



From the President

17 May 2019

This year Law Week was launched by the Attorney-General Gordon Ramsay MLA with some self-effacing humour and a very worthwhile reminder that we all work to protect the right to equal access to the legal system, and one of the “vital rights ... we must uphold is the right to a coherent, cohesive community”. In the seriously frivolous Golden Gavel speaking competition that followed, McLaren Wall received the Gavel, and Erin Hagerty received the People’s Choice award. In my view, all contestants deserved a first prize!

The Blackburn Lecture was delivered by Karen Fryar AM, who retired recently after 26 years as a magistrate, where she excelled in her work dealing with family violence. Karen’s discourse focussed on the pro bono delivery of legal services. She made a strong exhortation (a word with many shades of meaning) for each of us to individually take a serious look at how much pro bono service we provide, and to increase our commitment. Karen’s experience has her in the unique position of knowing the intense difficulty unrepresented litigants face — particularly in the family violence area — and the positive effect a generous lawyer can have to alleviate the person’s trauma. We will print her speech in full in the next edition of *Ethos*.

On achieving independence from Australia in 1975, PNG was given a robust Constitution and legal system. The independence of the judiciary and its power to make orders to enforce the Constitution are significant features. In 2015, after his retirement as Chief Justice of the ACT Supreme Court, the Honourable Terence Higgins AO QC, became a judge of the National and Supreme Courts of PNG. In his Law Week discourse “Justice in PNG”, Terry gave a very valuable insight into the workings of the PNG system and the constitutional basis for the Courts’ ability to rectify wrongs which would otherwise strike at the heart of a free and fair society. In the Manus Island case, the Court (constituted by five judges) applied the constitutional right to a person’s freedom to close (or open the gates of) the detention centre. The Government had argued that it was not detention, but protection for the good of the inmates. The complexity of the PNG social structure, with over 800 languages, its “One Tok” allegiances, and tendencies for over-use of perceived executive powers, were all addressed by Terry. We expect to publish his full discourse in the near future.

Meanwhile, back at the ACT Legislative Assembly, private rights were being stripped away from all of us by the Labor and Greens coalition, as they defeated the more than 100 amendments proposed by the Liberal Party to ameliorate the CTP legislation. We supported these amendments, as they would have mitigated the unfair and disastrous consequences to innocent injured people.

It left me wondering about the Government’s commitment to “access to justice”.

Chris Donohue

President, ACT Law Society



From the President

5 April 2019

The Barr Government is continuing on its ill-advised course with the introduction of the Motor Accident Injuries Bill 2019. The Law Society strongly opposes the proposed changes, which will leave Canberrans injured in road accidents much worse off. You can read our most recent media outline, [setting out numerous areas of concern within the bill, on our website.](#)

The Law Society is now attempting to petition the Assembly to vote against the *Motor Accidents Injuries Bill 2019*, so as to retain the existing rights to compensation of ACT residents. I ask all members to print the petition, have any and all concerned persons sign it, and return it to the Law Society by 7 May 2019.

[Download the petition by clicking here.](#)

Last Friday I spoke at a special sitting in the Supreme Court to pay tribute to retired Chief Justice Jeffery Allan Miles AO, who died recently. I'd like to express my gratitude to the many past Presidents of the Law Society who assisted in my tribute speech by providing anecdotes about Mr Miles. They variously described him as a decent, caring man, whose courteousness, compassion, and sense of justice made it a delight to appear before him in Court. He will be missed.

I attended the quarterly Law Council Director's meeting on 22 and 23 March, and there were some items on the agenda that I'd like to draw attention to.

Consideration is being given to instituting a base rate of pay for solicitors after admission. Anecdotal evidence shows that young lawyers are being pressured into accepting excessive hours and lower than reasonable rates. An award rate, setting minimum wage and maximum hours, will go some way to alleviating this problem.

The Law Council is considering drafting an outline of the necessary legislation to implement the Uluru Statement and the recommendations of the Referendum Council. I take a personal interest in this topic, and when the Law Council have finished their draft, it will be sent to the appropriate committees of our Society for comment.

The meeting also drew attention to the considerable amount of pro bono advocacy work being performed by young lawyers in the Northern Territory, including for child protection. The work is hard, conditions not good, and demand for their services is high. These workers need respite, and there is an immediate need for capable and willing young lawyers to go to NT on pro bono basis for two weeks at a time. If you would like more information about volunteering for short pro bono stints in the top end, please get in touch.

Chris Donohue

President, ACT Law Society



From the President

22 March 2019

On behalf of the Canberra legal community, I extend sincere sympathy to our friends and neighbours in Christchurch NZ for their tragic and terrible loss. Having barely survived an earthquake, it is just too cruel for them to now have to suffer this recent horror.

If you've been affected by this trauma, whether personally or simply by being exposed to the news cycle, please read this article at *The Conversation*, '[How to take care of your mental health after the Christchurch attacks](#)'.

Turning to more prosaic matters, last Thursday and Friday I attended the National Access to Justice and Pro Bono Conference in Canberra. The two day event, organised by the Law Council of Australia, presented sessions covering diverse issues including public interest litigation, self-represented litigants, bail and incarceration, homelessness, family law, and victims of crime.

I had the pleasure of chairing the elder abuse session. I reminded the audience that the Law Society is active in this area, and that through our Elder Law & Succession Law Committee, we are seeking changes to our laws on Enduring Powers of Attorney. Such matters as the qualification of the witness to the donor's signature, witnessing the donee's acceptance, proper advice to the donor and the donees, advising donees on their responsibilities, and restricting some persons from being appointed, are all issues that need legislative intervention.

The Age Discrimination Commissioner, the Hon Dr Kay Patterson AO, stated that, in her view, lawyers are often found to be wanting in the quality of their advice to the parties entering into an enduring power of attorney. Coming from someone as eminent as Dr Patterson, I take this as a warning sign that we practitioners need to take very seriously the instructions we accept, and the advice we give the parties. The legislative changes sought by our Committee will assist in this regard, and the ACT Attorney General, Gordon Ramsay MLA, has assured the Society that his office will engage with us to include necessary measures in future legislation.

Today and Saturday, I am attending Law Council meetings in Sydney. It's a busy life!

Chris Donohue

President, ACT Law Society



From the President

8 March 2019

At last month's Intensive CPD, among many very worthwhile seminars, was "*Working with Monsters*". Dr Rebecca Michalak very capably illustrated the "*dark side of the law industry*", where employees of legal firms have had to work under the shadow of bullying, discrimination, sexual harassment, and similar behaviour.

Overall, Dr Michalak's research ("*Causes and Consequences of Work-Related Psychosocial Risk Exposure*") shows that a large percentage are subjected to these behaviours in both private and non-private practice workplaces in Australia and New Zealand. Of these, the vast majority do not report their experiences in any way. Lawyers, for example, are three times more likely to seek employment elsewhere than report.

Inaction allowing situations like these must not be tolerated. Members should be aware of Rule 42 of our Conduct Rules, which state: "*A solicitor must not in the course of practice engage in conduct which constitutes: Discrimination; Sexual harassment; or Bullying.*" Breach of the rules can constitute "*unsatisfactory professional conduct*", or the more serious "*professional misconduct*".

For further reading I suggest the very comprehensive [submission of the Law Council of Australia](#) to the Australian Human Rights Commission in relation to its *National Inquiry into Sexual Harassment in Australian Workplaces*.

Today in a ceremonial sitting of the ACT Magistrates Court, we have farewelled one of our long-serving and much-cherished Magistrates, Karen Fryar AM. Karen was admitted to practice in 1982, and in 1993 was appointed as a magistrate (and coroner) of the ACT Magistrates Court, being the first woman to be appointed to the judiciary in the ACT.

Karen excelled in presiding over of the dedicated Family Violence list of the Court, and in her other work in prevention of family violence - to the extent that in 2010 she was named a Member of the Order of Australia (AM).

If you missed the Court sitting this morning, you can still attend the Law Society and Bar Association farewell dinner for Her Honour at the Boathouse on Thursday 11 April 2019, or hear her speak at our Annual Blackburn Lecture during Law Week on Tuesday 14 May 2019.

Chris Donohue

President, ACT Law Society



From the President

8 February 2019

It is of some comfort that the ACT Greens have recognised that aspects of the proposed Motor Accidents Injuries Bill will operate unfairly. They have called on the government to amend it and to provide the “guidelines” (which are to date invisible) before the legislation is introduced into the Assembly.

The proposed Bill will drastically reduce compensation to injured motorists, and contains provisions denying procedural fairness. The Bill attempts to prevent injured people from engaging lawyers to assist them in dealing with this complex legislation, while allowing insurers to engage lawyers to argue the case against the injured. The cynical side of this is that the insurers’ costs of engaging lawyers to defeat the claims of injured motorists is included in the compulsory third party insurance premiums which are paid by all motorists.

With the imminent introduction of the Bill into the Assembly it is a cause of considerable concern to the Society that the blatant unfairness in the proposed system has not been resolved. We face the prospect of having legislation put in place that severely affects people who become injured in a motor vehicle accident. That could be any one of us at any time.

Moving to a more hopeful topic, last week the Supreme Court conducted a ceremony to mark the Commencement of the New Legal Year and the Opening of the New Supreme Court Building.

The Chief Justice expressed the Court’s appreciation in overcoming building delays and having the “marvellous new building” finally completed and occupied. She said that the architecture reflects Canberra’s natural environment which is directly visible and referenced in the natural timber and undulating ceilings, which mirror the hills surrounding the City. Most importantly, she said, the building says that that our community recognises the importance of the rule of law and the judicial arm of government; and that the community values tradition but also looks confidently to the future.

I was honoured to address the Court on behalf of our 2,600 members to renew our commitment to the ethical and social responsibilities of the ACT profession. The new building, with its hugely improved functionality, its large public spaces, and courtrooms full of natural light, cannot do other than impress the parties appearing before it of the importance and dignity of the occasion, and the seriousness with which our community treats justice and the rule of law. The new court gives the impression of being a bright place of dignity, calm, and thoughtfulness, where legal issues will be given careful and just consideration.

We hope to arrange familiarisation tours of the new court complex in the coming months, and I will advise members when we have confirmed details.

Chris Donohue
President, ACT Law Society



From the President

25 January 2019

You may have noticed some media lately about buying real estate “off the plan”. I urge all conveyancing lawyers to ensure that their clients understand any special conditions that allow for delay, alteration of the final built result, and the seller’s rights of rescission. If you have any questions on this topic, please feel free to email the Law Society. Also remember that there will be a Property Law Afternoon on Thursday 28 March 2019, at The Boathouse by the Lake – this is a great opportunity to discuss current property law issues with your peers.

I recently had the pleasure of meeting with the Chief Public Attorney of the Philippines, Dr Persida V Rueda-Acosta, who was in Australia for a very short time, and keen to make contact with Australian lawyers. Her country has one legislative and judicial system, with the population spread over 7,200 inhabited islands. Her concern about crime, particularly narcotics, is very real, and her personal safety always at risk. Our own challenges in the ACT to ensure justice and the rule of law seem small compared to hers.

In the December *Ethos* I said that I expected to meet with JACS to discuss plans for re-instatement of the heritage timbers into Courtroom One with a view to retaining a large part of the look and feel of the original. Unfortunately that meeting did not occur. I have since been told that “the project architects are of the opinion that any attempt to retro-fit original timbers into the court would substantially compromise the contemporary designs, and would be viewed as a clumsy and tokenistic afterthought” and that “changing the design at this stage is not an option that can be recommended”. I am naturally disappointed by this decision, but will continue to lobby for a satisfactory conclusion.

I trust you all had a very good end of year break, and are now ready willing and able to pick up and continue with all the loose ends from last year, and take on new challenges.

Chris Donohue

President, ACT Law Society



From the President

14 December 2018

The Law Council of Australia represents the Australian legal profession on national issues through the various law societies and bar associations. On 1 December the LCA held its AGM in Canberra. Arthur Moses SC was elected as President, with the executive now to comprise Arthur Moses SC, and members Konrad de Kerloy, Pauline Wright, Tass Liveris, Jacoba Brasch QC, and Tony Rossi.

The new President's focus on reducing the number of indigenous people being incarcerated is very welcome. Mr Moses has been practising at the NSW Bar for over 20 years and, in 2008, was appointed Senior Counsel in the state of NSW.

The previous day there were meetings of the Presidents of the State and Territory law societies and bar associations. Discussion covered a wide range of subjects including the Federal election platform for the LCA, money laundering legislation, issues surrounding the Family Law Section of the LCA, proposed review of conduct rules, PEXA, and thresholds for costs disclosures.

Today it is expected that the report of the Legislative Assembly Committee on changes to personal injury compensation rights arising out of motor vehicle accidents will be released. The exposure draft, examined by the Committee, would strip innocent injured road users of a very significant part of their proper compensation entitlements, and deny natural justice in making their claims. The Society opposes the draft Bill in its present form.

The government is expected to push for an early passing of the legislation next year, regardless of its deficiencies.

I wish you all a peaceful holiday break, and I hope to catch up with more of you in the new year!

Chris Donohue

President, ACT Law Society



From the President

30 November 2018

Recently there has been some disquiet expressed to me about the absence of a coat of arms on the wall in our new Supreme Court rooms.

One view is that the coat of arms is a sign of the judicial authority of the Court, and that we bow at the commencement and end of proceedings towards it for that reason. It has even been suggested that, in its absence, there should be no bowing.

Another view is that the coat of arms, while an important reminder of the role of the Court, is not required for the judicial process. When we bow, we are not bowing to the person of the judicial officer, nor are we bowing to the office that person holds. We are bowing to acknowledge the start of the judicial proceeding that the officer is commencing, and the officer is doing the same. We do so again at the end or adjournment of the proceeding. That is the relevance of the bow — to the proceeding, not to the person, office, courtroom, bench, nor coat of arms.

It happens from time to time that the Court is constituted by a hearing or part hearing outside of a court room — for example, a bed side hearing at a hospital, or, when evidence is given by phone, the place of the person phoning to give evidence becomes part of the courtroom during that phone call. The coat of arms is usually absent from those places, but the proceeding of the Court is still constituted and continues.

The Society has not taken any side in this discussion, and it may be that we do not need to. However, if you have a very strong view one way or the other, please write to me at president@actlawsociety.asn.au.

This weekend I will be attending the AGM of the Law Council of Australia, which is being held in Canberra. The LCA is the peak body of Law Societies and Bar Associations in Australia. As such, it has a very important and very effective role in lobbying Federal and State legislatures in relation to policy issues. The vast array of issues the LCA is involved in can be seen by referring to [their website](#). Many of our own Society Committees have contributed to the development of those policies. As your President, I became a director of the LCA, and I also represent our Society as a Constituent Body of the LCA.

Lastly, it was encouraging this week to have a quick and positive response to my request to the ACT Attorney-General Gordon Ramsay for our Property Law Committee to be more closely involved in the government's deliberations about Electronic Conveyancing.

Chris Donohue

President, ACT Law Society



From the President

19 November 2018

On Thursday night the Society had the pleasure of giving a formal welcome to our newest judicial officers, Justice Chrissa Lukas-Karlsson and Magistrate Louise Taylor.

Justice Loukas-Karlsson was appointed in March this year, and has already proven herself a valuable addition to the bench. Among the many achievements in Her Honour's career are three years in the Hague as Counsel before the UN International Criminal Tribunal for the former Yugoslavia, serving as a Public Defender and then as a Crown Prosecutor in NSW, serving as an acting District Court Judge NSW, six years as a Judicial Member of the Administrative Decisions Tribunal in NSW, and serving as an executive member and Vice President of the NSW Bar Council.

Magistrate Taylor was appointed in August, leaving the position of Deputy CEO at ACT Legal Aid, where she is now sorely missed by her colleagues at that office. She has served as a specialist family violence prosecutor, has been a long-time Convenor of the Women's Legal Centre ACT, an Associate of the Indigenous Law Centre at UNSW, and a member of the ACT Law Reform Advisory Council.

Between them, they bring many years of impressive experience to the ACT judiciary, in addition to their intellect, integrity, skill, compassion and efficiency. Our profession is well served by having them with us. As practitioners we should all have the greatest respect, admiration and gratitude for all our Judges and Magistrates of the ACT. Without their wisdom and dedication, we would be living in a very chaotic city.

Next week the Society will be appearing before the Legislative Assembly's Standing Committee to express the Society's concerns about the Chief Minister's proposed legislation which would severely restrict compensation available to injured road users. Our focus will be largely on the vast number of mechanisms that would give insurers undue power to thwart natural justice and force injured road users to accept inadequate compensation. In this respect we note that Unions ACT are also conducting an advertising campaign opposing the legislation on these same grounds.

Chris Donohue

President, ACT Law Society



From the President

6 November 2018

It is comforting to know that the majority of Legislative Assembly members are prepared to give proper and thoughtful consideration to Chief Minister Barr's proposal to severely limit compensation available to injured road users. The Assembly's Committee was to report on 1 November 2018, but sought extra time, and is now to report on 14 December 2018.

It is also comforting to know that the bulk of the 74 submissions on the 364 page draft Bill (including from trade unions, members of the public, and lawyers) are in accord with the Law Society's view. That is, that the reduction in compensation entitlements is an unfair and draconian impost on injured road users, with the insurers being given an astonishing amount of power to further limit compensation, with the result being greater profits for the insurers. The really serious question is ... why?

I congratulate the Women's Lawyers Association on their very successful and enjoyable Awards Dinner last Friday at the National Gallery of Australia. I also congratulate all the recipients of awards made that night, and equally all those who competed without winning the award. Organising such an event is a massive undertaking and a credit to the organisers.

Back in my office at the Society, I have been looking at our involvement in some serious issues such as recidivism, legal super, justice strategy, mediation, and aboriginal legal issues, plus CTP and the everyday communications with members and staff. Yes, with also running my practice it's a big workload, but I am enjoying it all and would not change anything.

Chris Donohue

President, ACT Law Society



From the President

19 October 2018

Practitioners will be pleased to see the end in sight for the Court rebuilding work, with the commencement of operation of the new courtrooms of the Supreme Court.

I attended the new Court's first formal event on Monday - a ceremonial sitting to mark the imminent retirement of the ACT Director of Public Prosecutions, Jon White SC. In her farewell speech to Mr White, the Chief Justice described his style as clear, focussed and concise, saying that fine advocacy supports good judging. Mr White retires at the end of this year.

The ceremony was preceded by a traditional smoking ceremony in which eucalyptus leaves were burnt, and attendees were invited to walk through the smoke. The smoking ceremony wards off bad spirits, acknowledges ancestors and pays respect to the land and sea of country. I look forward to the day when the Australian Parliament, and through it, all Australian people, acknowledge and give their respect to all the first peoples and first nations of Australia.

As for me, coming from 40 years in a sole practitioner role, it is certainly different to be working in a team which represents around 2400 members, has ten full time staff, and 20 specialist committees. I can now operate the photocopier, the phone, the emails, the printer and the computers. I am also settling into the routine of the numerous meetings required of me.

Perhaps most importantly, I am finding the nearby places for a good coffee...

Chris Donohue

President, ACT Law Society



From the President

5 October 2018

Thank you for entrusting me with the task of leading the Society as President — it means a lot to me, and I sincerely hope I can meet your expectations.

Congratulations to all those who continued, started, or returned to a position on the Council. Commiserations to those who did not get their preferred position, or who were not elected at all. It can be discouraging, but the fact that you took the risk shows your significant support for the Society. So thank you, and do try again. The interest and support of members is what makes the Society strong, and that strength enables us to better perform our role as part of the system of justice in the ACT.

Leaving the Executive this year are Louise Vardanega (Secretary for 25 years), Vic Sundar (Treasurer) and Craig Painter (Vice President). After working for some years with these skilled people and their engaging personalities it is sad to see them go.

The Society's current major issue is Chief Minister Barr's proposal to legislate innocent road traffic victims out of their fair compensation entitlements. A 300-plus page exposure draft is available for comment, and our CTP working group is drafting a comprehensive response. You will hear more about this in the immediate future, and I urge you to take whatever steps you can to understand the issues and to make contributions, if possible, by submissions to the Assembly committee. Read the CTP article in this edition, and visit actctp.org for more information.

Chris Donohue

President, ACT Law Society