

Macrossan & Amiet Solicitors: news update

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Conference proves worthwhile for solicitors

Recently, several of Macrossan & Amiet’s professional staff members attended the 2008 North Queensland Law Association Annual Conference, which this year was held in Mackay.

The conference was a huge success, not only because it was the first to be held in Mackay for five years and had almost three times the attendance as the last time it was in the region (registrations sold out in record time), but also because the line-up of speakers presenting papers at the conference was exceptional.

Among the presenters was an assembly of members of the judiciary to impress even a layperson, as well as the Honourable Kerry Shine MP, Queensland Attorney-General, and many accomplished barristers and solicitors. The judges headlining some of the conference sessions included:

- Justice Susan Kiefel of the High Court of Australia
- Justice John Middleton of the Federal Court of Australia
- Justice Robert Benjamin of the Family Court of Australia
- Chief Justice Paul De Jersey, Justice Kerry Cullinane, Justice

Peter Dutney and Justice Duncan McMeekin of the Supreme Court of Queensland

- Judge Julie Dick and Judge PJ White (now retired) of the District Court
- Federal Magistrate John Coker and Federal Magistrate Grant Riethmuller of the Federal Magistrates Court of Australia
- Chief Magistrate Marshall Irwin of the Magistrates Court.

Conference streams focussed on current legal developments in the fields of commercial law, family law, criminal law and litigation. The conference sessions provided knowledgeable insights into the law, legal practices, decisions and trends and gave local practitioners an opportunity to engage in thoughtful, and at times provocative, dialogue with other members of the legal community.

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News



When you become involved in any legal matter, legal costs are one of the many major factors to consider.

By Mark Jenvey

Legal costs explained

There is a common perception that legal costs are too excessive, due in part to the lack of information on the basic cost structures of a legal practice.

In the absence of information, it is easy to assume fees correlate closely to net income. This is incorrect. Most of the gross dollars are used in the law firm's daily operating costs.

Different courts and completion of necessary paperwork greatly affect costs. Rising litigation costs could be described as the product of a number of factors many of which are systemic.

As highly trained professionals, clients are paying for a solicitor's experience, skill and access to resources and time spent on their legal issue.

Fees also finance support staff including trainee solicitors, law clerks, secretaries and IT personnel, who are guided by the solicitor to produce the best result for each client's circumstances.

The alternative is for potential clients to try their own hand at legal work, encouraged by the many internet sites and do-it-yourself legal kits available.

Unfortunately, too many end up

paying financially and emotionally for common mistakes and misunderstanding of the legal system.

The experienced staff at Macrossan & Amiet help clients avoid potential pitfalls. The advantage of having professional legal staff deal with legal matters is peace-of-mind, knowing they hold professional indemnity insurance - an important factor if something unexpected goes wrong with a legal matter.

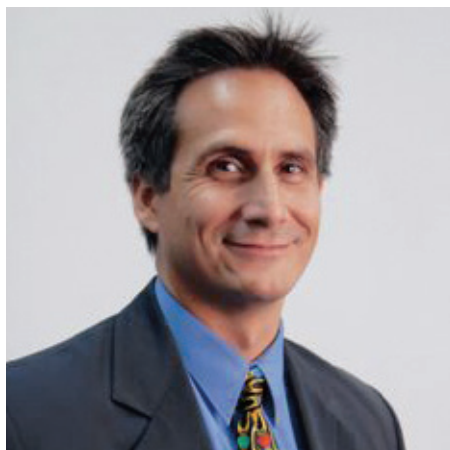
Section 308 of the Legal Profession Act 2007 ("the Act") says Macrossan & Amiet must disclose to clients certain information regarding costs. Clients can negotiate a cost agreement in accordance with section 322 of the Act, which must be a written offer.

During on-going legal matters, tax invoices are generated in accordance with the cost agreement. If a client is not satisfied with their legal account, a written itemised account can be produced to assist in identifying the fees they are unhappy with.

And if the service does not reflect what you were hoping for, immediately notify the staff member looking after you.

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Two minutes with... Paul Stasuik



Paul Stasuik joined Macrossan & Amiet in September of 2007 as a law clerk.

Paul moved to Australia from Canada several years ago, settling with his family in the Mackay area in 2005. He chose Macrossan & Amiet due to the supportive team environment and the dedication of senior staff in guiding and teaching their legal team.

Paul is currently studying a Bachelor of Law externally through the Queensland University of Technology

(QUT), having finished a degree in Computer Science through James Cook University in 2004.

Paul enjoys the varying aspects of law but is particularly intrigued by personal injuries and commercial law. "It is satisfying to see a client benefit from the experienced litigation team at Macrossan & Amiet," he said.

On weekends, Paul believes nothing beats being able to play a round of golf at one of the many courses in the Mackay/Whitsunday region.

News



Over the past few years, the government has seen the need to promote greater efficiency with regard to water consumption and to that end has put in place a system of ownership, which promotes the trading of water resources.

By Stephen Hayles

Water – secure your drop!

Water allocations are assets separate from the land and have their own title. They can be held and traded as personal property by non-landholders.

While the ownership of a water licence is tied to the ownership of the adjoining land, under a system of water allocation, owners of water allocations are able to sell, lease, mortgage or otherwise assign the excess of their water entitlements to other users.

The theory is that an economic advantage will be gained by maximizing the return of every drop of water. Those with excess water will be able to sell their entitlements to those who have a greater demand for supply.

Water allocations have already been issued for the Mackay area and upon completion of a water planning process as required by the Water Act, the Proserpine area is set to follow suit.

The water planning process involves conducting a water resource plan (WRP) and a resource operations plan (ROP).

A water resource plan establishes how water resources in a particular area are to be shared between human and environmental needs.

A resource operations plan puts in place rules, which ensures that the trading of water resources does not impact upon the operation of the WRP.

To subdivide a water allocation,

an owner must:

- Notify the relevant holder of the resource operations licence (ROP) of the proposed subdivision (this is usually Sunwater).
- Apply under s128A of the Water Act to the Department of Natural Resources and Water for approval to subdivide the allocation.

If approved, the Department of Natural Resources and Water will issue an Information Notice and a certificate approving the subdivision.

A General Request, together with the certificate approving the subdivision, must then be lodged with the Department of Natural Resources and Water.

Once the subdivision is recorded on the Water Allocations Register (WAR) a new title reference will be issued for the water allocation that is to be transferred.

The transfer may then be lodged together with an approved form, which notifies of the existence of a supply contract (ROP 13) once stamp duty and the applicable lodgment fee is paid.

Owners or prospective purchasers of land in Queensland should not overlook the value of water licences and water allocations. To ensure entitlements to water are protected, you should speak to your solicitor.

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Feature



Andrew Telford

Dick Dray was the patriarch of Proserpine's biggest farming family. He served 27 years on the local council, 34 years on the board of the Proserpine Co-operative Sugar Mill, with 7 of those as chairman.

Dick was a client of our firm but more importantly Dick was a mate. Dick held a special place in my life and I would like to share with you the reasons why.

By Andrew Telford

Remembering a special client

My first recollection of Dick was going to the Proserpine Mill Christmas Party when I was six or seven years old. I went with my grandfather, who was serving on the Board of Directors with Dick at the time.

I remember being very upset when my grandfather told me that Santa was not Santa but was in fact Lizzy Dray's Dad (Lizzy was in my class at school and she is also a solicitor, having completed her articles with our firm in the mid to late 1980's).

Whilst on a Christmas theme, I remember the times growing up and staying at our beach house at Midge Point over Christmas. Fun and good times came with having a beach house next to Dick, Gene and their eight children.

One memorable morning, I woke to see Dick's feet sticking out of the door of the Dray beach house. He and others, including my father, had a big one the night before. As I recall it, Dick never actually made it to bed and fell asleep in the entrance to the door. This escapade provided an image that lives with me still. One, I might add, that brings a smile to my face and I suppose that was the essence of Dick Dray – being around him always brought a smile to your face.

I remember going to my office to "work" on Saturday mornings. After reading the paper and not much else, there was nothing I enjoyed more than walking across to the Metropole Hotel or to the RSL to have a beer with Dick. I

simply loved his stories.

Like the one about Dick and his dad Eddie working in the family bakery all night making pies for the local show. If you knew Dick then, just picture him for a minute with his dad who had no fingers, working in a bakery making pies! The scene, I'm sure, resembled something from a Laurel and Hardy movie.

Or the story about when Dick's dad lit a cane fire next to Dick's brother Geoffrey's house. The cane fire had just burnt out and Geoffrey had noticed that the old man himself was on fire. Geoffrey did what any good son would have done. He rushed over to extinguish the fire by hitting his old man with a wet hessian bag (these bags were used to stop the fire from spreading). The old man couldn't believe what happened and quickly sought refuge with his other sons accusing Geoffrey of trying to kill him.

I also recall going to watch the Proserpine Brahman's play football. The highlight for me wasn't on the field but it was watching Dick and Jim Quod in the commentary box and listening to Dick's commentary, which was far more entertaining. At one time, there were three or four of Dick's sons and nephews playing. It was always funny to hear Dick describing his family playing football and nothing was better than when "my boy Henry" got the ball.

At a stage in my life when I was becoming an aging bachelor

myself, the story that I enjoyed, and which afforded me some comfort, was the one about his courtship of his beloved wife Gene whom he affectionately referred to as “puddin”. Dick would tell of how, when at about the age of 30 after years of being a lad around town, he met and pursued Gene. After a few “hiccups” along the way he finally married her and had eight children in a very short period of time. Unfortunately, Dick and Gene lost their daughter Alberta to cancer.

The Dray family provided a lesson in life to me when my father told me that if you have an argument within the family you need to do what the Drays do. That is, say your bit, yell at one another, then sit down, have smoko, a laugh and get on with the rest of the day. Apparently, this was the management style employed by Dick and his brothers. I am sure that there is a lesson in this philosophy for all of us. Dick never held a grudge nor did he ever wish ill will on anyone.

At the end of the day, there was a lot more to Dick Dray than a

series of humorous anecdotes. However, if that is how you chose to remember him I am sure that Dick would not object.

But I would also like to remember Dick as a good bloke who was a loving husband and father and for whom there was nothing more important than his family and friends. Dick was a leader within his family and within the Proserpine community and his passing leaves a gap in many lives that cannot be filled.

Lastly, I would like to acknowledge the real reason Dick was special to me and in doing so, I need to acknowledge and thank Dick for being the great friend he was to my father, John Telford. In recent years, being a cane farmer has had more lows than highs. By speaking to Dick almost every night it helped my father in more ways than I am sure Dick would have realised.

Thanks Dick for the fun memories but most of all, thanks for making the lows not seem so low.

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Dray family message

Genevieve Dray and family are grateful to Macrossan & Amiet for noting the passing of a wonderful husband and fantastic father, Frederick William Dray (“Dick”) on 28 April 2008.

Dick had a long association with Macrossan & Amiet, mainly through his connection and friendship with the late Kevin John Carroll (“KJ”), or King Farouk, as he referred to himself on occasion.

Business was done in those days (which are not so long ago days) in a haze of fat cigars and celebrated/commiserated post mortem over drinks and more fat cigars. KJ regularly smoked them, Dick was partial to them and there was always a regular supply in KJ’s breast pocket. And KJ, being a straight talking, salt of the earth, what you see is what you get kind of guy, didn’t add the cost of the cigars to the bill. And Dick, being the same kind of guy, respected this.

I guess that’s why Dick and KJ were such good mates, did such great business together and Tuesdays and/or Thursdays at the Proserpine Metropole were fine days indeed. Thank goodness for Desley Brown (deceased) who so competently secretaried in Proserpine most of those fine days and carefully ensured KJ’s safe passage back to Mackay and who skillfully trained John Formosa in the Proserpine ways.

Great people. Fond memories. Always in our hearts.

Frederick William (Dick) Dray was born on the 3 June 1930 and died at the Proserpine Hospital on the 28 April 2008. Dick was a larger than life character.



Feature



Law Week is a national event aimed at educating the public about the law and the legal system.

By Alison Woodward

Objection Your Honour

During May, Queensland celebrated Law Week (May 11–17) with many events and activities across the state.

This year, the Mackay Magistrates Court conducted tours of the Courthouse and held moot courts. A moot court is a mock trial. The participants involved were trainee solicitors and law clerks from various firms in Mackay.

Macrossan & Amiet was well represented in the moot courts with Stephen Willis, Paul Stasuik and Alison Woodward all taking part. Each trainee solicitor was paired with a trainee solicitor or law clerk from another firm.

The moot courts were held over three days (May 12–14). Participants argued the case of Jack and the Beanstalk in the heats. Both Paul and Alison and

their respective partners were successful during the heats.

They all reached the Grand Final where the moot was centred around Goldilocks and the Three Bears. This was great for Macrossan & Amiet as either way, one member of the winning team would be a Macrossan & Amiet employee.

For the participants, this was an invaluable experience as for some this was the first time they had been in court and despite the fact that these were mock trials, participants were required to obey court etiquette and argue the law correctly.

With Justice Cullinane presiding, they were offered constructive feedback on their performances. This experience will enable them to develop their skills for future court work.

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A personal highlight of the conference was the presentation by Mr Peter Russo, solicitor for Dr Mohamed Haneef, who shared a down-to-earth and personal account of his experience in the turmoil that surrounded the arrest, detention and deportation of Dr Haneef.

On a more social note, the conference included a cocktail party at Art Space to get delegates and speakers mingling, and also a robustly-attended conference dinner at

Latitude 21. The cocktail party included a presentation by the Queensland Law Society and Chief Justice De Jersey to the young lawyers in the Mackay region recently admitted to the profession in 2007 and 2008. It was a proud evening for North Queensland, and Mackay in particular, to see the number of young practitioners thriving in the region, including several from Macrossan & Amiet.

Overall, the conference provided a rich environment in which the Macrossan & Amiet solicitors in

attendance were able to continue their own professional development, build constructive relationships with the wider legal community and benefit from up-to-the-minute accounts of the status of the law in Queensland – equipping them all the better to serve their clients.

Thanks go to Greg Smart, one of Macrossan & Amiet's solicitors, who is a committee member on the North Queensland Law Association and who assisted in organising the triumphant 2008 conference.

Feature



By Catherine Manderson

Retail shop leases – what are your options?

In Queensland, retail shop leases are heavily regulated by the *Retail Shop Leases Act 1994 (Qld)* (“the Act”). This Act was brought in to provide protection for tenants in relation to various matters where they are leasing either a retail shop or a lease (including an office) in a retail shopping centre where the “shopping centre” consists of five or more retail shops. There are a few other requirements as well and it is interesting to note that it is the only legislation regulating commercial leases in Queensland, so it is very important.

The Act imposes certain obligations on landlords with respect to Options to Renew.

Firstly, if there is an option, the lease will specify a specific time period during which the tenant must notify the landlord that they intend to exercise the option. The Act imports a further obligation on landlords to give the tenant notice of the latest date that they can exercise the option period – at least two months but no more than six months before that date.

Example:

If the lease provides that the tenant must exercise the option period on 30 November 2008, the landlord must give the tenant notice of that date sometime between 30 May 2008 and 30 September 2008.

Secondly, if the lease is about to expire and there is no further option period, the landlord must give the tenant notice that either:

- (a) they are going to offer the tenant a new lease or extend the lease. If this applies, the notice should set out the terms, including the rent figure. This notice cannot be revoked until one month after it has been made; OR
- (b) that they are not going to offer to renew or extend the lease.

The notice must be given within a

certain period, depending on the duration of the lease.

If the lease was for **less than one year**, the notice must be given at least three months and no more than six months before the lease expires.

If the Lease was for **more than one year**, the notice must be given at least six months and no more than one year before the lease expires.

If the landlord does not give any notice to the tenant about whether they are going to renew or extend the lease, and the tenant asks for an extension of the lease, the term of the lease will be extended until six months after the landlord does give the notice. This is subject to the tenant’s right to terminate the lease on one month’s notice in writing.

So, if you’re a landlord and your lease is about to expire, make sure you give your tenant notice about whether you intend to offer them a further lease.

If you’re a tenant, your lease will continue under the Act until six months after you receive notice from the landlord about a further option. You might care to ask your landlord about their intentions, but you might prefer to wait for them to act first!

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Last word



Kylie Davies

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The dreaded ‘End of Financial Year’ rush....

As we come around to the start of another financial year, I thought I would discuss some of the impacts of the close of the financial year on lawyers.

Whilst most people think this time of year is purely about financial management and ‘tidying up’, the truth is usually the tidying up is done with the assistance of your lawyer.

This time last year, there was a government incentive to transfer property to superannuation funds and this caused a lot of clients to run to our office at the last minute to have us transfer the legal title to their property to their superannuation fund.

No such incentive was available this year (to my knowledge at the time of writing this article), however most people who have a property portfolio realise that if they are going to sell an investment property, they

need to do it at a particular time, especially if they need to avoid Capital Gains Tax and Land Tax implications.

Having said this, June is always a hectic time of year for we lawyers and things take a little longer than they normally would!

All we can ask is that, this time next year, perhaps obtaining financial advice earlier than usual and instructing your lawyer well in advance will ensure that any property transactions motivated by financial implications are carried out smoothly and in a timely fashion.

Until next month,

Kylie
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If you have any queries about any of the articles in this newsletter, please feel free to email mac@macamiet.com.au or phone 4944 0333 (Mackay) or 4948 4500 (Whitsundays) to speak directly with the author of the article.