

---

# Australian Law Journal

GENERAL EDITOR  
Mr Justice PW Young AO

ASSISTANT GENERAL EDITORS  
Angelina Gomez      Jennifer Single  
Barrister-at-Law      Barrister-at-Law

PRODUCTION EDITOR  
Cheryle King

The mode of citation of this volume is  
**(2007) 81 ALJ [page]**

*The Australian Law Journal* is a refereed journal.

## Australian Law Journal Reports

PRODUCTION EDITOR  
Carolyn May

CASE REPORTERS  
Alan Luchetti  
James McGregor  
Colleen Tognetti

The mode of citation of this volume is  
**81 ALJR [page]**

---

# THE AUSTRALIAN LAW JOURNAL

Volume 81, Number 4

April 2007

## **CURRENT ISSUES – Editor: Mr Justice PW Young AO**

Appointment of silk in Victoria.....	223
Statistics on full time imprisonment.....	223
Jury confusion .....	224
Graham Hill Award .....	224
Litigation funders .....	224
Extradition to the US.....	225
Reconstitution of the Law Council of Australia .....	225
What has happened to our rixitricies?.....	226
Wife inveigling can be criminal .....	226
Quotes of the month .....	226

## **CONVEYANCING AND PROPERTY – Editor: Peter Butt**

Deposit returned after disputed rescission.....	227
Transfer of mortgage does not necessarily transfer obligations under loan agreement .....	238
Uncertainty in rent review notices: Follow up.....	229

## **PEOPLE IN THE LAW – Editor: Geoff Lindsay SC**

Australia Day Honours List 2007 (Cth).....	232
Professor Rosalind Croucher (Cth).....	232
Justice Michael Kirby AC CMG (Cth).....	232
Hon Kemerl Murray AO (Cth) .....	232
Appointment of Senior Council (Qld).....	233
Sir Harry Gibbs (Qld).....	233

## **FAMILY LAW – Editor: Anthony Dickey QC**

What is the purpose of valuing superannuation interests under the Regulations? .....	234
Best interests of the child: Significance of “primary considerations” and “additional considerations” .....	235

---

**PRACTICAL ADVOCACY – Editor: Professor John Harber Phillips AC QC**

“Turning the enemy’s flank” .....	237
-----------------------------------	-----

**RECENT CASES – Editor: Mr Justice PW Young AO**

Charities.....	239
Crime: Significance of flight .....	239
Appeal: Order for retrial by fresh judge .....	239
Security for costs .....	240
Lifting the corporate veil .....	240
Dangerous recreational activities.....	241
Trusts: Beneficiaries’ rights to inspect trust documents .....	241
Corporations: Court convened meetings .....	241
Freedom of information.....	242
Pleading and raising legality .....	244

**ARTICLES**

“INTRODUCTION TO HUMAN RIGHTS LAW”: SEMINAR – PART I

**Hon Chief Justice Marilyn Warren AC**

This article, presented at a seminar for Victorian judicial officers, introduces the Charter of Human Rights and Responsibilities Act 2006 (Vic) and discusses the important function of the Victorian judiciary in interpreting and applying the new laws. The article touches on the purpose behind the Charter, quoting from a report by the Human Rights Consultation Committee and the Charter’s preamble. The author notes the ways in which human rights cases have arisen in the past, within the common law and other legislation, and highlights the significance of the journey now facing Victorian judicial officers in the development of human rights jurisprudence. ....	245
--	-----

“INTRODUCTION TO HUMAN RIGHTS LAW”: SEMINAR – PART II

**Hon Sir Gerard Brennan AC KBE**

This article, presented at a seminar for Victorian judicial officers, discusses key sections of the Charter of Human Rights and Responsibilities Act 2006 (Vic), and advocates a liberal, but cautious, approach to the interpretation of rights. The article considers the approach to interpreting the Charter, the relevance of decisions by the courts of other nations (including the UK, Canada, and New Zealand), the scope of declarations of incompatibility, and possible jurisdictional issues within Australia. ....	248
--	-----

---

## THE BAKUN DISPUTE: MANDATORY NATIONAL LAWS IN INTERNATIONAL ARBITRATION

**Peter Megens and Max Bonnell**

In international arbitration, it is accepted that the parties are free to determine what law will govern the substance of their dispute. But that freedom is not unlimited, because in some circumstances the parties will be unable to exclude the operation of the mandatory national laws that are binding on one or more of them. In *Transfield v Pacific Hydro Ltd* [2006] VSC 175, the Victorian Supreme Court considered the tension between the right of parties to an arbitration to choose the law that governs their dispute, the binding nature of awards of international arbitral tribunals, and the fact that parties are not permitted to exclude, by contract, liability under the Trade Practices Act 1974 (Cth). The decision raises serious questions about what rights a party has when an international arbitral tribunal refuses to apply mandatory national laws to the dispute under arbitration. .... 259

## RE-CALIBRATING INTERESTS: CO-OWNERSHIP IN EQUITY

**Lee Aitken**

Equity has a large part to play in working out the respective rights of co-owners both while the relationship is on foot and when it comes to an end. There is a subtle interplay between the underlying common law and the equitable doctrines which operate in any given context. This article explores the general topic of co-ownership and emphasises the issues which frequently arise when nerves are strained, and tempers fray. .... 266

## OBITUARY

Rt Hon Sir Robert Megarry ..... 276

# The Australian Law Journal Reports

## HIGH COURT REPORTS – Staff of Lawbook Co

### DECISIONS RECEIVED IN FEBRUARY/ MARCH 2007

<i>Forsyth v Deputy Commissioner of Taxation (High Court; Procedure; Statutes; Taxes and Duties)</i> ([2007] HCA 8) .....	662
<i>Taxation, Commissioner of v McNeil (Taxes and Duties)</i> ([2007] HCA 5) .....	638
<i>X v Australian Prudential Regulation Authority (Criminal Law)</i> ([2007] HCA 4) .....	611
<i>Z v New South Wales Crime Commission (Criminal Law; Evidence)</i> ([2007] HCA 7) .....	651