. These, I felt, were the most important conversations we had and Olivia gained the confidence to implement thexcreative and innovative ideas she shared with me into her future workplace to benefit others.

As a mentor it was valuable to revisit and reconnect with some of the challenges facing law students and those entering the profession. I think it is important for employers to keep these in mind and adapt our workplaces to be proactive in preventing barriers where possible.

I am very grateful to have had the opportunity to participate in the program and will do so again in future. ■

Olivia Lilly is a trainee lawyer at Pearce Webster Dugdales.
Nicole Carter is a legal manager at the Transport Accident Commission.

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CULTIVATING WELLBEING AS A LIFE SKILL NEEDS TO BE CENTRAL TO UNIVERSITY EXPERIENCE. UNDERSTANDING STUDENTS' DIVERSITY IS KEY TO ADDRESSING THEIR NEEDS AND CREATING A POSITIVE LAW SCHOOL COMMUNITY. **BY SOPHIE TVERSKY**

The successful transition into tertiary study in law has been identified as being critical to ongoing engagement with student studies, constructing professional legal and student identities and fostering social integration. It also enables adjustment into the tertiary educational environment, and the formation of new friend and support networks.

Undergraduates have a one in four chance of developing mental ill-health. Law students display at least equivalent levels of wellbeing to the general population before starting their course. However, between the first semester and the end of first year, they experience significantly greater stress, anxiety or depression symptoms than other undergraduates. A multitude of interrelated factors influence their occurrences, including: perfectionist traits, isolation and lack of social connectedness, pessimism, competitive nature of law school, lack of feedback, Socratic teaching methods, extrinsic rather than intrinsic motivations for studying law, lack of proactive wellbeing strategies by students and the adversarial nature of the discipline. It is important to increase protective factors and decrease the exposure to risk factors for law students, to increase the likelihood of wellbeing.

How do we cater for the diversity of student experiences, enabling a successful transition and fostering student wellbeing?

Peer mentor programs are recognised as part of the toolkit for facilitating successful transitions and enabling support networks and integration into the tertiary space. They generally involve later-year peers (mentors) from the same discipline mentoring first-year students (mentees). Mentors guide mentees' social and academic integration in the tertiary education environment, build a sense of connectedness with the faculty and university and refer the mentee to appropriate services such as career advice or counselling. These programs are shown to increase social adjustment, emotional support, connectedness and belonging, and reduce feelings of uncertainty. They are also utilised to increase the likelihood of degree completion and student retention. For mentor and mentee, personal and academic development occurs.

Engagement in relation to transition into tertiary education is multilayered, not only facilitated by organisational internal workings but by student engagement in constructing their identities as students, participation in the law school community, academic pursuits and development of a positive sense of belonging. This is not limited to the first-year experience and should continue throughout a student's law degree. This prompts the following questions:

- How might we create engagement for mentors, mentees and a law school community?
- How might we cater for the diversity of student experience to help them through this transition, increasing protective factors that contribute to wellbeing while also facilitating an integrated law school culture and first-year experience?

Service design methodologies and principles are key to creating integrated, student-centric programs that increase community within law school. The rest of this article explores examples of how these methodologies and principles can be employed.

Redesign of the Monash University Law Faculty Peer Mentor Program

Service design is a human-centred, collaborative, interdisciplinary, iterative approach which uses research, prototyping and a set of easily understood activities and visualisation tools to create and orchestrate experiences that meet the needs of the business, the user, and other stakeholders.

Service design techniques were utilised to redesign the undergraduate Monash University Law Faculty Peer Mentor Program (Peer Mentor Program) in 2016.

The final iteration of the program comprised of a Peer Mentor Coordinator and six Deputy Coordinators (student leadership team). Each Deputy Coordinator oversaw several groups of mentors. Paired mentors assisted approximately 15 mentees each. Multiple communication and accountability pathways were established. Peer Mentor Program events and support systems fed into those occurring within the faculty, broader university services and the Law Students' Society. This structure was achieved by employing service design techniques.

Designing through collaboration

The process of design process improvement of the Peer Mentor Program, or any wellbeing initiative, should be collaborative, requiring cross-departmental or interdisciplinary involvement in the design process. In the design of the Peer Mentor Program, this included collaborating with the student leadership team driving the 2016 program, students and staff. This increased engagement with stakeholders and ensured the right problems were being solved. Rather than imposing solutions on people, collaboration

makes it possible to tap into knowledge sources, ensuring that a full understanding of the problems or improvements needed are obtained.

In the redesign process, program pain points and opportunities for mentors were identified. The perspectives of the student leadership team, previous mentors and mentees were collated. Their insights were captured in meetings and informal interviews, as well as ratings and comments shared in surveys from previous years of the Peer Mentor Program. This enabled the identification of consistent and divergent themes.

Involving the students in the design process (and ongoing improvement process) permits collective expectation setting and a shared commitment to the Peer Mentor Program, promoting a collaborative culture. This is critical, a balance must be struck between clear structure and flexibility for mentors to gauge how their mentees are travelling throughout the semester, while also ensuring clear expectations and commitment are set. Clarity in expectations is communicated through shared vision and language. Ongoing check-ins by the student leadership team with mentors, offering them support and guidance in their mentoring journey, helps ongoing measures of program traction, feedback and engagement.

Mentors feel motivated and a central part of the ongoing success of the Peer Mentor Program through seeing the engagement of the student leadership team. For both the student leadership team and mentors, training, reflecting on their own law school journey, study skills and personal development, promotes intrinsic motivation for studying, involvement in the community and empathy for the diversity of student experience. Here, storytelling is an important tool, for both process improvement and facilitating a culture of collaboration. Mentors develop professional skills, such as communication and leadership skills, through the mentoring process. Empathy is also developed. By co-creating the Peer Mentor Program, reflecting on their experiences and mentoring, students gain an increased understanding of other people's experiences and how they can play a role in optimising mentees' transitions. This is a skill for workplace and client interaction. Understanding the needs of others, or empathy, is recognised as a vital skill for the future of work.

Creating a human-centred peer mentor program

Information gathered from interviews and research informs process improvements, program strategies and the creation of manuals or decisions about how to best communicate information to first-year students. Changes should be driven by information gathered and student experience and therefore a one-size-fits-all approach to wellbeing initiatives is unlikely to be successful. Information can also be used to map out the student front-end experience, including Orientation Day, enrolment and mentor meetings. Visualising processes helps to understand how students experience transition and their first year of law school. This technique can be used as a springboard to identify pain points for students and to ask:

- When do mentees need certain types of information?
- In what form do mentees need this information and where do they find it?
- When do mentees most need support?
- How do mentees feel at 'X' point in time?
- When do mentees most need experiences that facilitate the creation of support networks or friendship groups?
- How can we integrate fun into the first-year experience?
- What are common questions asked by mentors and mentees throughout the semester? Can these be codified?

In the Peer Mentor Program, collecting information and asking questions led to the creation of a centralised information guide to assist mentors and the student leadership team to identify potential stress points in the semester. The guide suggests ways of talking about the transition process with mentees, coping strategies and referrals to support services.

Information gathered also highlights aligning or divergent motivations, for example, the motivation for learning skills for advisers and mentees. Mentees need to understand legal research, referencing and study skills and these are often a stress point. These skills are usually introduced within the first few weeks of law school. Learning skills advisers want to build an ongoing professional partnership with students to help them develop these skills throughout their degree. Through the identification of the overlapping needs of first-year teachers and learning skills advisers, an opportunity was identified to integrate peer learning into the Peer Mentor Program. Mentors shared their study experiences and tips, facilitating community building and role modelling.

Creating a holistic and integrated peer mentor program

Visually mapping out process and structures and the interrelationship between information, people and systems enables identification of overlapping or duplication which can cause stress, frustration or confusion for mentees. By zooming out and viewing the whole experience from the perspective of a new student, a smoother and more integrated transition process can be achieved, which promotes a collaborative culture. A peer mentor program should be part of the integrated first-year university experience. Linking up and making transparent services such as counselling, study skills and broader university offerings, is an example of drawing on existing resources to improve the mentee experience.

Consideration can be given to what information is being communicated, by whom, in what way and with what intention. It may be that similar messages are coming from different sources or that different messages are being delivered – ultimately confusing students, rather than providing clarification or reassurance. Identifying pain points and creating integrated processes and communications ensures that no student slips through the cracks.

Continuous feedback and collection of information regarding mentee and mentor experience is crucial. It allows for the continuous improvement of the program. This includes end of program surveys and interviews. Every cohort will be different and adjustments can be made through ongoing learning. When mentees feel there is an investment in community, culture, commonality of language and collaboration, they want to pay-it-forward and become mentors themselves. Anecdotally, this is a major reason for students applying to become a mentor in subsequent years. ■

Sophie Tversky redesigned the Monash University Law Faculty Peer Mentor Program in 2016. This is an edited extract from *Wellness for Law: Making Wellness Core Business* (Chapter 6, by Sophie Tversky), Judith Marychurch and Adiva Sifris (eds) 2019. LexisNexis.

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COVID-19: Rethinking the human-animal relationship

IN THE WAKE OF THE COVID-19 PANDEMIC, PROMOTING HUMAN SAFETY REQUIRES ADVOCATING FOR WILDLIFE ON THE INTERNATIONAL STAGE AND CHANGING LIVESTOCK FARMING AT HOME. BY JACOB McCAHON AND ALEXANDRA HARLEY

ADOBE STOCK

An under-recognised aspect of the COVID-19 pandemic is the harm posed to humans by animals. It is understood the pandemic was caused by live animals in a market. Notably, Australia has proposed an international investigation into the sale of live wildlife at markets. While we applaud this suggestion, the problem is larger. Where a market in Wuhan may have been the trigger cause, a rethink of the broader human-animal relationship is necessary. Livestock farming poses broader safety risks beyond the direct threats presented by the wildlife trade.

In relation to wildlife, humans are now poaching and hunting more than 300 mammal species. It is the world's largest trade after drugs, people and arms. People want endangered wildlife for traditional medicines, meat and caged exotic pets. The more iconic and endangered the animal is, the higher the demand. Pangolins are the most trafficked animal (their scales and meat are prized). Thirty thousand elephants are killed every year for their ivory, three rhinos are killed a day, and only 3200 tigers are left in the wild. Australian wildlife implicated in the international pet trade include parrots, cockatoos, snakes and lizards. A black cockatoo can be worth $30,000.[1]

In relation to livestock, there is also an increasing demand for animal food products. This is in the expanding middle class in the developing world and in the West. Europeans consume 50 per cent more red meat than the maximum level advised by the World Cancer Research Fund and Australian meat consumption increased by 13 per cent between 1998 and 2018.[2]

SNAPSHOT

- We have laboured over the decisions and indecision of governments, but failed to fully appreciate the root cause of the COVID-19 crisis.
- In the context of COVID-19, little to no attention has been paid to the harms posed by the wildlife trade – and virtually no attention has been paid to the harms posed by livestock farming.
- The wildlife trade and livestock farming are threatening our physical and economic safety. As a leader in livestock farming, Australia should start by making changes in this field.

Direct safety concerns

The world has a "rapacious appetite for wildlife", and this is posing "biosecurity and human health risks".[3] The list of recent zoonotic diseases (diseases that transfer from animals to humans) includes HIV, Ebola, Zika, Hendra, SARS, MERS and Bird Flu.

The recent intensification of camel production, from previously foraging outdoors to primarily being kept indoors in high stocking densities, is understood to have caused MERS. SARS is believed to have been transmitted from bats to humans through intermediary civet cats being sold at wet markets. In central Africa, land use changes and an altered climate forced bats and chimpanzees into human habitats in search of food (causing Ebola). Hendra was also the result of the urbanisation of fruit bats following habitat loss. Most recently, COVID-19 is understood to have originated in bats and subsequently transmitted to humans via the pangolin.[4]

Local laws and enforcement

While effective laws and active denouncement of the wildlife trade are important, this article focuses on the local livestock industry.

In Victoria, there is a litany of regulation to promote protection and safety. Section 9(1)(a) of the *Prevention of Cruelty to Animals Act 1986* (Vic) makes it an offence for a person to override, overdrive, overwork or worry an animal. The *Prevention of Cruelty to Animals Regulations 2019* (Vic) ensures animals are properly hydrated,

tethered and groomed when in transit. There are various codes of practice, including those for cattle, deer, goats, poultry and sheep. The Code of Practice for the Welfare of Animals at Saleyards is a guide on preventing stress to animals up for sale. Under the Code of Practice for the Welfare of Cattle, livestock operators must adhere to the "basic needs for the welfare of cattle", including water, food, air, social contact, sufficient space, protection from injury and protection from unnecessary pain.[5]

Under ss7-8 of the *Livestock Management Act 2010* (Vic), livestock operators must undertake systematic risk assessments of livestock management activities. These require "an assessment of the likely risks to animal welfare and biosecurity arising from the regulated livestock management activity". Under ss31-32 of the *Livestock Management Act*, inspectors under the *Cruelty to Animals Act 1986* (Vic) and/or the *Livestock Disease Control Act 1994* (Vic) are empowered to ensure livestock management activities are lawful. These inspectors may enter, search, inspect and/or examine livestock facilities.

Moreover, s44 of the *Meat Industry Act 1993* (Vic) establishes PrimeSafe to protect public health by controlling and reviewing the standards of meat, poultry and game for consumption; the hygiene of livestock facilities; and the cleanliness of livestock transport vehicles. The *Livestock Disease Control Act 1994* (Vic) is in place to prevent, monitor and control livestock disease, providing instructions and guidelines to livestock operators on the management of different species.

Broader safety considerations

Evidently, there is a labyrinth of regulation promoting safety in the local livestock industry. However, there are broader safety risks. The growing livestock farming industry is contributing to deforestation, soil degradation, resource waste, dietary harm, water pollution and greenhouse gas emissions.

In 2016, 30 million hectares of forest were razed. Deforestation reduces biodiversity – the variety of life on earth, in all its forms and all its interactions. As part of evolution, species have become reliant on natural habitats and weather patterns. Plants provide oxygen and pollinating bees mean we have fruit and nuts; trees absorb air pollution in urban areas; and coral reefs and mangrove swamps reduce the likelihood of tsunamis and cyclones on the coasts. Tropical tortoises and spider monkeys disperse seeds that are vital for the health of dense hardwood trees that are, in turn, vital for absorbing CO_2 in the atmosphere.[6]

Livestock farming has acidified soils through acidifying fertilisers (which have changed soil PH levels).[7] Hoofed animals have also damaged the ability of soils to absorb and desorb water.[8] The UN declares current agricultural trends mean the world's soils will be effectively destroyed within 60 years.[9]

Livestock farming has inefficiencies. Where 36 per cent of the world's crop calories are fed to animals, only 17 to 30 per cent of these calories are returned for human consumption (through meat or milk). This means 70 to 83 per cent of the world's crop calories are being lost. In exchange "for every 100 calories of grain we feed to animals, we only get 40 calories of milk, 22 calories of eggs, 12 [calories] of chicken, 10 [calories] of pork, or three [calories] of beef".[10] In addition, 21,900 Australian farms apply 8 million megalitres of water a year in agricultural production.[11]

Livestock farming has led to high levels of meat consumption in the West (and increasing levels in the developing world), which is harmful to human health. The overconsumption of animal protein leads to "increased risks of obesity, diabetes, heart diseases and certain cancers".[12]

The fertilisers, pesticides, and herbicides used in livestock farming cause water pollution (grey-water footprints) that affect downstream users. There is water contamination, riverbank erosion and adverse impacts on the stream turbidity in waterways.[13]

Livestock farming creates more greenhouse gases than the transportation sector. When fertilisers are applied to stimulate feed crops, the nitrogen not taken up by the feed crops is emitted into the atmosphere. Nitrogen is also discharged by livestock through manure. Excess nitrogen from livestock farming washes into rivers and lakes and leaches from the soil into groundwater (contaminating drinking water sources and damaging aquatic marine systems). The food system is currently responsible for between 25 to 30 per cent of the world's greenhouse gas emissions.[14]

What we can do

Deforestation

We can reimagine existing agricultural areas. This means retaining remaining levels of biodiversity and preventing any further use of natural ecosystems for cropland and development. Australia can do so by embracing the "Half-Earth" strategy – the goal prescribed by the EAT-Lancet Commission on Food, Planet, and Health (a forum that brought together 37 world-leading scientists). Currently we protect 15 per cent of land and 7 per cent of oceans. The EAT-Lancet Commissions says we should preserve the remaining 50 per cent of the earth's land and oceans for wildlife and ecosystem conservation.[15] A 50 per cent protection target could be included in *Environment Protection and Biodiversity Conservation Act 1999* (Cth) ch 2.

Soil degradation

The land we use to grow feed crops for livestock can be better utilised to grow crops for direct human consumption. More people will be fed, and it will prevent crops expanding into grasslands, savannahs and forests. More crop rotations, legume planting, and effective use of livestock manure — and less single crops, chemical fertilisers, and pesticides — will improve soils.

Studies reveal regenerative farmers in Australia are performing better (even in times of flood). This requires carefully rotating stock around grazing areas and prioritising the growth and health of native vegetation. Where most grazing areas have three per cent grass and trees, regenerative farms have closer to 20 per cent. The extra grasses and trees help capture carbon in the atmosphere and the deep-rooted systems better recycle nutrients in the soil. Livestock could be confined to these green spaces and away from croplands.[16]

Resource waste

Farmers can lower resource waste by planting and harvesting a variety of healthy crops and fruit trees. Reducing livestock numbers and keeping animals away from croplands will reduce the industry's grey-and blue-water footprints and maximise caloric crop yields. In fact, a 50 per cent reduction in livestock production will save 12,000 species, 4.5 million square kilometres of land, and millions of megalitres of water.[17]

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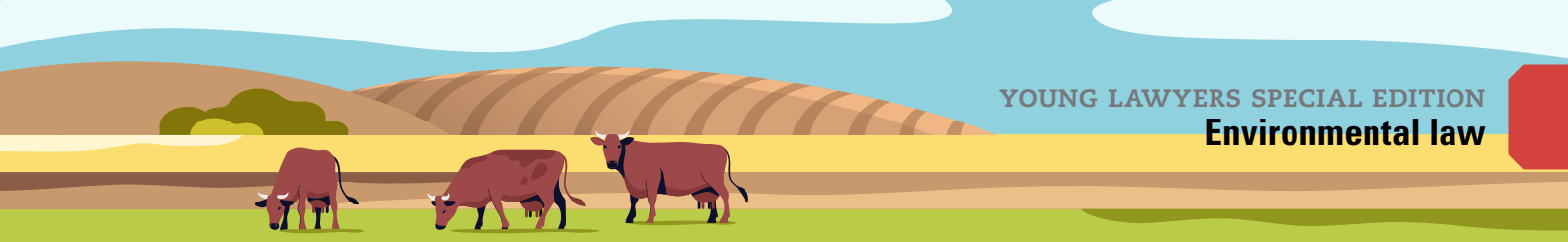

Dietary harm

The EAT-Lancet Commission suggests a diet rich in plant-based foods and with fewer animal source foods confers both improved health and environmental benefits. The Commission recommends reducing global red meat consumption by 50 per cent and growing a variety of plant-based grains, fruit, vegetables, beans, pulses, legumes and nuts. This means fewer single crops in high volumes for animal feed and embracing the "planetary health plate". The planetary health plate is half filled with sustainable and locally sourced vegetables and fruits and half filled with wholegrains, plant proteins and unsaturated plant oils (with optional modest amounts of animal protein).[18]

Water pollution

Rotating a variety of healthy crops for human consumption, planting legumes, not using herbicides, pesticides and chemical fertilisers, and keeping livestock away from croplands will improve soil quality and lessen grey-water pollution. Livestock could be restricted to graze in expansive grass areas with plentiful trees. This would be made easier by reducing livestock numbers, which would also reduce the industry's blue-water footprint.

Greenhouse gas emissions

The EAT-Lancet Commission suggests "food systems have environmental impacts along the entire supply chain from production to processing and retail."[19] The regenerative farming and livestock reduction measures mentioned above, combined with less meat purchasing by consumers, will substantially reduce nitrogen, methane and CO_2 emissions. As it stands, skipping one serving of beef every Monday for a year will save the equivalent greenhouse gas emissions as driving 560 kilometres.[20]

Conclusion

2020 has been a year filled with challenges and surprises. It has shifted our psyches and our social standards. Where it is easy to blame those in government for our current woes, it is worthwhile reflecting on the root causes of the COVID-19 crisis – including the increasing intimacy between animals and humans.

While wildlife poses direct safety risks, we contend livestock farming poses broader and underappreciated safety harms (including deforestation, soil degradation, resource waste, dietary harm, water pollution and greenhouse gas emissions). Alleviating these harms will require changes to laws and standards (including the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) and *Livestock Management Act 2010* (Vic)), financial incentives from government and sustainable decisions by consumers.

Local livestock regulations promote the direct safety of humans and the wellbeing of animals. In fact, some of the provisions could even be described as anthropomorphic. Although the wording is sound, we suggest the rationale of the regulations is flawed. Yes, we are heavily reliant on the sale of meat. In 2017–18, the red meat and livestock industry contributed $18.5 billion to Australia's GDP (through 80,300 business). Nevertheless, the industry is harming our species and our planet. And, as this article has demonstrated, changes can be made through regenerative farming and reducing livestock numbers. Bill Gates wrote at the onset of the pandemic, "We are sick because our home is sick". We now need to consider if it is time to make us as a people, and as a planet, that little bit healthier. ■

Jacob McCahon is the senior researcher (civil) at the County Court of Victoria, a residential tutor at Trinity College at the University of Melbourne, and co-chair of the LIV YL Law Reform Committee. **Alexandra Harley** is in her final year of her Bachelor of Arts/Laws (Honours) at Monash University.

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Make a difference

YOUNG LAWYERS CAN PLAY AN IMPORTANT ROLE IN ENSURING EFFECTIVE REGULATION OF THE MODERN SLAVERY ACT.

BY CRAIG EVANS AND GEORGIA WHITTEN

ADOBE STOCK

The *Modern Slavery Act 2018* (Cth) (Act) has commenced in Australia, obliging large entities with a consolidated revenue exceeding $100 million to report on modern slavery risks in their supply chain and the steps taken to address those risks.[1]

By engaging with the issue of modern slavery, young lawyers can play a crucial role in addressing and minimising these human rights abuses. This article explores three ways young lawyers can get involved to ensure that the Act is effectively enforced.

SNAPSHOT

- The *Modern Slavery Act* relies on market-based regulation.
- Young lawyers can play a crucial role in addressing and minimising these human rights abuses by reading modern slavery statements, critically analysing corporate responses (while being conscious of the task faced by reporting entities) and taking appropriate action.
- By following these steps, young lawyers can actively engage with this issue while assisting to ensure that reporting entities are effectively regulated by the market.

Background

"Modern slavery" is an umbrella term used to describe slavery, human trafficking, forced labour and a range of other human rights abuses involving human exploitation.[2] Sadly, modern slavery impacts every region of the world, including Australia.[3] Not only do these practices occur on our shores,[4] but Australian consumers and businesses could also be complicit in these crimes without realising it. In 2018, it was estimated that Australia imported $12 billion worth of products that were at risk of being affected by modern slavery.[5] Laptops, mobile phones, fish, cocoa and sugarcane are among the highest risk products.[6] In many cases, goods and services tainted by modern slavery become inter-mixed with other products and services, moving tier upon tier up the supply chain towards the consumer.[7]

After extensive public consultation, the federal government introduced the Act with the objective of equipping and enabling businesses to respond effectively to modern slavery and to develop and maintain responsible and transparent supply chains.[8]

Now, more than ever, an awareness of modern slavery is crucial. COVID-19 has caused widespread unemployment and shut down popular migration pathways, leaving many vulnerable people stranded overseas. With increased isolation and reduced scrutiny of labour practices, COVID-19 has greatly increased the likelihood that vulnerable people will be exposed to exploitation.[9]

By engaging with the issue of modern slavery, young lawyers can play a crucial role in addressing and ameliorating these human rights abuses.

Three ways to help

While the Act has increased awareness of modern slavery and mandated that reporting entities consider the risks of modern slavery in their supply chains, the absence of punitive penalties for entities that fail to comply has led to claims the legislation is "toothless".[10] Instead of penalties, the Act relies on market-based regulation. That is, rather than enforcement action, consumers and investors are relied on to hold reporting entities to account. Accordingly, young lawyers have an important role to play in the effective regulation of reporting entities. This article considers ways to help.

Read modern slavery statements

Young lawyers are encouraged to read Modern Slavery Statements (statements). A key feature of the Act is that all statements must be published on a publicly available central registry.[11] It is hoped that increasing access to statements will increase accountability. This aspect of the Act improves on similar legislation in the UK and California which simply requires reporting entities to publish statements on their own websites.

Although statements are published, it is not always easy to know what to look for. Reporting entities are required to address seven mandatory criteria in their statements. These include: the risks of modern slavery in the reporting entity's supply chain, action taken to assess and address those risks, and the effectiveness of those actions.[12] For young lawyers interested in this issue, it may be useful to read the Department of Home Affairs guidance note on reporting which provides a clear explanation of what reporting entities must do to comply with the Act.[13]

Critically analyse corporate responses

Beyond simply reading statements, young lawyers are encouraged to critically analyse corporate responses. In general, market-based disclosure is a weak regulatory tool which leads to poor compliance.[14] International experience in the UK reveals that the quality of compliance with the *Modern Slavery Act 2015* (UK) has been poor,[15] with many entities simply disclosing information about their policies and processes without explaining the steps taken to address these risks.[16] The likelihood of this happening in Australia may be reduced due to the mandatory reporting criteria in the Act, coupled with the Minister's discretionary power to publish information on the registry about entities that fail to comply.[17] Even so, young lawyers are encouraged to critically analyse statements, particularly the effectiveness of corporate responses to modern slavery, to ensure that reporting entities are actively engaging with this issue and improving year-on-year.

However, it is important to understand the gravity and magnitude of the task that reporting entities face. First, the Act operates extra-territorially, extending to omissions, matters and things outside Australia.[18] This presents a hurdle for reporting entities with offshore operations and supply chains. While Australian companies have a clear understanding of the problem and support the Act's requirements, Baker McKenzie employment and industrial law partner Sean Selleck notes that there is some resistance when operations go offshore, where there is less understanding of the problem and little to no knowledge of the legislation and its genesis in Australia. As such, there are challenges in getting commitment from overseas offices and supply chains to do the work needing to be done to allow Australian businesses to do what they need to comply with the Act.

Second, some businesses have hundreds and, in some cases, thousands of first tier suppliers. There are usually many links – each with many more suppliers – in every one of those supply chains, before reaching source products and raw materials. This highlights the difficulty that entities face in reporting on their entire supply chains. Not only is it difficult to increase visibility overall, it is difficult to assess what is going on in remote supply chains when a corporation may be a number of contractual links away from the problem.

So, while it is important to think critically about corporate responses to modern slavery, it is equally important for young lawyers to be aware of the complexities that reporting entities face and to understand that the process requires consistent improvement from reporting entities over time.

Take action

Effective enforcement requires consumers and investors to take action. However, this does not always happen. Studies show that a consumer's ethical and moral standards may be undermined by lower prices, convenience, product desirability and product functionality.[19] While consumers may say they would boycott a product if they became aware of slavery being involved in its manufacturing, a positive stance towards ethical purchasing is not always a clear indicator of actual purchasing behaviour.[20]

Yet, taking action does not always mean boycotting products and brands. Effective action may include increasing your awareness of at risk products, becoming an ethical consumer, monitoring corporate responses to allegations of modern slavery, engaging with NGOs and community groups that are actively involved in this space or contacting corporations directly about their responses.

Conclusion

While modern slavery may feel like an issue that is too big to grapple with, there are ways young lawyers can engage with it. As a starting point, young lawyers can assist in the effective regulation of the Act by reading modern slavery statements and critically analysing corporate responses. Ultimately, young lawyers can take appropriate action by considering and even modifying their own purchasing behaviour. ■

Craig Evans is studying a Master of Laws (Juris Doctor) at Monash University. He is a member of the LIV YL Executive Committee and Law Reform Committee and co-lead of the Modern Slavery Working Group. **Georgia Whitten** is studying a Master of Laws (Juris Doctor) at The University of Melbourne. She is a member of the LIV YL Law Reform Committee and co-lead of the Modern Slavery Working Group.

1. *Modern Slavery Act 2018* (Cth) s3.
2. Note 1 above, s4.
3. See, generally, International Labour Office, Global Estimates of Modern Slavery: Forced Labour and Forced Marriage (Final Report, 19 September 2017).
4. Samantha Lyneham, Christopher Dowling and Samantha Bricknell, "Estimating the Dark Figure of Human Trafficking and Slavery Victimisation in Australia", *Australian Government: Australian Institute of Criminology* (Statistical Bulletin No 16, 15 February 2019), https://aic.gov.au/publications/sb/sb16.
5. Walk Free Foundation, The Global Slavery Index, 2018 (Final Report, 2018) iv, 121.
6. Note 5 above, iv, vii, 103-4.
7. Note 3 above, 10.
8. Explanatory Memorandum, Modern Slavery Bill 2018 (Cth), 39.
9. Walk Free Foundation, "Protecting People in a Pandemic" (Final Report, 2020).
10. See, eg, Farrah Tomazin, "Slaves in the Supply Chain: New Laws Branded 'Toothless'" (The *Sydney Morning Herald* online, 27 June 2018), https://www.smh.com.au/politics/federal/taking-on-slavery-with-toothless-laws-20180627-p4zo36.html.
11. At the time of writing the Modern Slavery Statement Registry is not live <https://www.homeaffairs.gov.au/criminal-justice/Pages/modern-slavery.aspx>.
12. Note 1 above, s16(1).
13. Department of Home Affairs, "Commonwealth Modern Slavery Act 2018: Guidance for Reporting Entities" (October 2019).
14. Robert Baldwin, Martin Cave and Martin Lodge, *Understanding Regulation: Theory, Strategy and Best Practice*, Oxford University Press, 2nd edn, 2012, pp119-21.
15. Ergon Associates, "Modern Slavery Reporting: Is There Evidence of Progress?" (Report, October 2018).
16. United Kingdom, Joint Committee on Human Rights, Human Rights and Business 2017: Promoting Responsibility and Ensuring Accountability (House of Lords Paper No 153, Session 2016-17) 38 [94].
17. Note 1 above, s16A.
18. Note 1 above, s10.
19. See generally Timothy Devinney, Pat Auger and Giana Eckhardt, *The Myth of the Ethical Consumer*, Cambridge University Press, 2010.
20. Marcia Narine, "Disclosing Disclosure Defects: Addressing Corporate Irresponsibility for Human Rights Impacts" (2015) 47(1) *Columbia Human Rights Law Review* 84, 134.

ADOBESTOCK

Reforming the Charter

SNAPSHOT

- The limited scope of claims and remedies available in the Charter can operate as a barrier to an individual accessing justice.
- Legislative reform to the damages provisions and piggyback requirement would allow the Charter to achieve the values espoused in the document.
- The introduction of a dispute resolution framework would support these reforms and the efficient use of the courts.

WHILE THE INTRODUCTION OF THE VICTORIAN CHARTER OF HUMAN RIGHTS WAS AN IMPORTANT STEP, IT IS CLEAR REFORM IS REQUIRED.

BY JOSH ANDREWS

ADOBESTOCK

Charter of Human Rights

When proposing the framework for the Victorian Charter of Human Rights (Charter), the Victorian independent Human Rights Consultation Committee recommended limiting the scope of claims and remedies to preventing and mediating disputes.[1] In achieving this, two key prohibitions were included in the *Charter of Human Rights and Responsibilities Act 2006* – that an individual may not bring a standalone claim against a public authority for a breach (the piggyback requirement) and that damages or other forms of monetary compensation are not available.[2]

In place of damages, the Supreme Court was given powers to make decisions and declarations that a public authority has infringed on the rights outlined in the Charter and may require the authority to reconsider its decision or action on human rights grounds.

While these provisions were presented as common-sense measures to curtail unnecessary litigation proceedings, they have led to suboptimal outcomes.

The first issue is that the piggyback requirement has acted as a barrier to the public accessing justice. The provision means that in the event of a severe breach of a human right which has caused cruel outcomes, the individual may not bring a claim against the authority, unless that authority has acted in a separately unlawful way.

This proposition that an unlawful act should not have an enforcement mechanism as it would encourage the use of the courts would be dismissed in criminal law, contract law or tort law as subverting justice. To adopt this position in human rights law implies that government authorities should not be held to the standard of every other actor in the Victorian legal system.

The second issue is that these measures have impacted how both the community and public authorities interpret the document.[3] For the community, the removal of the capacity to bring an independent claim and absence of damages sends the message that the Charter is merely an aspirational document.

For public authorities which operate within compliance orientated regulatory designs, the lack of an enforcement mechanism renders human rights compliance a low priority in the creation of policy and procedure. Certainly, there is a substantial body of research that suggests legal obligations are far more effective when supported by a sanctions regime for non-compliance.[4]

The third issue is that limitations of the piggyback requirement and the confusing language of the provision have resulted in an inefficient use of court resources, with counsel forced to argue weak claims and the courts required to resolve jurisdictional questions rather than the matter in dispute.[5]

It is clear that in the interests of providing access to justice and ensuring the efficient use of court resources, the piggyback requirement should be repealed and damages should be available to harmed plaintiffs.

There are two key models which can be drawn on to reform the Charter. The first is the ACT's *Human Rights Act 2004* which provides that an individual may bring a claim in the ACT Supreme Court against a public authority relying on their rights in the Act.[6]

The second is the UK's *Human Rights Act 1998* which gives effect to the European Convention on Human Rights, making it unlawful for a public authority to act incompatibly with a Convention right.[7] In the event that an individual alleges that a public authority has acted unlawfully, that person may bring proceedings against the authority without a separate cause of action.[8] When a breach has been determined, the court or tribunal may grant any remedy or relief within its powers that it considers just and appropriate.[9]

With the capacity for damages, the UK *Human Rights Act* is the preferable model. This legislation also contains provisions which reduce the possibility of unnecessary litigation. First, the claim must be brought within one year,[10] thereby mitigating the risk of frivolous claims being brought long after the event. Second, awards of damages are restricted to circumstances that it is necessary to afford just satisfaction to the person concerned.[11] The result has been that damages have been awarded in a limited number of cases.[12]

Counter to the concerns raised by the Human Rights Consultation Committee in 2005, there is no evidence that stand-alone human rights claims lead to increased rates of litigation. An example is that while there was a spike in litigation in the ACT in 2009, the year that the direct cause of action provision was introduced into the Act, litigation rates soon returned to previous levels.[13]

Another factor in Victoria's case is that any increase in litigation from introducing a direct cause of action provision will likely be offset by the reduction in unnecessary litigation which currently occurs due to the obscurity of the existing provisions. A comprehensive and clear remedies provision will enable parties to focus on practical outcomes rather than abstract legal disputes.[14]

To support the efficient use of court resources, it would be pragmatic to introduce an appropriate dispute resolution function which does not currently exist.[15] In place of a single body to deal with complaints, there is currently a patchwork of internal complaints mechanisms – the Victorian Ombudsman and the Independent Broad-based Anti-corruption Commission.[16] Unlike the *Equal Opportunity Act 2010* (Vic) which allows the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) to hear and manage discrimination complaints, the Charter does not provide a role for the VEOHRC.

The VEOHRC has proposed that it would be an appropriate body to take on this role.[17] This would mirror the role that it has

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in discrimination complaints under the *Equal Opportunity Act*.

These reforms have been discussed for years. In 2015, the Victorian government commissioned a review of the Charter to be undertaken by former LIV CEO Michael Brett Young which put forward 52 recommendations including the removal of the piggyback requirement and the introduction of an alternative dispute resolution function. While 46 of these recommendations were supported by the Victorian government, since 2015, no amendments have been made.

In addition to supporting a number of the 2015 review recommendations, the VEOHRC has also recommended the progressive realisation of health, housing and education rights as well as the right to self-determination for Aboriginal Victorians.

Following a deep dive analysis of the Charter, the LIV YL Law Reform Committee has identified that in addition to the aforementioned reforms, the override provision and religious freedoms exemptions should be repealed.

The introduction of the Charter was an important step in Victoria prioritising human rights and defining the relationship between government and the people that it serves. Over time, though, it has become clear that limitations in the Act have undermined its purpose and diminished its impact. In order to bring the Charter into line with the values espoused in the document, the Victorian government should implement these reforms immediately. ■

Josh Andrews is co-chair of the LIV YL Law Reform Committee, a paralegal at Phi Finney McDonald and a third year JD student at Melbourne Law School.

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1. Michael Brett Young, *From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006*, September 2015, 119; Explanatory Memorandum, Charter of Human Rights and Responsibilities Bill 2006 (Vic).
2. *Charter of Human Rights and Responsibilities Act 2006* (Vic) s39.
3. Note 1 above, 127.
4. Note 1 above, 86.
5. Note 1 above, 12.
6. *Human Rights Act 2004* (ACT), s40(C)(2).
7. Note 6 above, s6(1).
8. Note 6 above, s7(1).
9. Note 6 above s7(1).
10. Note 6 above, s7(1)(a).
11. Note 6 above, 8(1).
12. *Dobson v Thames Water Utilities* [2009] EWCA 28 [41]-[46]; *R (Faulkner) v Secretary of State for Justice* [2013] 2 AC 254; [2013] UKSC 23.
13. Note 1 above, 127; ACT Human Rights Commission, *Look Who's Talking: A Snapshot of Ten Years of Dialogue under the Human Rights Act 2004* (2014) 8-9.
14. Note 1 above, 127.
15. VEOHRC, *Submission to the Royal Commission into Victoria's Mental Health System*, (July 2019), 23.
16. *Ombudsman Act 1973* (Vic), ss13(2) and 13(AA); *Independent Broad-based Anti-corruption Commission Act 2011* (Vic), ss15(3)(iii), 51-52 and 64(2).
17. Note 15 above, 23.

HIGH COURT JUDGMENTS

DR MICHELLE SHARPE

Military discipline

Jurisdiction of Defence Force magistrate

In *Private R v Brigadier Michael Cowen & Anor* [2020] HCA 31 (9 September 2020) the High Court was required to consider whether the power conferred on the Commonwealth Parliament by s51(vi) of the Constitution, to make laws with respect to "naval and military defence" (defence power), supports the conferral of jurisdiction by the *Defence Force Discipline Act 1982* (Cth) (DFDA) on a Defence Force magistrate to try a charge of assault occasioning actual bodily harm during peacetime and when recourse to civil courts was available.

It is an offence under s61(3) of the DFDA if a defence member engages in conduct in the Jervis Bay Territory which amounts to a punishable offence under the law in the Jervis Bay Territory. Relevantly, assault occasioning actual bodily harm is an offence under s24 of the *Crimes Act 1900* (ACT) which applies in the *Jervis Bay Territory by virtue of the Jervis Bay Territory Acceptance Act 1915* (Cth).

The plaintiff "Private R" is a member of the Australian Regular Army. While a member of the army, he violently assaulted the complainant, a woman who was, at the time, a member of the Royal Australian Airforce. The plaintiff and the complainant had previously been in an intimate relationship. The offence occurred while both were off duty after a birthday party held for the complainant in Fortitude Valley, Queensland. The plaintiff had booked a hotel room for himself and the complainant. The complainant had agreed to use the room to get ready for the party. Throughout the evening the plaintiff had made a number of unwanted advances toward the complainant. At the end of the evening the complainant returned to the hotel room to retrieve her belongings. The plaintiff arrived at the hotel room shortly after. When the complainant sought to call an Uber, the plaintiff, heavily intoxicated and angry, threw her phone across the room. He then grabbed her by her neck and pinned her to the wall lifting her off her feet. When the complainant broke free, the plaintiff tackled her to the ground. He placed his knees on her chest and began choking her with both of his hands until security guards pulled him away. The complainant was subsequently treated for bruising to her throat. Sometime later the complainant made a formal complaint to the Defence Force which charged the plaintiff under s61(3) of the DFDA.

The plaintiff commenced proceedings in the original jurisdiction of the High Court seeking to prevent the Defence Force magistrate hearing the charge against him. The plaintiff argued that s61(3) of the DFDA was not, in the circumstances, sufficiently connected to his military service. Further, the plaintiff argued, Queensland's civil justice system, replete with all of the advantages and protections that that system bestows on citizens, was available to hear and determine an equivalent charge under the Criminal Code (Qld). The plaintiff also sought to argue that, prior to federation, it was not considered necessary, in either the United Kingdom or the Australian colonies, for service tribunals to try defence members for ordinary crimes committed during peacetime. The High Court unanimously, but for diverging reasons, dismissed the plaintiff's application.

Edelman J noted at [148] that, for at least 30 years, the jurisprudence of the High Court has been divided on the extent to which the defence power supported laws conferring judicial power on service tribunals. Edelman J at [149]-[151] enumerates four different approaches that have been taken by justices of the High Court. But, in this appeal, the High Court focused on just two approaches: the "service status" approach, taken by Mason CJ, Wilson and Dawson JJ in *Re Tracey; Ex parte Ryan* (1989) 166 CLR 518, and the "service connection" approach, taken by Brennan and Toohey JJ in the same case. Under both approaches, Edelman J noted at [150] that service tribunals are viewed as exercising judicial power concurrently with, and not subject to, Chapter III of the Constitution. And both approaches are informed by pre-federation history.

On the service status approach, the defence power empowers the federal Parliament to confer power on service tribunals to discipline any offence committed by a person with "service status". Conversely, on the service connection approach the defence power empowers the federal Parliament to confer power on service tribunals to discipline service personnel only for those offences which have a "service connection" to the defence power.

Kiefel CJ and Bell and Keane JJ, in a joint judgment, favoured the service status approach. They observed at [40] that the defence power is a purposive power. That is, the defence power is not concerned to identify an area or activity in respect of which the federal Parliament may make laws but, rather, an object that the federal Parliament may pursue in making laws. Their honours note at [25] and [62] that the purpose of the DFDA is to maintain the morale and discipline of the Defence Force. They point out at [65] that a member of the Defence Force, while still a citizen, is subject to sterner duties than those of any private citizen and it is appropriate that these duties be enforced by a system of military justice. Their honours at [69] rejected the plaintiff's historical account of service tribunals noting, instead, the concurrent exercise of jurisdiction of civil courts and service tribunals (even in peace time). And their honours also noted that, even before federation, the law recognised that many ordinary criminal offences posed a risk to military discipline. Their honours observed at [75] that if members of the Defence Force engage in ill-disciplined use of violence

(whether at home or work) then the Defence Force's confidence in them to execute their duties lawfully and discriminately, under extreme stress on the battlefield, is undermined. Their honours, unsurprisingly concluded at [81] that s61(3) of the DFDA is "valid in all its applications" (as does Gageler J at [95] and Edelman J at [153]). And their honours, in expressing a preference for the service status approach, criticise the service connection approach at [85] as being "uncertain in its application" and "notably unfocused and unwieldy". Gageler J at [95] and Edelman J at [154] also expressed a preference for the service status approach.

But Nettle and Gordon JJ preferred instead to adopt the service connection approach. Nettle J (citing Kirby J's dissenting judgment in *Re Colonel Aird; Ex parte Albert* (2004) 220 CLR 308 at [96]) criticised the service status approach at [125] as being "incompatible with Australia's constitutional history and text and with the highest measure of agreement to which past judicial concurrence in this Court has extended". Nettle J also complained at [126] and [128] that a service status approach would deprive members of the Defence Force from the benefits and safeguards of the administration of justice by independent courts. Gordon J, while eschewing at [139] either a service status approach or a service connection approach, essentially also adopts the latter. Gordon J contended at [141] that there are a number of ordinary criminal offences that would likely fall outside the defence power. By way of example Gordon J referred to charges for urinating in a public place or littering. But, ultimately, applying the service connection approach, both Nettle and Gordon JJ, concluded that the plaintiff's offence is conduct that is connected to his military service. Their honours both noted (at [131] and [145] respectively) that the violent assault by a trained, serving, member of the Defence Force on another member of the force, because she spurned his sexual advances, would undoubtedly undermine service discipline.

Immigration

Duty of Minister to consider non-refoulment obligations

In *Applicant S270/2019 v Minister for Immigration and Border Protection* [2020] HCA 32 (9 September 2020) the High Court was required to consider whether the Minister, in deciding not to revoke the cancellation of the applicant's visa under s501CA(4)(b)(ii) of the *Migration Act 1958* (Cth) (*Migration Act*), had a duty to consider non-refoulment obligations (that is the practice of not forcing refugees to return to a country in which they are liable to be subjected to persecution).

The applicant was born in Vietnam but, at the age of seven, left to spend some eight years in a refugee camp in Hong Kong. At the age of 15 the applicant arrived in Australia on a humanitarian visa. Relevantly, the visa did not include a criterion that the applicant was entitled to protection under the Convention relating to the Status of Refugees. Sometime later the applicant was granted a Class BB Subclass 155 Five Year Resident Return visa (which is not a protection visa). The applicant has a lengthy criminal history that culminated in a sentence of six years of imprisonment in 2013 for the offence of aggravated break and enter. In 2016 the applicant's visa was cancelled pursuant to s501(3A) of the *Migration Act* because of the applicant's criminal record. On the cancellation of the visa, the applicant was sent a form to request a revocation of the cancellation pursuant to s501CA(4) of the *Migration Act*. The form specifically asked whether the applicant had any concerns or fears about what would happen to him on his return to his country of citizenship and to describe those fears. The applicant indicated that he did hold such fears but, in an accompanying letter, did not describe any fear of persecution or other serious harm only that his past experience as a refugee in Hong Kong was traumatic. The applicant also indicated that he did not want to return to Vietnam and that he wanted to stay with his wife and children in Australia. The Minister declined to revoke the earlier cancellation.

Kiefel CJ and Gageler J revoked the grant of special leave to appeal and dismissed the applicant's application for special leave. Their honours noted at [4] that there was a lack of evidence from which the Minister could have concluded that the applicant was at risk of harm if he returned to Vietnam. For this reason, their honours at [5] did not consider it necessary, or appropriate, to make any comment at all on the operation of s501CA(4)(b)(ii) of the *Migration Act*.

Nettle, Gordon and Edelman JJ did comment on the operation of s501CA(4)(b)(ii). They considered at [34] that nothing in the subject matter, scope or purpose of s501CA required the Minister to take into account any non-refoulement obligations. Instead, their honours noted at [35] that such obligations were addressed in entirely separate provisions of the *Migration Act* dealing with the grant of protection visas. They observed at [35]-[36] that although the discretion in s501CA(4) of the *Migration Act* was broad it must be exercised by the Minister on the basis of the material put forward by the applicant. And if, as was the case here, no non-refoulment claim was made the Minister had no obligation to consider it "in the abstract". Their honours accordingly dismissed the applicant's appeal. ■

Dr Michelle Sharpe is a Victorian barrister practising in general commercial, disciplinary and regulatory law, ph 9225 8722, email msharpe@vicbar.com.au. The full version of these judgments can be found at www.austlii.edu.au.

FEDERAL COURT JUDGMENTS

ANTHONY LO SURDO SC
& THERESA POWER

Corporations

Insolvency – voluntary administration – deed of company arrangement – standing to bring application under ss445D and 447A of *Corporations Act 2001* (Cth) – whether administrators had a conflict of interest

In *Habrok (Dalgaranga) Pty Ltd v Gascoyne Resources Ltd* [2020] FCA 1395 (29 September 2020) the plaintiff, Habrok, sought orders under ss445D and 447A of the Corporations Act 2001 (Cth) (Act) terminating a deed of company arrangement (DOCA) executed by the first to seventh defendants (GCY Group) and the eighth defendant (Administrators/FTI).

Background

After the investigation of options available to the GCY Group, the Administrators recommended to the creditors of the GCY Group that a DOCA should be entered into involving a recapitalisation.

A rival DOCA was proposed by Habrok Mining Pty Ltd, the holding company of Habrok, at the second meeting of creditors. The creditors voted to cause the companies in the CGY Group to execute the DOCA put forward by the Administrators, which was then executed. Habrok was not at that time a creditor of any entity in the GCY Group but took an assignment of a claim by a creditor of one of the companies in the GCY Group on the day that the proceedings were commenced.

Habrok's principal complaint against the Administrators is that having assisted the GCY Group to formulate a turnaround plan in late 2018 when FTI were consultants to GCY, the Administrators pursued their plan for the DOCA with single-minded determination during the administration, and in the process disregarded material conflicts of interest.

The issues

The issues in the proceedings included whether:

i. Habrok had standing to make the application in circumstances where it was not a creditor at the date of the second meeting of creditors which resolved to accept the DOCA; and
ii. the Administrators' prior involvement with the CGY Group was a conflict of interest.

Did Habrok have standing?

The Court found that Habrok had standing both as a creditor and as an interested person pursuant to s445D(2)(c) of the Act. Having taken an assignment of a pre-administration debt, the Court was satisfied that Habrok was a creditor notwithstanding that it was not a creditor at the time that creditors resolved for the companies in the CGY Group to execute the DOCA. Further, Habrok had standing to bring the application as "any other interested person" pursuant to s445D(2)(c). Applying the principles enunciated in *Allstate*, the Court found that the expression "any other interested person" is to be interpreted broadly, that is, whether the person's material rights or economic interests are or may be affected by the operation or effect of the deed of company arrangement that they seek to challenge. Habrok satisfied that test.

Administrator's pre-appointment involvement with the GCY Group

The question before the Court was whether (as Habrok claimed) FTI's prior involvement with the GCY Group would likely impede them from acting independently and impartially as administrators in making recommendations about the GCY Group's future.

The Court said that ". . . in terms of impartiality, not only the reality but the perception of impartiality are important and that an appearance of bias arising from prior involvement may be disqualifying" (at [442]).

Nevertheless, the Court found that the involvement of FTI pre-appointment did not compromise its independence or objectivity on any insolvency analysis, whether as a matter of reality or appearance by a hypothetical fair-minded observer (at [450]).

Consumer law

Misleading and deceptive conduct – representations "with respect to any future matter" (ACL s4(1)(a))

One of the issues in Australian Competition and *Consumer Commission v Woolworths Group Limited (formerly called Woolworths Limited)* [2020] FCAFC 162 (29 September 2020) was the meaning of the phrase "with respect to any future matter" in s4(1)(a) of the Australian Consumer Law (ACL).

Background

In the period between November 2014 and November 2017 Woolworths sold in its Australian supermarkets and through its online store a range of disposable cutlery and crockery under the label *"Select Eco"* (Products).

The packaging in which the Products were sold featured the statement "Biodegradable and Compostable". That packaging also contained the statement: "Made from a renewable resource".

The Australian Competition and Consumer Commission (ACCC) claimed that those statements represented to consumers that the Products would biodegrade and compost within a reasonable time when disposed of using domestic composting or in circumstances ordinarily used for the disposal of such products, including conventional Australian landfill. The ACCC claimed that by making those representations, Woolworths engaged in misleading and deceptive conduct or conduct that was likely to mislead or deceive in contravention of s18 of the ACL.

The ACCC commenced proceedings against Woolworths in which it claimed declarations, injunctions, pecuniary penalties, publication orders and costs in respect of alleged contraventions of ss18, 29(1)(a), 29(1)(g) and 33 of the ACL. The primary judge dismissed the ACCC's proceedings.

The issues

The resolution of the appeal turned on two critical issues: the meaning of the phrase ". . . with respect to any future matter" in s4(1)(a) of the ACL; and whether the representations as found or as pleaded by the ACCC were with respect to a future matter or future matters.

The appeal

The Court (Foster, Wigney and Jackson JJ) noted that the term "future matter" is not defined in the ACL and that s4 is in substantially the same terms as s51A of the *Trade Practices Act 1974* (Cth). Whether a statement relates to a future matter depends on the words used and the context in which they were used.

The Court found, consistent with many earlier first instance decisions that ". . . a representation will only be with respect to a future matter if it is in the nature of a promise, forecast, prediction or other like statement about something that will only transpire in the future – that is, a representation which is not capable of being proven to be true or false when made" (at [132]).

It is always a matter of the proper characterisation of the representations actually conveyed which turns on the content of the representations in question, judged objectively in their particular context.

The appeal was dismissed.

Practice and procedure

Self-represented litigant – extent of court's obligations to assist

The central issue in *Flightdeck Geelong Pty Ltd v All Options Pty Ltd* [2020] FCAFC 138 (14 August 2020) was the scope of a judge's duty to assist an unrepresented litigant in the conduct of a trial.

Background

The proceedings arose from a contract entered into by the respondent (All Options) on 19 March 2015 to purchase from the appellant (Flightdeck) an indoor trampoline business called "Airodrome Trampoline Park".

All Options claimed that representations made by Mr Mathews and Flightdeck during negotiations in relation to the establishment costs of the business, its past revenue and profit, and its future profitability were misleading and asserted that the making of them contravened s18 of the ACL.

Until approximately five months prior to the hearing, Mr Mathews and Flightdeck had been legally represented. At that time, Mr Mathews appeared at a directions without legal representation and sought to represent both himself and Flightdeck.

The primary judge informed him that if he wished to appear on behalf of Flightdeck he would need to seek leave to do so and that any such application would need to be accompanied by a supporting affidavit. Successive applications made by Mr Mathews for leave to represent Flightdeck and, subsequently, to adjourn the hearing date to obtain legal representation, were refused.

The appeal

Mr Mathews and Flightdeck contended, in part, that the primary judge erred by denying Mr Mathews procedural fairness as a self-represented litigant in that he failed to adequately explain the processes of the trial and the legal consequences of his choices during the trial, particularly in relation to cross-examination and the tendering of evidence.

The Court's duty to the litigant-in-person

The Court (Markovic, Derrington and Anastassiou JJ) commenced its consideration of this issue by noting that there existed a lack of clarity as to the obligations of a court to a litigant-in-person. Statements to the effect that, "Courts have an overriding duty to ensure that a trial is fair" or that judges must "ensure that trials are conducted fairly and in accordance with law" are axiomatic but do not offer any great assistance in the particular circumstances of a trial.

The extent of the Court's obligation to assist an unrepresented litigant is factually idiosyncratic and, significantly, depends on "the litigant, the nature of the case, and the litigant's intelligence and understanding of the case". The Court provided the following useful guide as to the type of assistance that it may be appropriate for a court to provide to a litigant-in-person:

a. ensuring the litigant has sufficient information about the practice and procedure of the Court to make effective choices in the conduct of the matter. The failure by a judge to, for example, explain the difference between formal sworn testimony and statements made from the bar table and to explain the risks in not leading evidence where adverse inferences might be drawn, may amount to a denial of procedural fairness
b. ensuring the litigant is informed of procedures which, if invoked, may prove to be advantageous. For example, failing to inform a litigant-in-person of their ability to apply for an adjournment may amount to a denial of procedural fairness
c. ensuring the litigant has not, because of a lack of legal skill, failed to claim rights or put forward arguments.

However, the duty of the Court does not extend to providing judicial advice, counselling a litigant on how to exercise their rights, or conducting the case on their behalf, nor to view a litigant-in-person's case with a favourable eye. ■

Anthony Lo Surdo SC is a barrister, arbitrator and mediator at 12 Wentworth Selborne Chambers, Sydney, Lonsdale Chambers, Melbourne and Outer Temple Chambers, London, Abu Dhabi and Dubai. **Theresa Power** is a barrister at 12 Wentworth Selborne Chambers, Sydney.

FAMILY LAW JUDGMENTS

ROBERT GLADE-WRIGHT

Property

Husband fined $54,000 for buying $180,000 of cryptocurrency in breach of an injunction

In *Lescosky & Durante* [2020] FamCAFC 179 (28 July 2020) Strickland J, sitting in the appellate division of the Family Court of Australia, heard a case where the husband breached an injunction 18 times, purchasing $180,000 of cryptocurrency, for which he was fined $54,000.

The husband appealed, arguing that the Magistrate had not taken into account the "totality principle". Strickland J said:

". . . [I]t is not the case that the court . . . must apply any so-called principle of sentencing . . . apart of course, from what appears in the *Family Law Act 1975* (Cth) . . . (at [13]).

"Thus, it is not open for the husband to assert error by the Magistrate in failing to follow the 'totality principle', or failing to apply s6 of the *Sentencing Act 1995* (WA) or s16A of the *Crimes Act 1914* (Cth). Further, there is ample authority to the effect that 'review of the punishments in other cases is of limited assistance, as each case really depends upon the Court's assessment of the relevant facts . . . (at [15]).

"The task for her Honour was to fix a sanction or sanctions that her Honour considered to be the most appropriate in the circumstance (s112AD) . . . (at [17]).

"What . . . her Honour did was impose a fine of $3000 for each of the 18 contraventions, and aggregate those fines, arriving at a total fine of $54,000 . . . (at [21]).

". . . [H]er Honour did what the husband said the sentencing principles and the decided cases required her to do . . . [S]he identified the maximum allowable fine for each contravention . . . concluding 'that the maximum prescribed limit for each contravention is not appropriate given the number of admitted contraventions and the quantum of funds involved'. Her Honour added that she was 'mindful that the fine is at the lower end of the spectrum for each individual breach, however the total is a significant sum' (at [25]).

"That approach accords with what the husband has described as the 'totality principle' . . ." (at [26]).

The husband's appeal was dismissed.

Property

Bankrupt de facto partner precluded from making submissions as to existing equitable proprietary interest

In *Walford & Bantock and Anor* [2020] FamCAFC 210 (21 August 2020) the Full Court (Ainslie-Wallace, Watts & Austin JJ) heard a case where a de facto husband had brought property adjustment proceedings while the de facto wife was bankrupt.

As ss90SM(15) and (16) prevent a bankrupt from making submissions as to vested property without leave and where the bankrupt must establish "exceptional circumstances" for such leave, the bankrupt unsuccessfully argued that she should be granted leave to make submissions as to her having an equitable interest in the de facto husband's real property.

Austin J said:

". . . The [de facto husband] respondent seeks an order granting him exclusive title to the home so . . . he denies that the applicant enjoys any equitable interest in the home . . . (at [16]).

"If the [de facto wife] applicant is subsequently found not to have any equitable interest in the home then any share in its title which is settled upon her by an adjustment order made in the exercise of discretion under Part VIIIAB of the Act does not constitute 'after-acquired property' under the Bankruptcy Act and did not vest in the trustee. The reason for the distinction is that the applicant's proprietary interest in the home is only created by the Court's ultimate exercise of statutory discretion; not recognised by the fulfilment of an equitable cause of action . . . (at [17]).

". . . The embargo under s90SM(15) of the Act only precludes the applicant from making submissions at trial 'in connection with' any existing equitable proprietary interest she enjoys in the home, as that would be 'vested bankruptcy property' and therefore the exclusive province of argument between the trustee and the respondent. The applicant is not precluded by the ruling from making final submissions about her entitlement to non-vested property under the provisions of Part VIIIAB of the Act (at [20]).

"Not only is the appealed order interlocutory in nature, it . . . pertains to practice and procedure . . . Accordingly, particular caution should be exercised in granting leave to appeal from it . . ." (at [25]).

Watts and Ainslie-Wallace JJ agreed, dismissing the application for leave to appeal.

Property

No error in Court's refusal to disjoin corporate trustees of family trusts

In *E Pty Ltd and Ors & Zunino and Anor* [2020] FamCAFC 216 (1 September 2020) the Full Court (Ainslie-Wallace, Ryan & Tree JJ) heard a case where a wife had named three companies as respondents, of which the husband was a former director.

The wife sought declarations that each entity held real estate on trust for her; each company having sought orders for disjoinder.

The Full Court said:

"The [corporate] appellants carefully established that although the husband had been a director of the entities . . . he had never had explicit legal title to the entities. Senior counsel for the wife . . . explained that . . . the husband was the controlling mind and the entities his alter ego . . . To this end, the wife pointed to a raft of 'uncommercial' transactions and what she said were the spouse party's more or less exclusive use of the subject properties (at [13]).

"In deciding against the appellants, the primary judge took into account the circumstantial nature of the wife's case . . . [I]t is tolerably clear that his Honour thought

. . . the wife's case appeared weak . . . but . . . he was not satisfied that she had no reasonable likelihood of establishing that the husband exercises effective control over the entities as his alter ego . . . (at [18]).

"We . . . agree with the primary judge that as the appellants 'may' be directly affected by the wife's case raised against them . . . they are necessary parties (r 6.02) . . . Plainly . . . the appellants 'may' be deprived of their beneficial ownership of valuable property . . . (at [24]).

"His Honour's decision to reject the appellants' application to be removed as parties was correct . . ." (at [25]).

Children

Registrar's refusal to file initiating application due to non-provision of a s60I certificate set aside

In *Valack & Valack (No. 2)* [2020] FCCA 1799 (2 July 2020) Jarrett J held that a registrar lacked power to reject an initiating application on the basis of the non-provision of a s60I certificate, as the exemptions set out at s60I(7) required a decision "by a judge or Registrar in existing proceedings".

Where the mother's attempt at filing an initiating application had been rejected by a registrar, she argued that the decision should be set aside pursuant to s5 of the *Administrative Decisions (Judicial Review) Act 1977* (Cth) (AD(JR) Act).

The Court said:

". . . The only basis upon which the Registrar could have acted when not accepting the initiating application for filing was that it was an abuse of process or was frivolous, scandalous or vexatious. I found that the application was not an abuse of process . . . It was plainly not frivolous or vexatious . . . (at [15]).

"*Ellwood & Ravenhill* [2019] FamCAFC 153 compels the conclusion that the filing of a s60I(7) certificate is not a necessary condition of the Court's jurisdiction under Part VII of the *Family Law Act*. In that case . . . Kent J held that a failure to file a s60I(7) certificate with an application for orders under Part VII did not deprive the Court of jurisdiction in the application. His Honour recognised at [31] that a consideration of the matters raised in s60I(9) might be required in a particular case and that could only happen in the context of an extant proceeding . . . (at [18]).

"It was an error to refuse the filing of the initiating application on the basis that there was no operative s60I certificate. That error engages ss5(1)(d), 5(1)(e) and 5(1)(f) of the AD(JR) Act. I am satisfied that the Registrar's decision to refuse to file the initiating application was a decision that was not authorised by either the *Family Law Act* or the *Federal Circuit Court Rules* . . . (at [19]).

Further, I am satisfied that the decision to refuse the filing of the document was an improper exercise of the power conferred by FCCR 2.06 because it took into account an irrelevant consideration, namely whether the application was accompanied by a s60I(1) certificate . . ." (at [20]).

The Registrar's decision to not file the initiating application was set aside, the Court deeming it to have been filed on the day it was lodged on the Commonwealth Courts portal. ■

Robert Glade-Wright, a former barrister and accredited family law specialist, is the founder of The *Family Law Book*, a looseleaf and online service: see www.thefamilylawbook.com.au. He is assisted by accredited family law specialist **Craig Nicol**. References to sections of an Act in the text refer to the *Family Law Act 1975* (Cth) unless otherwise specified. The full text of these judgments can be found at www.austlii.edu.au. The numbers in square brackets in the text refer to the paragraph numbers in the judgment.

SUPREME COURT JUDGMENTS

DR MICHAEL TAYLOR

Judicial review and appeal – Breach of general code of conduct for general health services – overlapping regulatory schemes

CDC Clinics Pty Ltd & Anor v Health Complaints Commissioner [2020] VSC 597 S ECI 2019 05205

This case note concerns a judicial review of prohibition orders made by the Health Complaints Commissioner (Commissioner) against CDC Clinics Pty Ltd (CDC), a provider of cosmetic and non-cosmetic medical services, and Ms Cynthia Weinstein, CDC's practice manager and a former dermatologist and cosmetic surgeon no longer registered as a medical practitioner (at [1]-[2]).

In January 2018 the Commissioner received a complaint from a CDC client regarding cosmetic treatments to her lips and cheeks received during 2017 (at [3]-[4]). In summary, the complainant alleged that she received injections of Oxane (a dermal filler) on two occasions from Ms Weinstein, and then on the third occasion by Dr Angela (Hua) Xu, a registered medical practitioner at CDC who was also present on the two previous occasions (at [3] and [4]). On the third occasion it was alleged that something went wrong, with subsequent corrective actions (including further injections on other occasions) being unsatisfactory to the complainant because her features became asymmetrical (at [4]).

The original complaint to the Commissioner concerned Dr Xu. The Australian Health Practitioner Regulation Agency (AHPRA) was notified of the complaint as required by s26 of the *Health Complaints Act 2016* (Act) (at [6]-[9]). AHPRA commenced its investigation into Dr Xu's conduct in March 2018, considering issues of scope of practice and informed consent to treatment (at [10]). In response, Dr Xu contended that she was the treatment provider on all three occasions, that she was suitably qualified to do so and followed appropriate consent and follow-up procedures (at [12]-[13]). In November 2018, Dr Xu was advised by AHPRA that the Medical Board of Australia (the relevant National Board) was satisfied with her conduct and that no further action would be taken (at [14]).

Concurrent with the AHPRA investigation of Dr Xu, in March 2018 the complainant further requested that the Commissioner assist her in obtaining financial compensation (at [15]). Consistent with the Commissioner's powers to deal with a complaint, a letter was sent to CDC and Ms Weinstein on 12 July 2018 informing them that the Commissioner would investigate the complaint as it related to the plaintiffs (at [17]). The plaintiffs were advised that the Commissioner was considering making an interim prohibition order against them under s90 of the Act and invited them to respond (at [19]). The plaintiff's response (16 July 2018) denied that Ms Weinstein had provided any cosmetic treatments (stating that Dr Xu had done so) and questioned the Commissioner's jurisdiction to: (i) investigate on the basis that the treatment in question was not a health service within the meaning of the Act and (ii) deal with a complaint about Dr Xu (at [20]).

In August 2018, the Commissioner made a 12-week interim prohibition order against CDC and Ms Weinstein, prohibiting either party from "causing, directing or otherwise facilitating" prescribing or administration of any drug, poison or substance (including Oxane) by any person "unless that person is a registered practitioner" (at [22]). The interim prohibition order was the subject of an article in the *Herald Sun* newspaper, and in November 2018 the interim order was remade (at [22]-[24]).

A draft investigation report and proposed final prohibition order were provided to the plaintiffs in December 2018, setting out the Commissioner's preliminary finding that there was a breach of the Code of Conduct (as applied to health service providers under the Act) based on the Commissioner's conclusion that Ms Weinstein had provided, or assisted Dr Xu to provide, the treatments as alleged by the complainant (at [26]). The Commissioner did not consider Dr Xu to be an independent witness based on her pecuniary interest in maintaining a financial relationship with CDC (at [26]). A response was provided by the plaintiffs in January 2019, reiterating Dr Xu's evidence that she was the treatment provider and highlighting various inaccuracies and inconsistencies in the complainant's account of events (at [27]).

In January 2019, a final prohibition order was made with more expansive conditions than those originally proposed (and responded to) (at [28]). As a result, the plaintiffs sought judicial review based on procedural fairness (at [28]). By consent, the prohibition order was quashed by Daly AJ on 13 June 2019 (at [29]). Four days later, the Commissioner wrote to the plaintiffs to inform them of proposed new orders prohibiting the provision of clinical treatment (or advice) to any person and assisting, directing or instructing any person (regardless of whether they are a registered health practitioner) as to clinical treatment of a person (at [30]). Further exchanges occurred between the Commissioner and the plaintiffs (at [30]-[33]), culminating in the Commissioner making (without notice) the final prohibition order without an end date (in place until varied or revoked) in October 2019 (at [34]-[35]).

In April 2020, before Forbes J, the plaintiffs sought a declaration that the Commissioner's October 2019 probation orders were null, void and of no legal effect, and an order in the nature of certiorari quashing the prohibition orders (at [36]-[37]). The plaintiffs relied on three grounds of review: (1) that the Commissioner fell into error by misapplying her jurisdiction under s27 of the Act; (2) legal unreasonableness; and (3) denial of procedural fairness (at [2] and [37]-[40]). All three grounds were dismissed (at [55], [69] and [91]). This case note considers Forbes J's reasons on the misapplication ground in detail given the complexity of the overlapping regulatory schemes for healthcare.

Forbes J's reasons set out the interrelationship of the Act with s150 of the Health Practitioner National Law (the National Law),[1] where (at [41]-[43]):

- s150 sets out the relationship of the National Law with a "health complaints entity", where s150(2) requires a health complaints entity in receipt of a complaint about a health practitioner to notify the relevant National Board established for the practitioner's health profession. Section 26 of the Act makes the Commissioner a "health complaints entity" for the purposes of the National Law
- s27 preserves certain functions and powers of the Commissioner, despite such a referral, to the extent that the referred complaint (or part of it) relates to a general health service provider and any contravention of the Code of Conduct applying to a general health service.[2]

As described by Forbes J, the overall legislative scheme "envisaged a separation between complaints about health practitioners which the National Board has power to deal with and complaints about general health providers which the Commissioner has power to deal with," where s150(3) of the National Law requires both complaints entities to attempt to reach an agreement on how to deal with the complaint (at [44]).

On behalf of the plaintiffs, it was submitted that where there is an agreement to refer a complaint to the relevant National Board, a Board decision should take precedence insofar as allegations concerning a health practitioner are concerned and amounts to a "finding", where it is not open to the Commissioner to exercise a power of prohibition over a general health services provider in a manner that is inconsistent with such a finding (at [45]).

For the Commissioner, it was argued that the Board decision made no finding on a controversial matter (who provided the three treatments) and, even if it had made a finding of fact, the Commissioner was not bound by that finding on a proper construction of s27 of the Act (at [46]). In support of their respective submissions on jurisdiction, both parties relied on the relevant second reading speech, albeit different paragraphs (at [47]-[48]).

Forbes J did not accept that the Board decision resolved a factual dispute for several reasons, including how the complaint was presented to it and that the overall outcome was a decision to take no further action (described in more detail at [49]-[50]). The Board was said to hold the view that the administration of Oxane was an unsettled area of law and Dr Xu's response that she was the treatment provider "had the effect of conceding to the regulatory authority that her actions on those three dates were relevant to the investigation that it was conducting," and so there was no factual contest to resolve (at [49]-[50] and [56]).

Alternatively, if the Board decision was a finding as contended by the plaintiff, Forbes J did not accept that it was binding on the Commissioner who (along with the plaintiffs) were not party to the Board's investigation, and s27 of the Act does not refer to any limiting effect of findings made under the National Law (at [51]).

In addition, on this ground of review Forbes J found that (at [52]-[54]):

- s150(3) of the National Law was a legislative direction to act cooperatively and does not give precedence to the decision by the entity to which a complaint is referred. Further, it is not correct to characterise referral of a complaint as an agreement between the two entities under the National Law, as referrals are mandatory (ss150(1) and (2)) and s150(3) agreements relate to how to deal with a complaint
- In this instance, there was no evidence of an agreement between the two complaints entities about how each would deal with the complaint. Such a circumstance is contemplated by s150(4) of the National Law, which gives precedence to the most serious actions proposed by either of the two complaints entities and "doesn't determine any precedence of decisions in the sense that the decision of one [entity] is imposed upon another" (at [54]).

Given that the Board's final decision regarding Dr Xu was to take no action, then s150(4) of the National Law was not called on. As such, the Commissioner's concurrent investigation and final prohibition orders were not misapprehension of the jurisdiction granted by s27 of the Act. ■

Dr Michael Taylor is a barrister at the Victorian Bar (email: michael.taylor@vicbar.com.au). The numbers in square brackets in the text refer to the paragraph numbers in the judgment. The full version of this judgment can be found at www.austlii.edu.au.

1. As applicable in Victoria under the *Health Practitioner Regulation National Law (Victoria) Act 2009*.
2. Section 3 of the Act defines these terms in a cascading fashion that illustrates the complex interrelationship of healthcare legislation. Under the Act, a general health service provider means a person who provides a general health service, where a general health service means a health service that is not a health profession service. A health profession service means the practice of a health profession, where a health profession means a health profession within the meaning of the National Law. Finally, a health service means a range of different services, including those intended (or claimed) by the provider to assess or improve health status or diagnose, prevent or treat an illness, injury or disability, as well as services such as palliative care, aged care and health education.

LEGISLATION UPDATE

New Victorian 2020 Assents

As at 18/09/2020

2020 No. 24 Public Health and Wellbeing Amendment (State of Emergency Extension and Other Matters) Act

New Victorian 2020 Regulations

As at 18/09/2020

2020 No. 85 Children's Court Criminal Procedure Amendment Rules
2020 No. 86 Public Health and Wellbeing Amendment (Compliance) Regulations
2020 No. 87 Library Purposes Trusts Regulations
2020 No. 88 Victims of Crime Assistance Rules
2020 No. 89 Supreme Court (Chapter III Emergency Measures Amendment) Rules
2020 No. 90 Gambling Amendment (Training Requirements) Regulations
2020 No. 91 Long Service Benefits Portability Regulations
2020 No. 92 City of Melbourne (Electoral) and Local Government (Electoral) Amendment Regulations
2020 No. 93 Public Health and Wellbeing Amendment (Further Infringements) Regulations

New Victorian 2020 Bills

As at 18/09/2020

Consumer Legislation Amendment Bill 2020
COVID-19 Omnibus (Emergency Measures) and Other Acts Amendment Bill 2020
Parliamentary Committees Amendment (SARC Protection Against Rights Curtailment by Urgent Bills) Bill 2020
Worker Screening Bill 2020

New Commonwealth 2020 Assents

As at 18/09/2020

2020 No. 76 National Skills Commissioner Act
2020 No. 77 National Vocational Education and Training Regulator Amendment (Governance and Other Matters) Act
2020 No. 78 Tertiary Education Quality and Standards Agency Amendment (Prohibiting Academic Cheating Services) Act
2020 No. 79 Treasury Laws Amendment (2020 Measures No. 2) Act
2020 No. 80 Treasury Laws Amendment (Your Superannuation, Your Choice) Act
2020 No. 81 Coronavirus Economic Response Package (Jobkeeper Payments) Amendment Act
2020 No. 82 Product Stewardship (Oil) Amendment Act
2020 No. 83 Norfolk Island Amendment (Supreme Court) Act
2020 No. 84 Family Assistance Legislation Amendment (Improving Assistance for Vulnerable and Disadvantaged Families) Act
2020 No. 85 Excise Tariff Amendment Act
2020 No. 86 Superannuation Amendment (PSSAP Membership) Act

New Commonwealth 2020 Regulations

As at 18/09/2020

Age Discrimination Regulations 2020
Civil Aviation Safety Amendment (Flight Crew Licensing Measures No. 1) Regulations 2020
Criminal Code (Terrorist Organisation—Islamic State East Asia) Regulations 2020
Customs Legislation Amendment (Objectionable Goods) Regulations 2020
Electoral and Referendum Amendment (Prescribed Authorities) Regulations 2020
Financial Framework (Supplementary Powers) Amendment (Agriculture, Water and the Environment Measures No. 5) Regulations 2020
Financial Framework (Supplementary Powers) Amendment (Education, Skills and Employment Measures No. 4) Regulations 2020
Financial Framework (Supplementary Powers) Amendment (Health Measures No. 4) Regulations 2020
Financial Framework (Supplementary Powers) Amendment (Infrastructure, Transport, Regional Development and Communications Measures No. 7) Regulations 2020
Financial Framework (Supplementary Powers) Amendment (Social Services Measures No. 3) Regulations 2020
Financial Framework (Supplementary Powers) Amendment (Treasury Measures No. 2) Regulations 2020
Foreign Acquisitions and Takeovers Amendment (Commercial Land Lease Threshold Test) Regulations 2020
Healthcare Identifiers Regulations 2020
Migration Amendment (Hong Kong Passport Holders) Regulations 2020
National Health (Pharmaceutical Benefits) Amendment (Active Ingredient Prescribing) Regulations 2020
Offshore Petroleum and Greenhouse Gas Storage (Regulatory Levies) Amendment (Cross-boundary Greenhouse Gas Storage) Regulations 2020
Ozone Protection and Synthetic Greenhouse Gas Management Amendment (2020 Measures No. 1) Regulations 2020
Parliamentary Contributory Superannuation (Early Release Payments) Amendment Regulations 2020
Product Stewardship (Oil) Amendment (Re-refined Base Oil) Regulations 2020
Statute Update (Regulations References) Regulations 2020
Trans-Tasman Mutual Recognition Amendment (WA Container Deposit Scheme) Regulations 2020
Treasury Laws Amendment (Release of Superannuation on Compassionate Grounds) Regulations (No. 3) 2020

New Commonwealth 2020 Bills

As at 18/09/2020

Australia's Foreign Relations (State and Territory Arrangements) (Consequential Amendments) Bill 2020
Australia's Foreign Relations (State and Territory Arrangements) Bill 2020
Civil Aviation (Unmanned Aircraft Levy) Bill 2020
Civil Aviation Amendment (Unmanned Aircraft Levy Collection and Payment) Bill 2020
Clean Energy Finance Corporation Amendment (Grid Reliability Fund) Bill 2020
Competition and Consumer Amendment (Exploitation of Indigenous Culture) Bill 2020
Coronavirus Economic Response Package (Jobkeeper Payments) Amendment Bill 2020
Counter-Terrorism Legislation Amendment (High Risk Terrorist Offenders) Bill 2020
Crimes Legislation Amendment (Economic Disruption) Bill 2020
Defence Legislation Amendment (Enhancement of Defence Force Response to Emergencies) Bill 2020

Education Legislation Amendment (Up-front Payments Tuition Protection) Bill 2020
Environment Protection and Biodiversity Conservation Amendment (Streamlining Environmental Approvals) Bill 2020
Fair Work Amendment (Improving Unpaid Parental Leave for Parents of Stillborn Babies and Other Measures) Bill 2020
Family Law Amendment (Risk Screening Protections) Bill 2020
Franchising Laws Amendment (Fairness in Franchising) Bill 2020
Health Insurance Amendment (Administration) Bill 2020
Higher Education (Up-front Payments Tuition Protection Levy) Bill 2020
Higher Education Legislation Amendment (Provider Category Standards and Other Measures) Bill 2020
Higher Education Support Amendment (Job-Ready Graduates and Supporting Regional and Remote Students) Bill 2020
Interactive Gambling Amendment (Prohibition on Credit Card Use) Bill 2020
National Commissioner for Defence and Veteran Suicide Prevention (Consequential Amendments) Bill 2020
National Commissioner for Defence and Veteran Suicide Prevention Bill 2020
Radiocommunications (Receiver Licence Tax) Amendment Bill 2020
Radiocommunications (Transmitter Licence Tax) Amendment Bill 2020
Radiocommunications Legislation Amendment (Reform and Modernisation) Bill 2020
Recycling and Waste Reduction (Consequential and Transitional Provisions) Bill 2020
Recycling and Waste Reduction Bill 2020
Recycling and Waste Reduction Charges (Customs) Bill 2020
Recycling and Waste Reduction Charges (Excise) Bill 2020
Recycling and Waste Reduction Charges (General) Bill 2020
Sport Integrity Australia Amendment (World Anti-Doping Code Review) Bill 2020
Treasury Laws Amendment (Self Managed Superannuation Funds) Bill 2020 ■

This summary is prepared by the LIV Library to help practitioners keep informed of recent changes in legislation.

Law Institute of Victoria

COVID-19 Hub – www.liv.asn.au/COVID19

The LIV has established a COVID-19 Hub for the profession to ensure support for members and the legal profession during the pandemic. It contains all actions the LIV is taking to deliver continuity of services, tools and guides for members including practice contingency planning, working from home advice, current information from the courts, the regulator and the broader legal sector, as well as other useful information and advice. It is updated regularly.

LIV FAQs

Information and advice from the courts

- Administrative Appeals Tribunal
- Children's Court
- County Court
- Court Services Victoria
- Family Court of Australia
- Federal Circuit Court of Australia
- Federal Court of Australia
- Magistrates' Court
- Supreme Court
- VCAT

Information for the profession

- COVID-19 State of Disaster - Key information for the profession
- Australian Registrars National Electronic Conveyancing Council (ARNECC)
- Corrections Victoria
- Department of Justice and Community Safety Victoria
- Fair Work Australia
- Fair Work Commission
- Foreign Investment Review Board
- JobWatch
- Judicial College of Victoria
- Law Institute Victoria
- Legal Practitioners' Liability Committee (LPLC)
- Safe Work Australia
- Victoria Legal Aid
- Victoria Police
- Victorian Bar
- Victorian DHHS
- Victorian Small Business Commission
- VLSB+C
- Other Resources

LIV services and support

- Quick Contacts
- Your Wellbeing
- Communications and LIV's response
- Access to Member Facilities
- LIV Activities and CPD
- Member Services & Support (including Practice Contingency Planning)
- Legal Referral Service

Office of the Public Advocate and Law Institute of Victoria

Future planning for decision-making and the law in Victoria

The Office of the Public Advocate and the LIV have collaborated to produce a resource for lawyers who practise in future planning for decision making. The resource is supported by members of the LIV Disability, Elder and Health Law Section, and has been produced in consultation with the LIV Elder Law Committee, which frequently liaises with OPA, the Australian Medical Association, the Law Council of Australia, the Elder Abuse Prevention Advisory Group and Seniors Rights Victoria. ■

CASH RATE TARGET

From 6 December 2007 law practices whose matters are governed by the *Legal Profession Act 2004* cannot use the penalty interest rate for their accounts. The maximum rate is the cash rate target plus 2 per cent. The cash rate target is currently 0.25 per cent (from 20 March 2020). To monitor changes between editions of the *LIJ*, practitioners should check www.rba.gov.au/statistics/cash-rate.

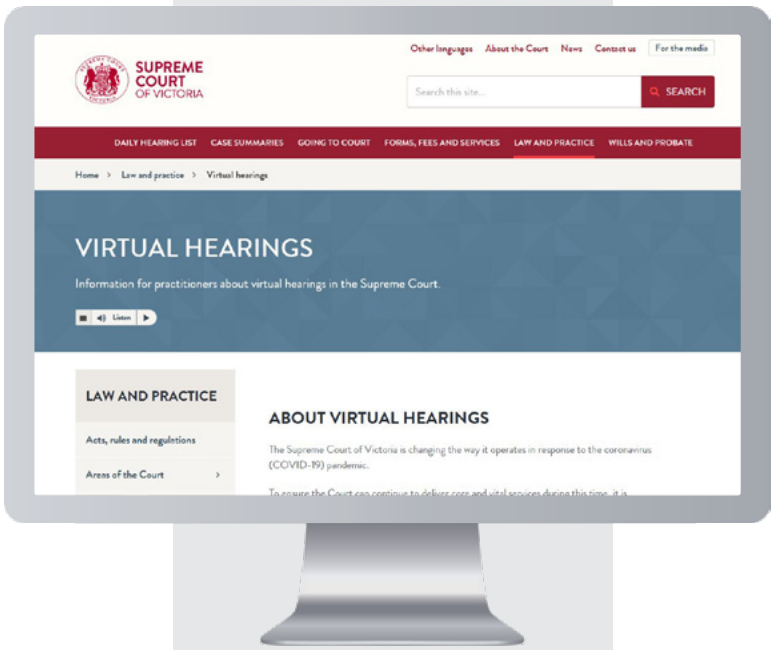
PENALTY AND FEE UNITS

For the financial year commencing 1 July 2020, the value of a penalty unit is $165.22. The value of a fee unit is $14.81 (*Government Gazette* G16, 23 April 2020).

PENALTY INTEREST RATE

The penalty interest rate is 10 per cent per annum (from 1 February 2017). To monitor changes to this rate between editions of the *LIJ*, practitioners should check the Magistrates' Court of Victoria website.

IN_SITES



Supreme Court of Victoria – Virtual backdrops

https://www.supremecourt.vic.gov.au/law-and-practice/virtual-hearings

The Supreme Court of Victoria introduced virtual hearings to ensure the continuance of core services and compliance with social distancing requirements during the COVID-19 pandemic. In an effort to create a virtual courtroom atmosphere, the Court has provided backdrop photos for members of the legal profession to use during hearings. There are four photos to choose from, each a different courtroom from the VSC, including the old High Court.

Victorian government – Coronavirus (COVID-19) roadmap for reopening

https://www.coronavirus.vic.gov.au/coronavirus-covid-19-restrictions-roadmaps

The Victorian government has released roadmaps for the state's path to COVID normal. There are roadmaps for both regional and metropolitan Melbourne which are based on the active number of cases in the community. There are tabs explaining the four steps to COVID normal and it is also broken down into sectors – health, work, education, travel and housing. There is also translation available into more than 60 languages and a hotline.

eSafety Commissioner

https://www.esafety.gov.au/

This website provides audience-specific content to help educate people on online safety issues including cyberbullying and offensive or illegal content. It includes specific tabs for children, young people, parents, women, seniors and educators. You can use filters to tailor information by topic and audience, for example, social media for sporting organisations. The site provides a reporting tool, blog posts, fact sheets and free online training.

Tenants Victoria – Family violence protection tenancy toolkit

https://www.tenantsvic.org.au/family-violence-protection/

Tenants Victoria has developed a family violence protection kit for those living in rented accommodation who are affected by family violence and are considering leaving the relationship. The kit includes a checklist of questions to ask affected people as well as a list of the support services available. There is information on new laws and measures due to COVID-19, changing the locks, getting an intervention order, and what to do depending on whether those affected choose to stay or leave the rental property.

Women's Information and Referral Exchange

https://www.wire.org.au/

The Women's Information and Referral Exchange (WIRE) provides free information, research, support and referral services to women and non-binary and gender diverse people throughout Victoria. Information can be filtered by category including relationships, housing, migration, money and family violence. The walk-in information centre is closed due to COVID-19, but online sessions are available to join. You can also order and download free booklets on topics including family violence and money problems with your partner and you can subscribe to a fortnightly ebulletin for the latest news and information.

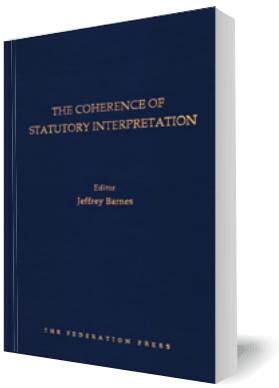
International Bar Association – Doing Business in Asia Pacific

https://www.ibanet.org/Regional_Fora/Regional_Fora/Asia_Pacific_Forum/Doing-business.aspx

The International Bar Association has produced these guides for both investors and the legal profession conducting business in the Asia Pacific region. The guides discuss the common pitfalls and cultural differences of doing business in 11 jurisdictions in the region – Australia, China, Hong Kong, India, Indonesia, Japan, Malaysia, Singapore, South Korea, the Philippines and Vietnam. Topics covered include employment and tax law, foreign investment, financing, intellectual property and dispute resolution. ■

IN_PRINT

This month's books cover statutory interpretation, Australian law and its development, the law of tracing and the life and times of Maurice Blackburn.



The Coherence of Statutory Interpretation

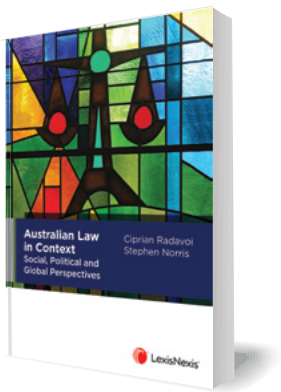
Jeffrey Barnes (ed), The Federation Press, 2019, hb $160

This book is a collection of works from eminent members of the judiciary, academia and the legal profession, focusing on the topic of coherence in statutory interpretation. The contributions primarily originate from a symposium held by La Trobe University in November 2016.

The book is organised into 10 chapters, with each author addressing the underlying theme of coherence in one form or another. The first chapter contains the opening remarks of the Hon Kenneth Hayne at the symposium, where the reader is reminded of the importance of the Constitution as the bedrock of statutory framework. The ensuing chapters critically explore issues such as what is meant by coherence in statutory interpretation and whether it can be achieved, the judiciary's approach to statutory interpretation, legislative drafters' views as to construction and interpretation, and the debate about whether it is possible to have an overall method of interpreting statutes which is both consistent and workable. Although there is an unsurprisingly strong emphasis on legal theory, the book provides succinct summaries of the current law on statutory interpretation, including a concise analysis of the *Acts Interpretation Act 1901* (Cth).

The strength of this book stems from not only the expertise of its contributors, but their varying and at times thought-provoking perspectives and insights. Its approach is both refreshing and welcomed. The book demonstrates that there is no one consistent voice advocating for a particular approach to statutory interpretation. It aptly highlights the varying political, legal and social influences affecting the legislative ecosystem.

David Kim, barrister



Australian Law in Context: Social, Political and Global Perspectives

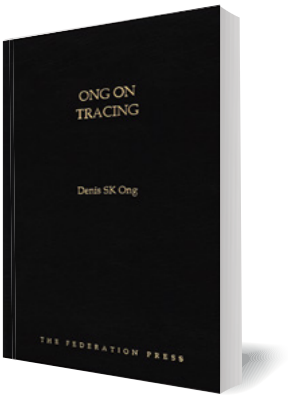
Ciprian Radavoi, Stephen Norris, LexisNexis, 2020, pb $90

Law is not simply a set of predictable rules, but also a product of history, prevailing values in society, and the conscious or unconscious impact of matters such as race, gender, class and politics which "contextualise" the essence, interpretation and application of law. The preface indicates some interesting insights on issues, eg, Gillian Triggs sees law as being primarily about fairness; former US president Barack Obama, when considering the qualities of a new appointment to the Supreme Court, de-emphasised the importance of eminent learning, in the face of greater attributes as to "how the world works in a practical sense" and "empathy".

Equipping students and practitioners alike, any person interested in law has much to learn and appreciate from the broad discussion of ideas this book canvasses. Importantly, the book has an Australian context, with great scholarship on the history and uniqueness of Australian law, issues of Aboriginal rights, and the place of Australia in a globalised world. More modern issues are also explained, such as the emergence of a global economy, the transnational nature of the company, and the rise of the algorithm in all aspects of life, including law.

This book is both a great reference and learning tool to a vast arena of history, ideas and movements on all sides, with a dispassionate and even-handed presentation of the myriad social, economic, political, philosophical and power relationships that underpin our legal system, consciously or otherwise. This book presents a pantheon of ideas in a readable and admirably concise way, which hopefully opens our eyes to the fact that law is a work in progress.

David Parker, sessional law lecturer



Ong on Tracing

Denis SK Ong, The Federation Press, 2019, hb $135

The issue with tracing arises where an item of property has been transformed or mixed with other property and whether the original owner is entitled to the transformed or mixed property.

However, tracing is an area of law that causes much consternation because of the lack of understanding of the very real differences between common law and equitable tracing.

This is where Ong's text is at its best, with more than half the book devoted to explaining the differences, and reasons for the differences, between common law and equitable tracing.

In addition, there is a chapter dealing with tracing into bank and other accounts which is an increasingly important issue with the increase in fraud by online hackers.

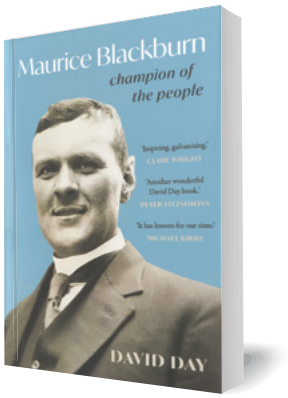
Chapter 1 deals with common law tracing and sets out the fundamental basis for common law tracing, ie, if an owner transfers possession of property – as distinct from title – the possessor becomes a bailee of the property.

Ong then sets out the authorities which have purportedly applied common law tracing where equitable tracing should have been applied and which have caused some of the confusion in this area of the law.

Chapter 2 deals with equitable tracing and sets out how equitable tracing provides a broader approach that does allow a claim into a mixed fund and to take a specifically severable part of a mixed fund. There is a very good elucidation of the nature of the equitable tracing charge which Ong asserts – despite its title – is not a security interest but a form of equitable ownership.

It is clear that there has been a great deal of misunderstanding as to tracing and Ong clearly sets out in an easily understandable manner, the basis on which tracing arises and where common law and equitable tracing apply.

Mark Harrick, principal, Harrick Lawyers



Maurice Blackburn: Champion of the people

David Day, Scribe Publications, 2019, pb $50

This book traces Maurice Blackburn's life and the significant contribution he made to Australian public life and the lives of individuals. It shows how Blackburn moved from a position of conservatism to that of a highly principled socialist. This change occurred when Blackburn perceived the harsh human cost of the implementation of a conservative political agenda. It led him to becoming an active member of the Australian Labor Party (ALP), including as a state and federal parliamentarian.

Blackburn made many important contributions to public life. Perhaps his most significant was his role in preventing the ALP from becoming a revolutionary socialist party in the aftermath of World War I. At that time there was great pressure in Labor circles to go down a path of revolutionary socialism and nationalisation. Blackburn could see that such a path would be electoral poison. Facing vigorous opposition from unions and parliamentarians he succeeded in modifying that through a resolution passed by the ALP in 1921, called the "Blackburn Declaration", which made the ALP a reformist rather than revolutionary party and shaped ALP policy for decades.

His contribution to the lives of individuals was seen in the way he used his legal skills "for the betterment of society".

Blackburn's principled socialism came at a cost – it cost him positions of political power and influence and ultimately led to his expulsion from the ALP in 1943 over the issue of conscription for military service in World War II.

His life can be best summed up from the last paragraph of the book: ". . . He had transformed the lives of countless people, bravely championed a multitude of sometimes unpopular causes and been a noble exemplar for others". ■

Scott Whitechurch, lecturer, College of Law Melbourne

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CONSIDERING SECRET LAWYER RECORDINGS

Is it ever legitimate for a lawyer to surreptitiously record a conversation to which he or she is a party?

In my September 2020 *LIJ* column, I returned to the topic of secret lawyer recordings of conversations with others. Therein I cautioned against such a practice, despite the fact it is not illegal in Victoria, or indeed most Australian jurisdictions (albeit subject to prescribed constraints),[1] noting that what is legal does not always encompass what is ethical. In this column, I ponder whether there are occasions where a lawyer recording a conversation to which he or she is a party may be justified.

There are no doubt instances where a recording could be beneficial to the parties thereto and effected, to this end, without any surreptitious intent. For example, oral discussions between lawyers representing parties to a prospective document frequently precede its drafting, and a recording of those discussions can no doubt assist in ultimating the parties' agreement. But in this instance, it is difficult to see why consent to the recording should not be sought at the outset. If the requested consent is not forthcoming, it is evidently unethical for the lawyer to nonetheless proceed to record the discussions.

It stands to reason that occasions in which consent to recording is not sought in advance are likely to be motivated to secure some advantage to the lawyer, typically by reason of a corresponding detriment to another party to the conversation. The objective may, for instance, be to record some admission by that party, relying on the fact that many are less guarded (and more reactive) in the spoken than the written word. That this could moreover be used as a tactical manoeuvre to secure leverage over an opponent bespeaks what veers closer to deception than cleverness.

In an interesting article published earlier this year in an American journal, the author probed whether there might be occasions where a lawyer could legitimately record a conversation with a client without consent. The analysis identified three scenarios in this context: where the recording might benefit the client and broader representation; where it might benefit the lawyer; and where it might advance the public interest.[2]

The first scenario could encompass where the lawyer believes that the client will be less candid if he or she believes that an oral conversation will be recorded or if asked to commit matters to writing. But even if driven by a wholesome motivation, discovery of the recording is unlikely to foster trust within the professional relationship. It could also expose the contents of the recording to revelation on compulsory process.

As lawyers may disclose confidential client information for the (limited) purpose of substantiating a claim to costs, defending an action for breach of duty or responding to a client complaint, it can be argued that, if put on notice or otherwise suspecting that his or her interests may be thereby compromised, a lawyer should be able to record a conversation with a client germane to the issue. Yet usually lawyers protect their own interests by way of written communications and contemporaneous file notes. Going a step further, and making a recording without consent, moreover prejudices the loyalty the client may legitimately expect from his or her legal representative.

The third scenario of surreptitious client recording dovetails into the exception to confidentiality "for the sole purpose of avoiding the probable commission of a serious criminal offence" or "for the purpose of preventing imminent serious physical harm to the client or to another person".[3] Assuming that the lawyer has been placed on notice, typically by prior client disclosures, of the client's expressed intention to commit such an offence or do such harm, it is arguable that the public interest might justify the lawyer recording the client's threats, and passing this to the relevant authorities. At the same time, one may query whether such a recording is ever essential to a lawyer reporting in this context. The fact that American case law reveals instances where, as a result, law enforcement has then recruited a lawyer to make ongoing recordings of the client for the purpose of substantiating a prosecution,[4] reveals the dangers for lawyers. In the wake of the "Lawyer X" scandal in Victoria, real caution is justified.

Accordingly, there are compelling grounds to conclude that the recording of a client without the latter's consent is an ethical minefield better avoided. ■

SNAPSHOT

- It is interesting to probe whether circumstances may arise where it is legitimate for a lawyer to surreptitiously record a conversation to which he or she is a party.
- This raises the question whether some circumstances might justify making a recording of the lawyer's client.
- Recording without consent nonetheless remains beset with ethical difficulties.

Gino Dal Pont is Professor, Faculty of Law, University of Tasmania.

1. See *Listening Devices Act 1992* (ACT) s4; *Surveillance Devices Act 2007* (NT) s11; *Surveillance Devices Act 1997* (NSW) s7; *Invasion of Privacy Act 1971* (Qld) s43; *Listening Devices Act 1991* (Tas) s5; *Surveillance Devices Act 1999* (Vic) s6.
2. J Bliss, "The Legal Ethics of Secret Client Recordings" (2020) 33 Geo J Leg Ethics 55 (see at 73–100).
3. Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015 (Vic) rr 9.2.4, 9.2.5.
4. See A Abramovsky, "Traitors in our Midst: Attorneys who Inform on their Clients" (1999) 2 U Pa J Const L 676.

ADOBE STOCK

ACTING IN LITIGATION

Skipping litigation basics can land a practitioner in hot water.

Over the past few years, the LPLC has seen a rise in claims resulting from practitioners acting in commercial litigation. In 2019-2020, commercial litigation was the second highest area of law for claims at 18 per cent, with property and conveyancing at 27 per cent.

The examination of three claim scenarios is useful to illustrate that getting the basics wrong in commercial litigation can lead to big ramifications for both client and practitioner.

Jurisdiction limit error

A barrister acted for a client in Magistrates' Court proceedings obtained for the client judgment in default of a defence. The default judgment was for $123,000, but the jurisdictional limit of the Magistrates' Court is $100,000, making the default judgment defective. The barrister erroneously believed that the jurisdictional limit was $200,000.

The error was compounded when the instructing solicitor advised the client to issue a creditor's statutory demand against the defendant to recover $123,000. The solicitor gave this advice even though the barrister had informed the solicitor, after realising their error, that the default judgment was probably defective because of the jurisdictional limit.

The defendant successfully applied for a rehearing and the default judgment was set aside. The winding up proceeding therefore failed. The client was ordered to pay the defendant's costs and looked to the barrister and solicitor to reclaim the costs.

Cooked books

The practitioner acted for the vendor of a small business to defend proceedings issued by the purchaser. The purchaser alleged that the vendor had falsely represented the business's profits through discussions and in a statement made pursuant to s52 of the *Estate Agents Act 1980* (Vic). The vendor vigorously denied the allegations.

The trial judge did not accept any of the evidence given by the vendor at trial. The trial judge accepted the purchaser's expert accounting evidence about discrepancies in the business's financial figures. The vendor's expert accountant had admitted in evidence they were not appropriately qualified to give expert evidence. The trial judge concluded that the vendor had "cooked the books" and entered judgment against the vendor. The purchaser was also successful in obtaining costs on an indemnity basis because the judgment exceeded settlement offers made by the purchaser during the litigation.

The vendor alleged the practitioner had acted negligently because the practitioner had not advised the vendor about the risks its defence would be unsuccessful, in particular that:

- there was a risk the trial judge would not accept the vendor's denials of oral representations alleged to have been made
- the trial judge may prefer the purchaser's expert evidence over that of the vendor's expert evidence
- the vendor may be ordered to pay the purchaser's costs on an indemnity basis if the vendor did not accept the purchaser's offers of compromise, and the vendor did not beat the offers at trial.

A hollow victory

A practitioner acted for a purchaser of a business in proceedings against the vendor. The purchaser and vendor were from the same church community. The vendor enticed the purchaser to buy the business by promising that the vendor would repay the purchase price if the purchaser later changed their mind. After two days in the business, the purchaser changed their mind but the vendor refused to return the money.

The purchaser wanted to seek justice against the vendor and was unwilling to accept any offers to settle the proceeding less than of the full amount paid for the business. The practitioner advised the purchaser to accept offers made by the vendor because even if the purchaser was successful, it might be a hollow victory because the vendor did not appear to have any assets.

The purchaser was successful at trial but was unsuccessful in recovering the money. The purchaser said that the practitioner should have advised them not to proceed with the claim because there was little prospect of recovering the money from the vendor and costs had been incurred in pursuing a fruitless recovery.

Although the practitioner had apparently provided this advice on numerous occasions, none of the advice was given in writing and the file notes recording the oral advice given were scant.

TIPS

- Check relevant legislation to ensure that a court or tribunal is the correct forum and has sufficient jurisdiction for the client's claim.
- Keep records of your advice and confirm any important oral advice in writing.
- Give your client a written merits advice which clearly identifies any weaknesses and areas of exposure. Update this advice as new information and documents come to light.
- Critically assess all settlement offers and advise your client about the merits of the offer and the consequences flowing from accepting or not accepting it.

Lessons

These are just some examples of when and where litigation can go wrong due to simple errors and failure to manage the legal issues, and the client looks to the practitioner to recover their loss. By ensuring the basics were covered some of these claims could have been avoided.

LPLC has a handy litigation checklist and a revised commercial litigation practice risk guide on its website to help prompt practitioners about matters to consider when acting for clients in litigation. ■

Thanh Bui is special counsel at MinterEllison. This column is provided by the **Legal Practitioners' Liability Committee**. For further information ph 9672 3800 or visit www.lplc.com.au.

ADOBESTOCK

CLADDING SOLUTION LIMITED

The cost of rectifying combustible cladding will vastly exceed the $600 million Cladding Safety Victoria has to work with, meaning most owners corporations will be out of pocket.

The Lacrosse fires of 2014 brought combustible cladding to light in Australia – an issue which had for so long gone undetected. Investigations have shown the Lacrosse building was the tip of the iceberg and the cladding issue was a systemic one.[1]

Since the establishment of a statewide cladding audit in November 2017, the Victorian Building Authority (VBA) has conducted inspections on more than 2500 buildings. Of these, more than 400 buildings have been categorised as high risk with an additional 72 further classified as extreme risk. The VBA is currently issuing orders to rectify the cladding.

An agency dedicated to the remediation of cladding issues, Cladding Safety Victoria (CSV), will have access to $600 million to fund rectification works, providing welcome relief to building owners. However, it is highly likely the costs of such works will exceed the works package, meaning that if CSV cannot fund all the rectification works required across the state, many buildings will be left without a government supported solution yet will be expected to rectify works as soon a possible.

Cladding Safety Victoria program

Due to the complexity of the cladding issues, with respect to the cladding rectification works, the VBA has been appointed Municipal Building Surveyor for those 400 plus buildings deemed high risk. This means instead of dealing with the City of Melbourne, owners corporations, builders and developers will be directly dealing with the VBA.

Currently, there are four essential criteria for a building to be eligible for CSV funding:

- it must be deemed high risk or greater by the statewide cladding audit
- it must be subject to a Building Notice or Building Order that notes the combustible external wall cladding
- it must be referred to the CSV by either the VBA or the City of Melbourne
- it must be prioritised for rectification by CSV.

To date, 487 buildings have been referred to the CSV, with the CSV reviewing approximately 60 buildings a month for priority allocation (at least until COVID-19 restrictions came into effect).

If a building satisfies the above criteria, the owners corporation in charge of the building will enter into a funding agreement with CSV. CSV will only fund works associated with cladding rectification and additional works will need to be financed by the building's owners.

Each funding agreement between CSV and an owners corporation will vary in terms of their conditions depending on the building. In general, funding will be agreed in the following stages: design, rectification works, or design and construct.

The design stage focuses on developing rectification solutions. Approved costs for such can include professional project management services, design solution and service costs, Building Appeals Board (BAB) application and hearing fees and building surveyor services.

The rectification stage focuses on the direct costs incurred that are inherent to the removal and replacement of combustible cladding from the building. Approved costs for such can include construction labour, material and disposal of waste material.

The scope of works for design and construct stage would entail design and rectification stages identified above.

CSV has clearly stated it will only fund those works associated with, and necessary to, cladding rectification. Any additional works will then need to be financed by the building's owners.

Owners corporations should note that the establishment of the CSV does not relieve them of their obligation for rectification of non-compliant combustible cladding. Should an owners corporation receive a building notice or building order under the *Building Act 1993*, they are required to comply with it. Owners corporations may start cladding rectification work pursuant to a Building Notice or Building Order, and retrospectively participate in the CSV program and receive funding provided they can demonstrate that:

- rectification works relate to combustible cladding and did not start before the establishment of the CSV
- rectification works meet the same requirements and standards of the CSV program.

Limitations of CSV funding

The costs of rectifying combustible cladding works within Victoria will vastly exceed the $600 million that CSV has been entitled to work with, meaning that most owners corporations will still be out of pocket when attending to cladding rectification works. Additionally, there is no guarantee that for those buildings that the CSV has agreed to fund, that they will fund all costs, meaning that even for those high risk buildings the owners corporations may still be required to foot part of the bill. The recovery of such costs may then only be available through insurance claims or actions against practitioners. ■

SNAPSHOT

- Apartment buildings must satisfy four key criteria in order to be eligible for CSV cladding rectification funding.
- CSV funding will only be provided for those works that are directly related to cladding removal and replacement.
- Legal costs incurred will not be reimbursed or funded by the CSV, other than those necessary for the BAB process.
- Given the substantial amount of cladding issues in Victoria, it is unlikely that CSV will be able to fund cladding rectification works for all affected apartment complexes.
- Owners corporations, and thereby the owners themselves, will still need to fund part, if not all, cladding rectification works for their buildings, and may need to seek to recover such costs from the liable parties.

Harriet Warlow-Shill is a partner and **Malcolm Liu** is a lawyer at FAL Lawyers.

1. https://www.abc.net.au/news/2019-02-28/lacrosse-apartment-owners-win-5.7-million-cladding-fire-damages/10857060.

WILL AUSTRALIA GET ITS OWN CLOUD ACT?

Amendments to the Telecommunications (Interception and Access) Act 1979 would provide the basis for cross-border access to electronic communications data.

While COVID-19 has pushed many matters to the backburner, pending before federal Parliament is the Telecommunications Legislation Amendment (International Production Orders) Bill 2020.

The goals of the Bill are to assist Australia's international crime cooperation between its allies. The Bill will give Australian law enforcement the power to request or order foreign telecommunication companies to produce communication data and, likewise, will give foreign law enforcement the power to request or order Australian telecommunication companies to produce communication data.

Proposed TIA Act amendments

Through amendments to the *Telecommunications (Interception and Access) Act 1979* (Cth) (TIA Act), the Bill would provide the legal basis for Australia to enter into bilateral and multilateral agreements for cross-border access to electronic communications data.[1]

The Bill's significant amendments to the TIA Act include the creation of:

- an International Production Order (IPO) scheme allowing Australian agencies (including, among others, the Australian Federal Police and authorised state and territory police forces) to demand access to communications data from telecommunications providers in foreign countries. The Bill proposes IPOs for the interception, stored communications and telecommunications data including Internet Protocol (IP) addresses
- mechanisms for Australian telecommunications companies to respond to incoming orders and requests from foreign countries with which Australia has a designated international agreement
- an Australian Designated Authority tasked to review IPOs for compliance and to act as an intermediary between Australia's law enforcement agencies and telecommunications providers.

The TIA Act and the CLOUD Act

Under the Bill, Australia, the UK and the US will likely enter into agreements to facilitate telecommunication providers in each country to produce communications data.

In 2018, the US enacted the *Clarifying Lawful Overseas Use of Data Act* (the CLOUD Act) which allows US federal law enforcement agencies to access data from US-based communications providers even if such data is stored on foreign servers. Additionally, the UK finalised a CLOUD Agreement with the US in 2019.

Australia's anti-encryption laws

Australian law enforcement already has expansive powers to surveil its residents' electronic communications. In late 2018, the federal government enacted the *Telecommunications and Other Legislation Amendment (Assistance and Access) Act 2018* (Cth) (TOLA Act) to "introduce measures to better deal with the challenges posed by ubiquitous encryption".[2]

Under the TOLA Act, select Australian government agencies, including but not limited to the director-general of the Australian Security and Intelligence Organisation (ASIO), can compel designated communications providers (DCPs), via the issuing of a notice, to provide access to their encrypted communications, or Technical Assistance Notices (TANs) and Technical Capability Notices (TCNs).

If issued, failure to comply with TANs or TCNs may result in civil penalties. An additional mechanism under the TOLA Act is non-compulsive Technical Assistance Requests (TARs).

It is an offence under the TOLA Act to disclose information about a request or notice.

Before a recent Parliamentary Joint Committee on Intelligence and Security, NSW Police assistant commissioner Michael Fitzgerald said NSW Police had issued 13 TARs to DCPs since the enactment of the TOLA Act. AFP and NSW Police said neither has sought a TAN or TCN. Mr Fitzgerald said that their "experience of engaging with some overseas designated communication providers has been less successful. Those providers viewed their own domestic laws as legislative impediments to their ability to assist the NSW Police" (speaking directly to US laws).

Privacy issues

In the US, generally, if evidence is obtained by government officials in violation of US constitutional rights, such as through "unreasonable search and seizure", the evidence must be excluded as "fruit of the poisonous tree".[3]

However, Australia's constitutional protections are far less stringent than the US or the UK, as most recently demonstrated in the High Court case involving journalist Annika Smethurst and the AFP.

Even in democratic countries secret decisions by government bodies can result in abuses and malfeasance. Any measures adopted by the Australian government should be transparent and balance the interests of combating international crime with privacy. ■

Paul Cenoz is an Australian solicitor and US attorney focused on technology, media, copyright, privacy and data. He is co-founder of the North American Australian Lawyers Alliance.

1. Explanatory Memorandum, (n1) [7].
2. Explanatory Memorandum, Telecommunications and Other Legislation Amendment (Assistance and Access) Bill 2018 (Cth)
3. See *Wong Sun v United States*, 371 US 471 (1963).

ADOBESTOCK

DELIUM – EDISCOVERY

Delium is an evidence management system designed to facilitate the litigation cycle digitally for both eDiscovery and eTrials. This column focuses primarily on the eDiscovery solution.

PETER MORAN

Which practitioners would find this technology useful?

Litigation solicitors, barristers, judges and their associates, paralegals, law clerks.

How does it work?

Delium allows a user (such as the law firm) to create a single library of evidence containing all documents to be reviewed for the discovery process. As documents are uploaded into the system, which can be done as a bulk upload or in discrete groups over time, all content including metadata becomes text searchable regardless of the nature of the file (ie, .doc, .pdf etc).

Once documents are uploaded to the case library, they can be arranged in any number of ways – bundled and tagged within subsets; annotated, highlighted or redacted; allocated as being subject to legal professional privilege. As documents are organised, they will be automatically hyperlinked to one another so the reader will be able to click through. The automated nature of the hyperlinking is a time-saver.

Another feature of Delium is its ability to identify and sort duplicates automatically. Again, a process that would take time as a manual process is completed quickly and with more reliability than manual identification processes.

A particularly sophisticated part of Delium is its distinction between documents being accessed collectively and individually. While certain information and tags can be attached to documents as something that anyone reviewing the document can see, individuals and teams can annotate and highlight documents which only they can see. This functionality can be particularly useful, for example, for a barrister. In a trial, they can see the document with their annotations but other parties or the judge can only see the "clean" version.

The functionality of Delium being not just an eDiscovery but also an eTrial solution is a key part of what makes it particularly useful for practitioners. Time spent analysing, annotating and coding documents at discovery phase is then able to be exploited at trial phase.

Benefits

The search functionality is sophisticated and one of the core benefits of Delium. Users access an easy to use Google-type search tool which allows searches for single words or phrases and with some boolean links. The search will look to not just text content but also associated metadata: for example the sender or the date of sending of an email. Other "Google" type search features exist, for example – the ability to review searches for the 100 most frequently used words throughout the documents in the evidence library or within a particular subset.

Hyperlinks are generally created automatically based on document description and using the alpha numeric coding for each document. However, free text hyperlinking can be also configured eg, linking to all documents which use the text "Sydney tunnel collapse".

Delium has a 'Key Documents' module that enables users to subscribe to certain key documents and thereby receive updates of any changes made to those documents within the past 24 hours eg, privilege being added by another user etc.

Internal private comments and questions regarding documents made by users can be grouped as a single bundle of issues to deal with for whomever is managing/reviewing a case, which creates an efficient way to manage document review of a legal team.

Delium has a chronology feature that creates automated chronologies by collecting sequences of events.

It has sophisticated alias management where it can be taught name permutations and thereby identify and link documents with various permutations and aliases.

Clients and witnesses can be provided with access to the library but practitioners are able to control what can be seen and what levels of modification can be made by such parties.

SNAPSHOT

What is Delium?
Evidence management software for eDiscovery and eTrial processes

What type of technology?
Web Portal

Vendor
In Australia, Delium, the software product, is sold by Techlegalia Pty Ltd, trading as elaw.

Country of origin
Australia

Similar tech products
Goldfynch, Relativity, TIMG, Nuix, Law In Order – eDiscovery
Legal practice management software – Leap, Practice Evolve, ActionStep etc

Non-tech alternatives
Law In Order
Paralegal, secretary, junior lawyer

More information
www.delium.com

Costs

Price on request – cost may vary depending on scale of project and whether used in conjunction with other offerings.

Risks

Cyber risk, as with any cloud offering, is present with confidential and sensitive data moving beyond a firm's internal systems. The usual inquiries should be made regarding hosting set-up, cybersecurity features, privacy policies and data remaining with Australian servers.

Downsides

A level of comfort with using technology is required of all users. Likewise, the efficiency gained at the eTrial stage would be most heightened when all parties, including the court, agreed to use the system. Given the sophistication of the system, training would be required for all users. ■

Peter Moran is managing principal at Peer Legal and founder of the Steward Guide, an online technology guide for lawyers (www.stewardguide.com.au).

PREVENTING FUTURE HOMELESSNESS

Multi-disciplinary legal services are keeping Victorians safely housed through the pandemic.

Louise (not her real name) is a family violence victim-survivor with diagnosed post-traumatic stress disorder. As a single mother of three, including a daughter with an autoimmune condition, she had fallen behind in her rent after losing her casual job of seven years due to COVID-19. This was before Victoria's residential tenancies eviction moratorium, so Louise's private rental landlord successfully obtained a VCAT possession order against her.

When Louise first spoke with pro bono lawyers through Justice Connect, she was on the brink of homelessness and feared for her children's wellbeing during COVID-19. Integrated pro bono legal representation and social work support successfully stopped Louise's eviction. This wrap-around assistance also secured a suitable, long-term public housing property for Louise, where her daughter has been able to prioritise her health throughout COVID-19.

Louise's story shows the impact of multi-disciplinary legal services for those most at risk during the pandemic.

In 2019-20, pro bono lawyers delivered 23,373 hours of legal assistance for people experiencing or at risk of homelessness through Justice Connect. This contribution has addressed the increased legal and life pressures related to COVID-19 across Victoria, including rapidly responding to the needs of a new cohort of "future homeless" and financially insecure. Pro bono lawyers have also continued to resolve the complex issues faced by the most vulnerable, with a Justice Connect client noting: "They really helped me in my time of need – without them I would have been homeless in COVID . . . they gave me hope".

Drawing on casework evidence from frontline pro bono legal services, Justice Connect has collaboratively advocated for fairer responses to housing insecurity during COVID-19. For Victorians like Louise and her children, who have been able to stay safely housed, Justice Connect will keep advocating to ensure there are sufficient rental and financial protections in the recovery phase, so they do not slip through the justice system into homelessness.

Pro bono will continue to play a key role in preventing future homelessness, as well as creating capacity to scale reach in response to growing demand. As one pro bono lawyer recently shared with Justice Connect: "For the sacrifice of a small amount of time, our assistance goes a long way to improving the lives of very vulnerable people". ■

Cameron Lavery is manager and principal lawyer and **Breigh Smith** is a senior secondee lawyer at Justice Connect's Homeless Law service.

LOOKING TO HELP?

To find pro bono opportunities for your firm visit www.justiceconnect.org.au/work-with-us/, which also manages the LIV's pro bono Legal Assistance Service.

For solicitors: talk to your pro bono coordinator or the person responsible for pro bono work at your firm or visit www.fclc.org.au/cb_pages/careers_and_getting_involved.php.

For barristers: visit www.vicbar.com.au/social-justice/pro-bono.

TRACK YOUR RETIREMENT GOALS

Your annual super statement helps review past performance and plan future actions to achieve your goals.

ANDREW PROEBSTL

At a time of heightened personal and economic uncertainty due to the COVID-19 pandemic, superannuation fund members are encouraged to scrutinise their annual super statement.

Superannuation, which is now the second highest form of savings for Australians (exceeded only by housing), remains the bedrock of saving for retirement for most Australians.

Your annual super fund statement contains a wealth of information – not only in relation to the performance of your account over the preceding 12 months – but also in terms of the action you can take to potentially improve your account balance into the future.

Compare your investment balance

Compare your investment balance at the end of 2019/20 to your investment balance at the end of the preceding financial year. This will show you how much your investments have changed over the year.

Due to COVID-19 and impacts to the investment markets worldwide, investment returns were lower in 2019/20 and as a result any increase in 2019/20 of your super balance is more likely to be lower than that of previous years. By way of example, according to SuperRatings (an independent super research and rating advisory business) the median return for a balanced investment option for the year ended 30 June 2020 was -0.8 per cent.[1]

To help determine whether your retirement income target will set you up for the lifestyle you envisage for yourself and your loved ones when you finish working, it is helpful to compare your retirement income target to the Association of Superannuation Funds of Australia (ASFA) Retirement Standard. The standard benchmarks the annual budget needed by Australians to fund either a "comfortable" or "modest" standard of living in the post-work years of those aged around 65 and those aged around 85.

The latest standard, issued for the June quarter 2020, states that in retirement, a single person aged around 65 will need $27,902 per annum to lead a "modest" lifestyle and $43,687 per annum to lead a "comfortable" lifestyle. Couples aged around 65 years will need $40,380 and $61,909 per annum respectively. (These figures assume the retiree/s own their home outright and are relatively healthy).[2]

Check where you're invested

Your annual super statement must show your investment choice. It's important to periodically assess the level of risk and return you're comfortable with and ensure your investment choice is aligned.

As a result of the economic impact of the COVID-19 pandemic, super funds have, understandably, received an increase in inquiries from members about the impacts to their super, including whether they should change their current investment option(s).

History tells us that economic downturns are temporary, as markets have demonstrated the ability to recover losses after a crisis. For example, despite sharemarkets falling more than 40 per cent during the global financial crisis of 2008, most balanced funds recovered the majority of losses in the following 12 months.

That said, there may be an opportunity to change your investment options to better suit your current and future needs and the best way to start this conversation is to call your super fund to discuss the options available.

Other things to check

- How long has it been since you have checked your type and levels of insurance? Does it meet your current needs?
- Has your employer contributed the full amount required to your super fund?
- Are you happy with the administration and investment management fees you have been charged?
- Have you provided your TFN? If not, you will be charged extra tax. Are your contact details up to date? If not, your fund may be unable to contact you.
- Have you received more than one statement? More than one statement means more than one set of fees. Consider whether consolidating accounts will benefit you – but make sure you consider insurance coverage before consolidating super accounts.
- Do you have a beneficiary? If you were to die, where would you want your super to be paid? ■

SNAPSHOT

- Superannuation is the second highest form of savings for Australians, exceeded only by housing.
- Your annual super statement presents the perfect opportunity to review and, if needs be, reset your saving-for-retirement goals.
- To assist with this planning, ASFA Retirement Standard can help you benchmark your savings goals against the lifestyle you would like to enjoy when you finish working.

Andrew Proebstl is chief executive of legalsuper, Australia's industry super fund for the legal community. He can be contacted on ph 03 9602 0101 or via aproebstl@legalsuper.com.au. This information is of a general nature only and does not take into account your objectives, financial situation or needs. You should therefore consider the appropriateness of the information and obtain and read the relevant legalsuper Product Disclosure Statement before making any decision.

1. https://www.superratings.com.au.
2. https://www.superannuation.asn.au/resources/retirement-standard.

INDIGENOUS INITIATIVES HIT HARD

Reconciliation budgets have been cut in the wake of COVID-19 as commitment stalls.

Lawyer, prominent legal academic and Tangekanald-Meinganck woman Irene Watson once told the story of Gurukman, the frog who drank all the water on the land, draining lakes, rivers and the ocean. The land became dry and barren and the plants shrivelled to a crisp. The other animals were left parched, struggling to breath under the burning Australian sun.

Ms Watson said that Indigenous peoples have long been subject to the greed of the frog, which spread the illness of colonisation wherever it went.

In 1992, riding high on the successes of the High Court *Mabo* decision, then Prime Minister Paul Keating promised an Australia that would recognise its colonial past and redistribute stolen resources, ultimately forging a pathway towards reconciliation. Many organisations responded, integrating reconciliation action plans that made commitments to Indigenous-led initiatives in education, employment and health, which were reflected in their policies.

I first learnt about reconciliation in 2014. I was a young migrant-Australian student, eager to learn about the country my parents had chosen to make their new home. I never imagined that six years on we would find ourselves in the midst of a pandemic and an ever-weakening economy where reconciliation budgets have been cut and events paused.

Today, the fight to keep the world's population indoors while maintaining the economy is a paradox that necessitates an increased police presence. In the US this exacerbated racial violence, culminating in the death of George Floyd and reigniting the Black Lives Matter (BLM) movement. In Melbourne, the deployment of 500 police to public towers housing a predominantly migrant population generated a tense atmosphere, with the possibility of conflict. This occurred within a month of Melbourne's BLM rally where thousands protested against police violence and Indigenous deaths in custody.

Among the stories fuelling the protests were the injustices against Indigenous women in custody. Yorta-Yorta woman Tanya Day was arrested after falling asleep on a train. She was held in custody where she suffered traumatic head injuries and died the following day. Protesters also held up signs of Yamatji woman Ms Dhu, who died in custody in Western Australia following denial of medical treatment.

Since Paul Keating's 1992 speech, the number of Indigenous women in prison has risen by 148 per cent.[1] Eighty per cent of these women are mothers, resulting in yet another cohort of children who will grow up without their mothers.

Indigenous women remain central to their communities, many of them calling for stronger protections for Indigenous peoples in light of the pandemic. Gudanji-Arrente woman and CEO of National Aboriginal Community Controlled Health Organisation Pat Turner has implored non-Indigenous Australians to keep out of remote communities to stay the spread of the virus. She cited global statistics indicating that disadvantaged communities suffering neglect, overcrowding, unsafe employment and health facilities are being hit the hardest, with disproportionate numbers of people falling ill and dying as a result of the virus.

In a world where it feels like only the Gurukman frog remains, can Australia still dream of reconciliation – of two sides uniting, when one side can't breathe?

Three decades on from Paul Keating's speech there is still much to learn. The reduction in reconciliation budgets across organisations[2] begs the question – why are Indigenous initiatives not considered a priority? Perhaps a clue hides within the word itself. "Re-conciliation" implies the re-unification of two once unified groups and assumes that all prior disagreements have been resolved.

In the COVID-19 era, violence continues, with a further two Indigenous deaths in custody in July. Perhaps now, more than ever, Australia needs to engage in a conversation about reconciliation; one that encourages more accountability, self-reflection and critical thinking. As Irene Watson alluded to in her story, "Reconciliation will not occur until stolen things are returned and the unequal power of the frog is dismantled". ■

Coco Watanabe is a member of the Diversity and Inclusion Committee at Victorian Women Lawyers.

1. https://www.aljazeera.com/indepth/features/crisis-aboriginal-women-prison-australia-191105183142685.html.
2. https://www.reconciliation.org.au/budget-ignores-closing-the-gap-despite-overhaul/ https://www.sbs.com.au/nitv/article/2020/03/20/garma-becomes-latest-major-events-cancelled-postponed-due-coronavirus https://www.griffithreview.com/articles/2020-year-of-reckoning/.

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NEW ADMISSIONS

The following people were admitted to practice as Australian lawyers and as officers of the Supreme Court of Victoria on **11 September 2020.** The *LIJ* welcomes them to the legal profession.

ABASSZADE, Sean
ANTONELLIS, Marina
ARNAUT, Nikolija
ATKINSON, Caroline
AWAD, Jessica
BALINT, Ines
BARNES, Breanna
BATSIS, Alexander
BAYIR, Ozlem
BEIRNE, Kathleen
BETTER, Tamara
BILSON, Remi
BORDELIEVA, Lilia
BOWSKILL, Kestra
BRENCHLEY, Holly
BRUCE, Stephen
BURNETT, Jorda
CADDAYE, Benjamin
CAMERON, Isabelle
CARROLL, Thomas
CHARCHAR, Rita
CHEE, Jonathan
CHEN, Hui
CLARKE, Sebastian
COHEN, Simonne
COLAUTTI, Nicholas
CRAFT, Ryan
CREMONA, Ashlee
DALY, Fiona
DENIZ, Jeylan
DEWANYANG, Malaz
DOGAN, Rukiye
ELIADES, Andrew
FARNELL, Nicole
FINK, Hannah
FLORY, Nyrobi
FONG, Patrick
FRYER, Calum
FULTON, Nicholas
GEORGE, Rose
GHITA, Eunice
GIALANZE, Melissa
GLEESON, Jack
GREENSILL, Joel
GRONOW, Sharman
HALL, Benjamin
HANSEN, Tabea
HARRISON, Amy
HARVEY, Elizabeth
HERETAKIS, Theodore
HICKLETON, Marcus
HOLT, Nicholas
HUGHES, Anastasia
ISLAY, Sibel
JAMES, Mark
JAMIESON, Emma
JARVIS, Jodie
JOHN, Jess
JONES, Katelyn
KANDI, Natasha
KARUNAJEEWA, Indika
KEANEY, Ryan
KERSEY, Alexandra
KHALIQY, Tooba
KHOO, Jarryd
KIRSTEUER, Benjamin
KLEPPSCH, William
KNELL, Stephanie
KNEZEVIC-KOVAC, Erika
KOLWANT SINGH, Premjit
KUMAR, Vinu
KWONG, Naomi
LAI, Zech Tze Yu
LAVERY, Claudia
LEE, King Yu
LEE, Steven
LIBERATORE, Christina
LOIZOU, Louis
LOK, Sum Ue Mavis
LONG, Ramona
LUONG, Georgeana
McFARLANE, Laura
McNAMARA, Sophia
MELLETT, Jessica
MENXHIQI, Adelina
MIFSUD, Merita
MILLER, Stuart
MONLEY, Cindy
MORISON, Alexander
MORISON, Emily
MOURNELLIS, Amy
MUIRHEAD, James
NASSOUR, Michelle
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NATHAR, Jonathan
NESTADT, Janey
NGUYEN, Duy
OCCLESHAW, James
O'HALLORAN, John
ONG, Tricia
ORWIN, Keith
PALMER, Elyane
PANG, Chern Yee
PANTALLERESCO, Raymond
PARR, Daniel
PECHLIVANIS, Victoria
PEPPERELL, Tori
PERKOVIC, Ines
PHAM, Tam
RICHARDSON, Siane
ROBERTSON, Ruby
ROCHFORD, Thomas
ROLLER, Megan
RONCARI, Nathan
RONO, Christian
ROSELLA, Filomena
RUOTOLO, Gabriella
RUSHBY, Jes'Se
RUSSELL, Matthew
SABERI, Sahema
SAC, Sara
SAHOTA, Ajay
SAKAR, Ayse
SALEEM, Shaayaan
SEVASTOPOULOS, Despina
SHAKUR, Natali
SHERIDAN, Karen
SIEBEN, Benjamin
SIMMONDS, Sophie
SIRIANNI, Luisa
STANLEY, Eliza
STANLEY, Shauna
STOJNIC, Tomislav
SUNG, Jennifer
TEHAN, Madeleine
TEO, Shara
THOMAS, Darren
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TSANG, Tyrone
TUPPINI, Gabriel
VENVILLE, Nicholas
WANG, Weimin Dennis
WEERAKOON, Weerakoon
WESLEY, Maria
WHITE, Madeline
WILKINSON, Artemis
WILLIAMS, Samuel
WRIGHT, Kristen
WYRE, Madeline
YONG CHEN YIN, Joanna
ZHANG, An Qi

SUBMISSIONS

Call for clarification on voluntary assisted dying discussion and Criminal Code

The LIV is concerned that health practitioners could face criminal prosecution or unwarranted disciplinary action for discussing voluntary assisted dying (VAD) via phone or electronically.

The LIV has written to the Australian Health Practitioner Regulation Authority and the Commonwealth Director of Public Prosecutions seeking clarification on whether Victorian health practitioners who discuss VAD under the *Voluntary Assisted Dying Act 2017* (Vic) with patients via a carriage service such as over the phone, via email or through the use of telehealth, may be in breach of the Commonwealth Criminal Code.

The Department of Health and Human Services Victoria currently advises this could be a breach of ss474.29A and 474.29B of the *Criminal Code Act 1995* (Cth) which prohibit using a carriage service "for suicide related material".

In response, the LIV has referred to legal documents which legally distinguish a voluntary assisted death from suicide and conclude that telecommunications about VAD via a carriage service do not contravene the Criminal Code.

The LIV submits that clarification is urgently needed, particularly where COVID-19 has imposed greater restrictions to accessing VAD advice for seriously ill patients in rural and regional areas of Victoria. ■

To read the full submission, go to the LIV website – Staying informed/Submissions.

NOTICE OF LIV AGM

In response to government restrictions and the potential health risks arising from COVID-19, members will not be able to attend the 2020 Annual General Meeting in person.

The 2020 Annual General Meeting of the Law Institute of Victoria Limited [LIV] [ABN 32075475731] will be held on Wednesday, 18 November 2020, at 6.00pm live via webcast. Arrangements to attend the webcast will be published in the Notice of Annual General Meeting and on the LIV website [https://www.liv.asn.au] on Monday 26 October 2020.

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To find out more about LIV governance and representation or to contact LIV Council members see www.liv.asn.au or phone the secretary to the Council on 9607 9513 or email secretariat@liv.asn.au.

ABOUT THE LIV: The LIV represents about 19,000 lawyers and people working in the law in Victoria, interstate and overseas. Our members offer their commitment, diversity and expertise to help shape the laws of Victoria and to ensure a strong legal profession for the future. The LIV promotes justice for all advancing social and public welfare in the operation of the courts and legal system as well as advancing education and public confidence both in the legal profession and in the processes by which the law is made and administered. As the peak body for the Victorian legal profession, the LIV initiates programs to support the needs of a changing profession, promotes an active law reform advocacy agenda, responds publicly to issues affecting the profession and broader community, delivers continuing legal education programs, and continues to provide expert services and resources to support our members.

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VALUATIONS

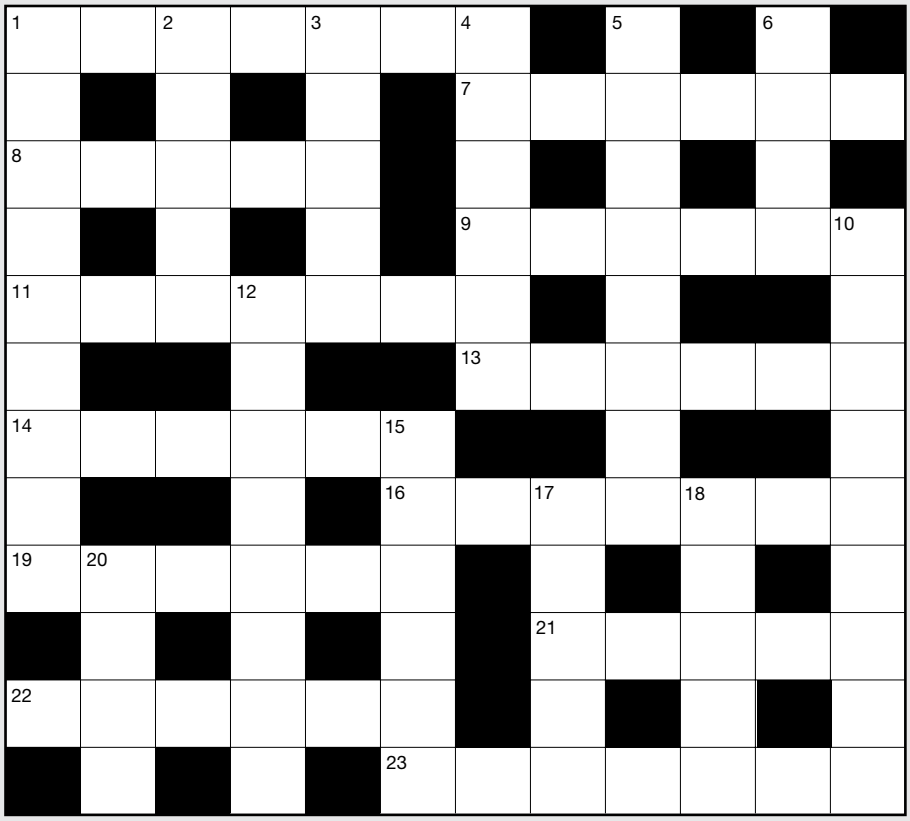
WILLS & ESTATES

COLOSIMO, ANTHONY GERARD late of 16 Lehmann Walk, Epping, in the State of Victoria, Tax Consultant, deceased, who died on 5 May 2020. Would anyone holding or knowing of the whereabouts of any Will of the deceased please contact Collards of 312 Station Street, Lalor Vic 3075 Phone: 03 9466 1544 Fax: 03 9464 0589 email: maria@collards.com.au.

PETER GEORGE BUTTIGIEG (also known as **PETER FREDRICK BUTTIGIEG**) late of 2 Santed Court, Rowville, Victoria. Deceased, who died on 27 August 2020. Would anyone holding or knowing the whereabouts of any of the deceased please contact Mills Oakley of Level 6, 530 Collins Street, Melbourne VIC 3000. Phone: 0438 157 097. Email: tpalmer@millsoakley.com.au.

Would any solicitor, firm or person holding or knowing the whereabouts of a will, or other testamentary document of **Lloyd Thomas Meredith** late of 6 Manor Court Lalor Victoria 3075 who died on 30 July 2020 please contact Andrew Mumford of Laurier Lawyers Email: andrew.m@laurierlawyers.com.au. Phone: 03 9017 4949.

LETTERS OF THE LAW NO. 231



Solution next edition
Compiled by Stroz

ACROSS

1 The patella can keep arrange (7)
7 Capital offences left placentas in Government agency (6)
8 It'd be an accounting entry (5)
9 Went after detail in different order (6)
11 Brigade found to reduce in scope (7)
13 Remained without me and fell in large quantities (6)
14 Tropical American shrub left by newspaperwoman leaving Norsemen (6)
16 Carl gets icy with a synthetic fabric (7)
19 Meal of the day from Inn red place (6)
21 Lawful gelatin without an assistant (3,2)
22 To shake by collision projectiles lacking price (6)
23 Steer to a knot of radiating loops of ribbon (7)

DOWN

1 Kidd took a pep with an abducted (9)
2 A piece of live coal from Nuremberg rung off (5)
3 Edict then mentioned (5)
4 Used to pert then mess around (6)
5 Tiffany and I get chemical attraction (8)
6 Each to feel physical pain (4)
10 Caddie tea; a person to whom a thing is consecrated (9)
12 From my input I turn exemption from punishment (8)
15 Law officer to redraw (6)
17 Stands out from fruitless without fits (5)
18 Source of illumination is short (5)
20 Home appliance atomic number 26 (4)

Solution to Letters of the Law No.230

S	U	S	P	E	C	T	■	R	■	T	■
C	■	L	■	D	■	E	Y	E	L	I	D
A	G	A	T	E	■	S	■	P	■	D	■
R	■	N	■	M	■	T	U	R	N	E	R
E	N	G	R	A	V	E	■	I	■	■	E
C	■	■	A	■	■	R	E	S	O	L	D
R	A	C	I	N	G	■	■	A	■	■	E
O	■	■	N	■	O	I	L	L	A	M	P
W	A	R	D	E	R	■	E	■	B	■	O
■	H	■	R	■	I	■	A	M	A	S	S
R	E	P	O	S	E	■	S	■	T	■	I
■	M	■	P	■	R	E	E	L	E	C	T

Maggie McGowan (right) with co-founder of Magpie Goose Laura Egan and artist Margaret Duncan

LAWYERS TURNED ENTREPRENEURS

THREE FORMER LAWYERS REVEAL WHY THEY LEFT THE LAW TO START THEIR OWN BUSINESSES AND HOW THEIR LEGAL EXPERIENCE HELPED THEIR SUCCESS.

Maggie McGowan

What do you do now?

I am co-founder of Magpie Goose – a fashion social enterprise that showcases unique stories from Aboriginal people across Australia. We partner with Aboriginal artists to create clothing collections that celebrate Aboriginal culture, people and stories. Aboriginal artists create textile designs which are hand screen printed on natural fibres and made up into clothes at our ethically accredited partners in Sydney.

I oversee the day to day activities of the business, which includes textile design (workshops in remote communities and partnerships with remote Aboriginal art centres), business and legal admin (licensing designs from artists), clothing production (ordering fabric, overseeing screen printing, managing production), sales (online, popups), website maintenance and marketing.

Where and when did you commence your legal career?

I studied arts/law at the University of Melbourne, 2007-2013 (with an exchange year in California and a few study trips abroad).

How did you know when it was time to move on?

My early law career took me from Melbourne – where I completed my studies and worked for a stint in a Victorian government legal department – to the North Australian Aboriginal Justice Agency (NAAJA) in Darwin. In this role I was travelling out to remote communities across the Top End, providing legal advice and assistance in the areas of tenancy/public housing, welfare rights (Centrelink) and consumer law. Through this work I was exposed to the incredible textile design work that was taking place at remote Aboriginal art centres. I was also exposed to the lack of jobs for Aboriginal people living remotely – but could see the incredible talent that existed.

After a hard week at work my partner (and Magpie Goose co-founder) Laura Egan asked what I would be doing if I wasn't a lawyer – and I decided it would be something with the incredible hand screen printed textiles that were created in remote communities; and something that could help create new income generating opportunities for people living remotely.

It became clear that I could create greater impact and opportunities by starting a business than by continuing to be a lawyer. We worked on the business part time while I continued to work as a lawyer. After six months, we did a big pre-order campaign on Kickstarter and had such a good response that I felt confident to leave my job as a lawyer and commit to the life of a social entrepreneur.

How has your legal experience equipped you for life after law?

I learned so many valuable skills through my law studies plus three to four years practising as a lawyer that I continue apply to my work today. Being able to read a lot of information and distil the key points is a useful skill. Contracts, licensing and negotiation is a major part of my work with Magpie Goose. Through my work at NAAJA I undertook cultural competency courses, studied Yolgnu Matha (language of East Arnhem) through Charles Darwin University, and learned how to communicate complicated legal concepts in plain English. All this experience has been invaluable in working closely with Aboriginal artists who often don't speak English as a first language (but will have competency in many Aboriginal languages).

The work we do – licensing designs to be screen printed and made into clothing and sharing cultural stories through fashion – is often a new concept to Aboriginal artists/remote art centres, so it's very important to have the right communication, interpersonal and legal skills to make sure we're all on the same page.

How has your definition of success changed throughout your career?

Magpie Goose evolved out of Laura and my shared commitment to work for economic and social justice in remote Australia. I have always wanted to do meaningful work that is impactful; this was true throughout my short legal career. Magpie Goose is the vehicle I am currently using to work to address the economic and social injustices faced by Aboriginal people in Australia.

Success in my legal work was probably more individual based – helping people with unique legal problems while also trying to address broader systemic issues where possible.

I view success in my current work as constructive and honest working relationships with our Aboriginal partners and business collaborators; generating income for our artist partners; supporting local manufacturing; and helping to create the best version of Australia – an Australia that recognises that we are all on Aboriginal land, that the experiences of invasion and colonisation have been diverse and we haven't heard nearly enough of these stories; and that we can all benefit from a deeper understanding of our history and a connection with Aboriginal culture.

Sarah Davidson

What do you do now?

I call myself a lawyer turned funtrepreneur – it gets harder to describe what I do as each year passes because I've ended up doing a bit of everything which is probably what I enjoy most about the entrepreneurial career path. My departure from law came with the unexpected success of the side hustle turned global matcha green tea company, Matcha Maiden, that my husband and I started in pursuit of our own need for good quality matcha powder after discovering it overseas.

A year later, we expanded into a physical plant-based eatery, Matcha Mylkbar, with two brothers (one of whom also started out in law) that again took us by surprise drawing global attention and becoming actor Chris Hemsworth's favourite café in Australia. After a few years on the matcha mission, my fascination with life paths and the complex relationship we all have to success and fulfilment led me to start the Seize the Yay podcast, along with a range of merchandise and, as of this month, a Seize the Yay book. That tumble into the world of podcasting has also led me into audio production, and I produce other podcasts now as well as my own. I'm also a speaker, host and Channel 7 presenter.

Where and when did you start your legal career?

I graduated with a law/arts degree in 2012 from Monash University and started my career at King & Wood Mallesons. I rotated through tax and M&A and then was lucky enough to complete my third rotation at our global headquarters in Hong Kong before returning to settle in the M&A team where I spent another year or so.

"It's ok to want more than good – that great exists and you can go out to find that."

How did you know when it was time to move on?

Many people who walk away from corporate roles are pushed by unhappiness or similar feelings that another career path might suit them better, but I honestly enjoyed my time as a lawyer and couldn't have chosen a better launchpad or learning environment for everything that has come next. I was so grateful to have a job at all having been at university during the GFC and thrived on the learning curve of my first few years in the workforce. What scares me the most now (and helped form my "seize the yay" philosophy) is that I could have quite happily continued that way accepting things being "good" for a lifetime before ever realising it's okay to want more than good – that great exists and you can go out to find that.

Now I'm so passionate about encouraging people not to walk away from stable, promising careers but at least to turn their minds to whether they're where they want to be. I only discovered that law wasn't fulfilling me completely by accident, when fatigue led me to give up coffee and discover matcha powder, which then led to a hobby that became more successful than we ever could have dreamed. It was only by contrast that I saw how the creative, fast-paced nature of business invigorated me and that my creative side was far more dominant than my academic side (and had been my whole life) but was being stifled by law. I might otherwise never have known it was time to move on and, even when the business was big enough to jump, I still hesitated and deferred to my risk-averse certainty-loving legal brain putting it off as long as I possibly could. But, ultimately, it was when it became physically impossible to do both that I realised law would always be there for me but I had a once-in-a-lifetime opportunity to give Matcha Maiden a chance without any other real competitors in the market – so that's when I resigned and I haven't looked back.

How has your legal experience equipped you for a life after law?

Immeasurably. I believe that nothing you do is ever a waste even if you dislike every minute of it (and especially if you don't). Every experience is teaching you something as long as you're willing to learn (and that includes learning that it's not something you want to do).

Law taught me so many things that still serve me every day – time management, critical thinking, organising concepts logically, reading contracts, negotiation, networking. No matter what career you end up in, a law degree and time as a lawyer will give you skills that can transfer to any scenario. I never used to know what people meant about law teaching you "critical thinking" until I saw the way people who don't think in an organised fashion write emails or organise their ideas. Even if you can't see it right now, law sets you up so comprehensively for anything you do next.

How has your definition of success changed throughout your career?

I don't really measure success anymore because I think it's become such a loaded word. I've never been driven heavily by financial metrics, but there's definitely an element of that in the concept of "success" as well as the sense of progress and ladder-climbing – promotions, titles, pay rises, things that show you're moving up. The problem was I was moving up a ladder I really didn't care much for. That's where I think success can distract us. I've come to realise direction is far more important than speed and that success is probably not what we all want so much as fulfilment. They can be the same thing but often they aren't. So for me, what I measure my life by is if I'm feeling fulfilled which is a combination of physical and emotional health and energy, a sense of financial stability (even if not quite the same as a regular wage), social connection, feeling intellectually challenged and seeing that I'm further along than "yesterday me".

Zara Lim

What do you do now?

I am the owner of two creative businesses. Edward Kwan specialises in custom hand painted bow ties and ties, mainly for wedding clients. When COVID-19 hit, I had been running Edward Kwan full-time for five months and had to pivot to make face masks. In July, I started a second "COVID-proof" business – Gracie Kwan Candy Boxes. Little did I know that in the same week I launched Gracie Kwan, face masks would be made mandatory in Melbourne. All of a sudden, I had two businesses that were going crazy, running them on my own in the middle of Stage 4 lockdown. It was a really exhausting, stressful and actually horrible experience, but also one of the best things to happen. Seven weeks later though, I was completely burnt out and had to stop selling the face masks. 2020 has been an absolute rollercoaster but I'm really proud of myself for how I have adapted and survived.

Where and when did you commence your legal career?

I did my PLT in-house at Macquarie Bank in 2014. I then worked as an intellectual property lawyer at K&L Gates, before doing a stint as associate to Associate Justice Efthim at the Supreme Court of Victoria, before spending a year in commercial litigation and insolvency at a boutique firm, Aptum. I also volunteered over a 10-year period at Southport Community Legal Service working on criminal law matters, so it's safe to say that I gave law a good crack.

"It just felt like the right thing to do, and the only thing I wanted to do."

How did you know when it was time to move on?

I ran Edward Kwan as a side business for six years, but it wasn't the case of "Edward Kwan took off so I gave up my law career". It was the opposite. I was so exhausted from my law job that I had stopped trying with Edward Kwan. Then in August 2019, I experienced a traumatic life event and suddenly I no longer had the energy to pretend I was passionate about being a lawyer. So I resigned and went all in with my true passion, Edward Kwan, with no proper business plan or budget. It just felt like the right thing to do, and the only thing I wanted to do.

How has your legal experience equipped you for a life after law?

My knowledge of intellectual property law helps me tremendously in relation to trade marks and my design work, and my experience in litigation and insolvency helps me in business. The way you are trained as a junior lawyer to constantly update the senior associate on where you are up to with tasks also helped me when my mask sales went crazy, as I naturally started updating my customers daily via Instagram as to how I was tracking with orders, and received positive feedback on that. Then of course, the people you meet and the networks you create along the way are invaluable – many have now become my customers.

How has your definition of success changed throughout your career?

When I was a lawyer, I was very driven by achieving and succeeding in and of itself, but not necessarily because I was passionate about what I was striving for. Now success to me means being able to make a living out of doing what I love and am passionate about, and being able to be my 100 per cent true self. ■

FOOD

Schmucks Bagels
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schmucksbagels.com.au

Schmucks Bagels is tucked in behind the William Cooper Justice Centre. Options range from a choice of spreads for breakfast bagels to fully-loaded lunch options, with gluten-free bagels also available. Fillings are fresh, delicious and jam packed ensuring these bagels satisfy all hunger pangs. The Schmucks philosophy is to combine modern and traditional fillings to satisfy everyone. A favourite around the office is the Polish Hot Brown bagel – turkey and hickory smoked bacon with mayo, tomato, melted cheese and iceberg lettuce – and I have earmarked the Miso Schmick Tuna bagel for my next visit. To round out your meal there are several side and drink options available.

Being loaded with fillings these bagels can be a bit difficult to eat on the go so finding a place to sit with a few serviettes will serve you well. There is plenty of seating inside and out (pandemic permitting) and if you want to go elsewhere the bagels are securely wrapped for easy transport. Schmucks is highly rated on Uber Eats, Deliveroo and DoorDash for those times when you cannot leave the office.

The staff are lovely and service is efficient – a great place to grab a quick bite.

The Wanderer
399 Lonsdale Street
thewanderermelbourne.com

If – and when – you are after a sit down dining experience, The Wanderer Thai Bar and Kitchen is a great option. Located just over Queen Street from the courts, The Wanderer provides delicious Thai meals at great prices. The lunch menu is not huge, but the food is hearty, and at mostly $15 or less per meal the price cannot be beaten. I still have fond memories of a delicious stir fry lunch with a colleague just before the first lockdown.

Through the week The Wanderer opens at 7.30am, with a coffee bar just inside the doorway. The dinner menu includes small snacks, a full bar and nightly specials, making The Wanderer a great place to stop in for an after work drink or dinner (pandemic permitting). ■

Madeline Rintoul is judicial support administration officer at the Supreme Court of Victoria and a member of the YL Editorial Committee.

COFFEE

Patricia Coffee Brewers
493-495 Little Bourke Street

While our return to normal, post lockdown, will sadly mean the end of working in your track pants, it also means the return of coffees with clients and colleagues.

Look no further than Patricia for your first stop. Its proximity to Melbourne's legal precinct makes it a hot spot for judges and practitioners. Despite its small size, this café is bursting with energy, taking Melbourne coffee culture to new heights while giving a nod to the more traditional European café scene. Did someone say *un caffè per favore?* The menu is simple, offering black, white and filtered coffee, either an Ethiopian or house blend. The coffee is roasted by Patricia at Abbotsford's Bureaux roasters. The result is a no nonsense brew that packs a punch. There is also an array of delicious baked goods sourced from a string of local bakeries, including All Are Welcome and Mörk. However, these goodies are not to detract from the main event, as it's the coffee, not pastry, that will keep you coming back for more.

Frank Lawrence is a law graduate at HWL Ebsworth.

WINE *By Jeni Port*

Howard Park Grand Jete 2015
RRP $50

Some years back, Howard Park committed itself to becoming Western Australia's premium sparkling winemaker. There is no doubt it has succeeded. The Jete range comprises a number of different styles culminating in the single vintage blend of chardonnay and pinot noir. It combines richness with a breezy zing of acidity. Citrus, apple, biscuit and almond meal aromas. The palate is dense and taut with ginger snap, grilled nuts and citrus. An excellent celebratory drink.

Enjoy with smoked salmon blinis.

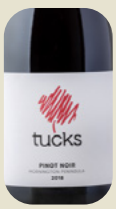
Stockists: Bespoke Wine & Spirits Thornbury, Armadale Cellars, www.howardparkwines.com.au

Huesgen & Margan Trabener Würzgarten Dry Riesling 2019
RRP $50

A friendship formed back in the 1980s between Hunter Valley winemaker, Andrew Margan and Mosel winemaker Aldo Huesgen, came to fruition last year when Margan travelled to Germany to make a collaborative riesling.

It highlights all the things we love about German riesling, the serious depth of fruit intensity and purity, the brightness, underlying spice and length. Green apple, spring blossom, lime fruit tingle, sherbet and spice. Imagine a lemon-lime split meets nougat and tangy sweet fruit. Then comes the serious part, nectarine, melon, apple, gravelly acidity and texture. Goes on and on. Open with Thai food.

Stockist: www.margan.com.au



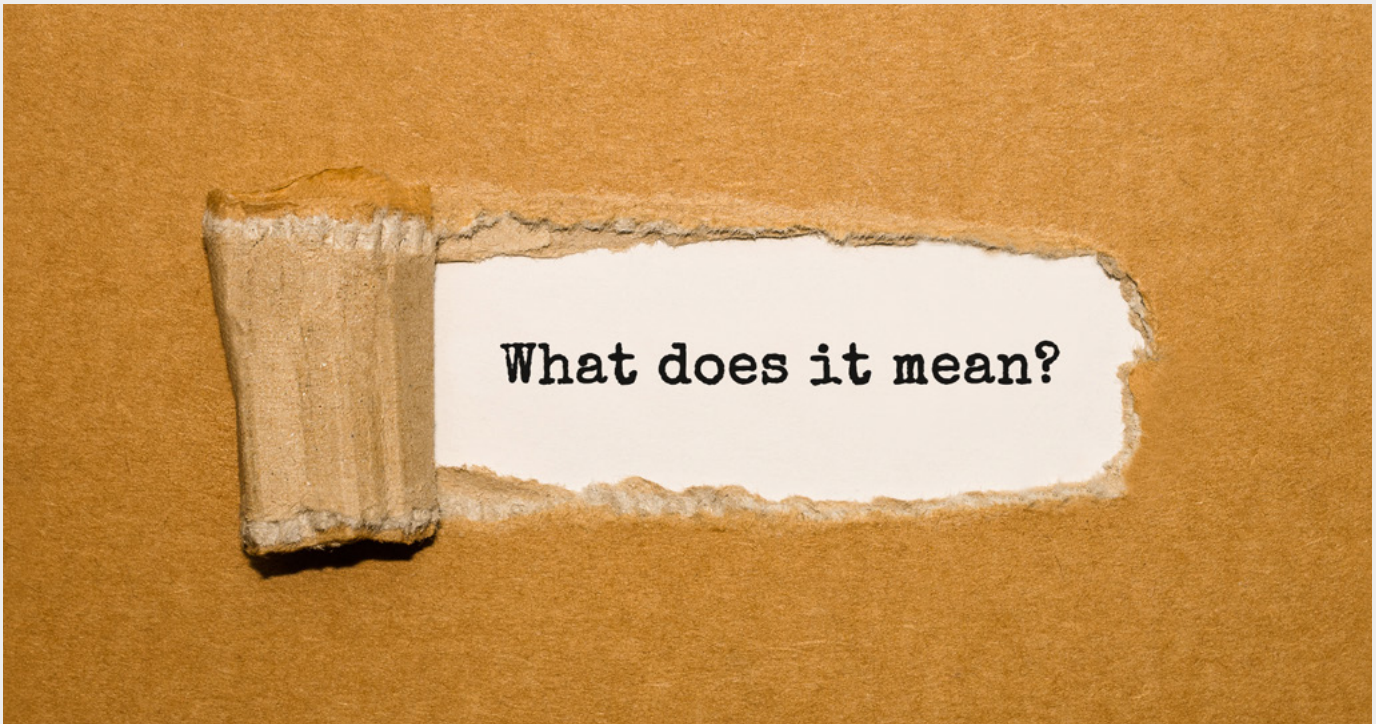
Tucks Mornington Peninsula Pinot Noir 2018
RRP $50

A joyful, fruit-forward Pinot Noir made for summer days has landed. And aren't we ready for it. Tucks is the sister brand to Montalto and is made by the super-talented Simon Black. It's a wine for now – or later if you have the patience – with delicious aromas of red cherries, raspberries, vanilla and plum. Nicely concentrated with lots of flesh, fruit-sweetness and supple tannins. Goes down a treat. This summer it will be good to support Aussie winemakers doing it tough. Wines like this make the job easy.

Open with pasta primavera.

Stockist: www.montalto.com.au ■

Jeni Port is a Melbourne wine writer, author and judge.



ADOBE STOCK

BLOATED BY JARGON

WHEN STAKEHOLDERS CAN'T COME UP WITH DELIVERABLES.

With more time on our hands due to COVID-19 it is hardly surprising that some of life's lesser irritations have attracted more attention than they probably deserve.

Although I can't claim to be an expert on the subject, your correspondent has become rather obsessed by the use of language. Whereas in normal times my major obsessions are ensuring a steady supply of Tim Tams and flow of good quality South Australian red. These are strange days indeed.

English, and particularly in its Australian form, is a wonderfully vibrant and diverse language, but we seem to be losing its vigour and clarity. A spade is no longer a spade. It is a handled gardening implement used pursuant to excavation.

By stealth, common English words and usage are slowly becoming more bloated by jargon and robbed of clarity. Fairly ordinary statements and concepts turned into linguistic blancmange.

The worst culprits are footy coaches, politicians, company CEOs and public servants who have adopted a language designed to make meaning irrelevant and impossible to pin down.

We no longer gather or work in groups but in cohorts. We are no longer skilled in a subject but work in this space, no longer have places but settings and footy coaches no longer talk about a game plan but a brand.

You can't just talk to a colleague about a difficult topic, you have to reach out to them, touch base rather than meet them, drill down or unpack rather than discuss.

There are other annoyances polluting the language such as the word deliverables. It is used when you are pretty sure you are not able to fulfil a promise to that amorphous group known as stakeholders.

One of the most ubiquitous examples of linguistic horror is "going forward". Its use may seem at first glance to indicate some sort of timescale when in fact it's a way of disguising the fact you want to avoid anything that definite.

It gets to ridiculous levels when users talk about an intention, a plan or a target. All of these things are happening in the future so the use of going forward is not just unnecessary but plainly stupid.

Would you say to your partner "I'm going to back the car out of the driveway going forward"?

Another word used to disguise meaning is learnings. It dates from the 14th century, where in this writer's view it should have remained.

Hearing it used over and over again by the same guilty parties my immediate reaction is to take it to mean "we've done something stupid and we promise not to do it again".

A friend claims that he received a communication from his footy club CEO that told members they were determined to "drive purposeful innovation". Does this mean winning a premiership or adding more biscuit varieties to the tea trolley?

Certainly times have changed. Legendary Hawthorn coach John Kennedy famously bellowed to his players during the 1975 Grand final "Do something!" The modern footy coach would urge his players to "use your learnings to execute our brand".

Somehow it doesn't have the same impact. Going forward. ■

DO YOU EVER COME ACROSS AMUSING INCIDENTS RELATED TO THE LAW?

Then why not contribute to WADR? Send your submission to edassist@liv.asn.au.

BUILDING YOUR TEAM

HAVING AN ELITE ATHLETE'S MINDSET HAS BEEN USEFUL FOR LAWYER **JADE BRIANI HOPPER.**

In a former life, I was a professional tennis player. Now, I'm a lawyer. Although I've exchanged being on the court for going to court, my athlete's mentality remains and has been advantageous at the start of my legal career. Elite sport demands excellence and attention to detail to achieve superior performance and that becomes embedded in an athlete's attitude to life.

I often observe my inner athlete's approach to life in the law, in particular striving to build "my team". As an athlete, it takes a team of people to maximise improvement. Each person adds value in pursuit of a goal.

This is commensurate with being a young lawyer. Surrounding yourself with the right people is important to help develop skills and provide support on your legal journey. Lawyers beginning their careers would do well to establish a support team which will encourage, drive and improve their practice of law.

I'm not suggesting every person must serve a purpose, but there is merit in having people around us who can have a positive impact and assist in achieving career goals. Athletes are always working towards goals and they understand that achieving those dreams needs input from a variety of trusted people.

The coach

Coaches help athletes realise their potential. Like a good boss, they establish the schedule and program, regularly evaluating for improvement. An athlete needs regular feedback and direction to constantly improve. When an athlete succeeds, it is shared with their coach. When an athlete loses, it's a mutual loss and a shared opportunity to assess and fix what went wrong.

Young lawyers often think of senior colleagues as unapproachable. I would suggest changing your mindset. Reframe it so you think it is your superior's responsibility, and to the firm's benefit, to monitor, encourage and develop your skillset. Recognising the value of being mentored through open and honest communication will have a positive effect on your learning and help you achieve your career goals.

The performance trainer

A performance trainer facilitates a specific program to advance performance that extra 10 per cent. Some athletes are natural superstars, but most get there through hard work, maximising their individual potential and being prepared when the competition gets tough.

Some young lawyers have a natural aptitude for law – memorising legislation or immediately understanding judgments. Most of us need to do a lot of work to be across judgments. Within your control is upskilling to be primed for challenging work. Seek out professional development courses, attend lectures by experts, find the performance trainers who can make you that 10 per cent better.

The teammates

Teammates are confidants, motivators and your reality checks. They understand the highs and lows of your profession. Travelling the world as a tennis player can be lonely, with close relationships hard to establish. As such, bonding with teammates is essential.

Law, like sport, is a high pressure, high stakes work environment. While non-law friends will listen to your struggles or successes, they may not fully appreciate a successful application for costs, for example, as your law colleagues may. Nor may they get the disappointment of your submissions being rejected by a judge.

Trustworthy teammates will provide for a shoulder to lean on, a voice to reason with and a companion to share experiences with.

The mental coach

Working in the law is mentally demanding and being engaged in stressful situations may affect performance. An athlete understands that, at times, the difference between winning and losing is 90 per cent mental attitude. As such, the psychologist is a vital member of the team, needed to develop the skills to perform successfully under extreme pressure.

In sport and law, there is a negative connotation about not being the toughest. Lawyers have demanding work schedules, often deal with highly emotive material and are expected to adopt a "deal with it" attitude. Athletes know they must not just perform but excel in high stress conditions and look for help in enhancing their ability to do that.

Having somebody who can lead you through taxing circumstances is an essential team member.

The idol

Junior athletes are often asked to name their idol. It's a significant question. Your idol establishes the dream, the template for success and provides the focus to move forward. Likewise, as a young lawyer, an admired role model can fuel the fire and help set a path on which to progress.

The dream

Keep dreaming. An athlete's dream is at the forefront of everything they do every day, spurring them on to be better, no matter what ranking we are or success we've had. Keep the dream alive by remembering why you wanted to be a lawyer in the first place. ■

Jade Briani Hopper is YL vice-president and a lawyer at Baker Jones.

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