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### Floor Members

Alison Stenmark SC  
Stephen Walsh QC  
David Alexander  
Vahan Bedrossian  
Grahame Berecny  
Philip Biggins  
Diana Black  
Anthony Bowen  
Brendan Burke  
C J (Jak) Callaway  
Peg Carr  
Richard Cavanagh  
John Clifton  
Elizabeth Cohen  
Peter J Cook  
Paul Cutler  
John de Meyrick MBE  
Dion Durston  
Michael Eagle  
David Eardley  
Luke Fermanis  
Ian George  
Steven Goldstein  
Matthew Graham  
Joseph Hallion  
Patricia Hanna  
Grant Hansen  
Thos Hodgson  
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Kevin Kelleher  
Andrew Kostopoulos  
Alex Ladopoulos  
Christopher Lawrence  
Mark R Lawson  
William Lloyd  
Martin Luitingh  
Keith Manion  
Rod Mater  
Richard Maurice  
Warren Moss  
Elizabeth Picker  
Colin Purdy  
Samuel Reuben  
Mark J Stevens  
Stephen J Walsh  
Greg Watkins  
Dennis Wilson

## Welcomes, Farewells + Appointments and Provision of Services

### Broun QC retires after 51 years

The Family Court of Australia presided over by the Chief Justice, Justice Diana Bryant, held a ceremonial sitting to mark the retirement from practice at the Bar of Mr Malcolm Broun OAM QC. Malcolm retired from practice on 30 June 2010 after 51 years at the Bar. As Chief Justice Bryant stated, Malcolm has made a significant contribution to Family Law during his career. We wish him well in his retirement.

### Floor Welcomes New Members

**Andrew Kostopoulos.** Andrew is a senior junior barrister having been admitted to practice in 1990. His area of practice is primarily in Building & Construction disputes and Security of Payment Act matters as well as Commercial Litigation. Andrew is a man of many talents: He is a member of the Bar Association Professional Conduct Committee, President of the Australian Lawyers Phil-Hellenic Association, Member of the ADF Australian Army Legal Corps, and over the years has appeared in Royal Commissions and Military Inquiries. As a senior member of Edmund Barton Chambers Andrew's knowledge and experience is of great benefit in mentoring junior barristers in the complex area of Building & Construction law.

**Colin Purdy and Matthew Graham** have joined the floor. Colin is formerly a partner at Moray & Agnew and brings to the floor a wealth of experience in Insurance & Commercial Litigation. Matthew is formerly a solicitor with Kreisson Legal which is a specialist construction and infrastructure firm.

### Appointments of Mediators and Facilities

The Floor has a number of experienced and highly regarded mediators. Two of our members have recently received further appointments:

**Alison Stenmark SC.** Alison has been included in the Federal Court's National List of Mediators for matters within the Native Title jurisdiction. She is also a certified Mediator with IAMA.

**Jak Callaway** has been appointed as a sessional Work Injury Damages Mediator of the Workers Compensation Commission for 3 years. Jak is also an accredited mediator under the NMAS for 2010 and 2011.

Members acting as Mediators include Stephen Walsh QC, Alison Stenmark SC, Graham Berecny, Jak Callaway, Sam Reuben, Stephen Goldstein and Diana Black.

EBC 44 is about to embark on a refurbishment of its conference rooms to ensure better services for its growing mediation practice.

### Provision of Services

In addition to the usual briefing traditions from our various and varied firms of solicitors our newer members of chambers are happy to attend and assist those smaller law firms who do not necessarily have the resources of the larger ones available.

In this regard we regularly assist sole practitioners who have a varied practice and in some instances may brief many barristers. For example one of our solicitors briefing the floor has retained the following counsel:

- Alison Stenmark SC - Protective Division matter
- Patricia Hanna - Application under the Mental Health Act and Family Law matters.
- Stephen Walsh – Commercial Landlord & Tenant
- David Alexander – children's matters against DOCS
- Matthew Graham – mediation
- Peter Cook – Family Law

Some of these matters involved urgent applications for relief or advice.

### URGENT CONTACT

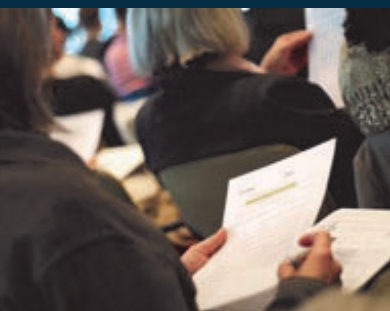
Our clerk, Trish Hoff, who is well-known to many of our solicitors, is always available to assist with your queries and also if we are busy in Court. She will make sure your enquiries are attended to.

Her direct number in Chambers is 9220-6191 or mobile 0418 206 736.



### PAPERS FROM SEMINAR SERIES

We regularly received requests for copies of papers from our annual March seminar series, which this year featured presentations by The Honourable Michael McHugh AC QC and the Honourable Justice Margaret Beazley. A selection of papers presented over the last 3 years are available on our website.



### Mediation Room Hire

We have extensive mediation facilities which can accommodate a number of parties.

These facilities will be undergoing refurbishment in September this year.

### The Scope of the CTP Scheme

To come within the definition of "injury" set out in the *Motor Accidents Compensation Act* 1999, there must be both a causal and a temporal connection between the driving of the vehicle and the injury.

In *Zotti v. AAMI* (2009) NSWCA 323, the New South Wales Court of Appeal (Spigelman CJ, Allsop P, Hodgson JA, McColl JA, Campbell JA) held that the injury must be sustained during the relevant event and it was not sufficient merely that the injury was caused during the relevant event if the actual injury occurs some time later. In *Zotti* there was a collision between two motor vehicles. One of the motor vehicles left oil on the road. Two hours later a cyclist lost control on the oil and sustained injury. Applying the dicta set out by the High Court in *Allianz Australia Insurance Limited v. GSF*, the Court held that the injury to the cyclist did not fall within the definition of "injury" contained in the legislation and thus did not come within the Motor Accidents Scheme.

Special leave was granted to appeal to the High Court. The appeal was resolved prior to the High Court hearing.

Richard Cavanagh and Stephen Walsh (appeared on behalf of AAMI).

### Part VA Trade Practices Act

Section 75AE of the *Trade Practices Act* is not intended to create a right of indemnity in a tortfeasor against a manufacturer who has supplied a defective product - so held the New South Wales Court of Appeal in *Erwin v. Iveco Trucks Australia Limited* (2010) NSWCA 117 (Basten JA, Campbell JA, Sackville AJA).

A motorist was injured when a truck ran out of control as a result of a defect in steering. The driver of the truck was found liable to the other driver but the manufacturer (who was alleged to have negligently designed the steering system) avoided liability. The driver appealed to the Court of Appeal on the issue of negligence and interpretation of various provisions of Part VA of the *Trade Practices Act*. The Judgment provides a useful analysis of the operation of Part VA as well as the nature and scope of the duty of care of a manufacturer, having regard to industry norm and standards.

Tony Bowen (appeared for the manufacturer).

### Family Provision Act

A plaintiff has been found to be entitled to interest from 2 years after the death of the testator based on the power under s.11(1)(d) of the *Family Provision Act*.

In *Large v. Higham (No.1)* the New South Wales Supreme Court (Slattery J) ordered that the plaintiff have provision from the notional estate of his late father who died in April 2006. In *Large v. Higham (No. 3)* (2010) NSWSC 681, the Court had regard to the time lapse between the final orders and the date of death, the fact that the notional estate was in the hands of the donee of the notional estate from the time of the death and the fact that complications in the administration of the estate were not the fault of the plaintiff and determined that the plaintiff should be entitled to interest from 2 years after the date of death as prescribed under the *Civil Procedure Act* Schedule 5. The Judgments provide an insight into the application of the *Family Provision Act* and the circumstances in which interest might be awarded.

Elizabeth Cohen (Counsel for the Plaintiff).

### Employment Law Update

What constitutes a redundancy under the new workplace laws has been clarified. All employees are now covered by the National Workplace Relations system, except those working in the State Public Sector and Local Government.

In *Ulan Coal Mines* (2010) FWA 3488, the Full Bench considered the expression "The person's employer no longer required the person's job to be performed by anyone". It held that a termination would not be an unfair dismissal under the *Fair Work Act* if it is a case of genuine redundancy. The Court held that a job can still be redundant under the Act even though an employee's duties are still being performed after that employee's retrenchment. There is a distinction between a particular job and the functions performed by a particular employee. For a termination to be a case of genuine redundancy, the functions may continue to exist even though the job does not. Other elements of a genuine redundancy under the Act include - surplus labour results from changes in the operational requirements of the enterprise; the employer complies with consultation requirements contained in the relevant Award or EA and it is not reasonable in all the circumstances for the person to be redeployed within the enterprise.

Chris Lawrence.