

Autumn 2004

ALTA Newsletter

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Report from the Chair of ALTA

2003 was an important landmark in the history of ALTA.

The smooth transition from the University of Sydney under the guidance of the late Leila Wong to the UTS Kuring-gai Campus staff of Lucinda Amon, Angus Young, and Samantha McGolrick was completed.

The database of members has needed a major overhaul, but appears to now be up-to-date. Each member, with their 2004 renewal, received a CD ROM of the ALTA Directory as provided by the Lawbook Co (Thomson).

During 2004, this directory will start to be updated on a monthly basis via a website provided by the LawBook Co. More details will follow as soon as the system is working securely. If, as a member, you do not wish to be listed in the online directory, please email alta@law.uts.edu.au so we can record your wishes.

At the 2003 Annual Conference, hosted by Griffith University, I was

greatly encouraged by the large number of members and law academics in attendance. I would have to say that the 2003 Conference was a major success and a full report has been provided by Prof Rosemary Hunter as the 2003 ALTA President. (see page 5)

At the Annual General Meeting, it was agreed to elect the existing General Executive of ALTA. This includes the honorary officers of Prue Vines as Treasurer, Elisabeth Peden as Secretary, and myself as Chair.

The General Committee also includes Rob Woellner, Zada Lipman, David Barker and Lyndal Taylor.

The 2004 Conference will take place between 8th-11th July at the newly-named Charles Darwin University. This automatically makes Prof Ned Aughterson the 2004 ALTA President.

A special edition of the ALTA Newsletter will be emailed out containing all the details of the upcoming conference. Please note the dates in



your diary and that the theme will be "Crossing Boundaries".

Once again, can I encourage as many institutions as well as individual members to renew their ALTA membership. You will note that the subscription (which runs January to December) has risen to cover the administrative expenses. However, we are negotiating more benefits as the year goes on. One of the immediate benefits will be access to a free copy of the *Legal Education Digest*.

For membership inquiries and renewals, please contact Angus Young or Samantha McGolrick on alta@law.uts.edu.au.

Finally, I hope you enjoy the autumn semester and see you in Darwin.

**Prof Michael A Adams
Chair, ALTA**
michael.adams@uts.edu.au

ALTA membership immediately pays for itself

...

members receive a discount on the Annual Conference fee of almost double the cost of membership!

Membership Renewal for 2004

ALTA membership has always been cheap, in fact one would say a “bargain”.

Personal membership is only A\$45 per annum — based on a calendar year.

Renewal notices were posted in January 2004 and need to be paid ASAP. There could be a tax deduction depending upon your personal circumstances. ALTA will issue an appropriate tax

invoice.

A large number of universities are Institutional members, which lowers the cost to \$A40 per academic, as it is paid by the university. This is much cheaper and easier for ALTA to administer.

The main benefits of membership are:

- Discount on the annual conference

- ALTA Newsletter (two per annum)
- Legal Education Digest (PDF version) emailed quarterly
- 2003 ALTA Directory of members on CD ROM as well as access to the 2004 updated online version – see below

For more details, please email

alta@law.uts.edu.au



2003/04 ALTA Directory

Once again, the Lawbook Co (Thomson), has kindly sponsored the printing and publication of the 2003/04 ALTA Directory of Members.

The 2003 ALTA Directory was provided on CD ROM to all paid-up members for 2003. If you did not receive the CD, please email ALTA.

In the first quarter of 2004, the Lawbook Co will be providing an online version of the Directory.

This will be updated on a monthly basis.

Please let us know of any changes in your profile, so we can keep this database up-to-date.

It is **urgent** that you renew or take out a membership subscription as soon as possible to be included in this year's ALTA Directory.

With the support of the Lawbook Co, we will be placing a version on a

website as well later in the year.

If you **do not** want to be included in the online version for privacy reasons, please email us at ALTA as soon as possible at: ALTA@law.uts.edu.au

Finally, if you want to contribute any short articles for the Newsletter, please email to the same address.

The Developing Tort of Invasion of Privacy

In June 2003, Senior Judge Skoien, of the Queensland District Court, took the bold step of recognising — for the first time in Australia — that there exists a common law right to privacy.

The plaintiff, the Mayor of Maroochy Shire on the Sunshine Coast, brought an action seeking compensatory, aggravated and exemplary damages for invasion of privacy, harassment, intentional infliction of physical harm, nuisance, trespass, assault, battery, and negligence. In addition, the plaintiff sought permanent injunctions, interest and costs.

The plaintiff and defendant had both been directors of a non-profit company and had formed a sexual relationship during their directorship. Subsequent to the cessation of the personal relationship, the plaintiff established a therapeutic massage business. The defendant alleged that the plaintiff's business provided more than merely therapeutic massage services and continued to pursue the plaintiff for a number of years, which gave rise to the plaintiff's 70 particularised allegations of stalking. In his

defence, the defendant claimed his actions were intended to protect the plaintiff's reputation and career, and the reputation of a non-profit company.

DCJ Skoien determined that there exists a common law right to privacy actionable in tort. The Judge found that the decision of the High Court in *Australian Broadcasting Corporation v Lenah Game Meat Pty Ltd* (2002) 208 CLR 199 was not to be read as support for the proposition that there was no common law right to privacy which could be enforced by an action in tort.

Although a bold step to take, DCJ Skoien felt it was desirable and logical to take the first step in Australia to hold that there could be a civil action for damages based on the actionable right of an individual to privacy.

Whilst refusing to outline definitively the scope of the action for breach of privacy, DCJ Skoien held the elements of the tort to be:

- a willed act by the defendant;
- which intruded upon the privacy or seclusion of the plaintiff;
- in a manner which would have been

considered highly offensive to a reasonable person of ordinary sensibilities; and

- which caused the plaintiff detriment in the form of mental, psychological or emotional harm or distress; or
- which prevented or hindered the plaintiff from doing an act which he or she was lawfully entitled to do.

DCJ Skoien found these elements to exist and awarded the plaintiff \$178,000 in damages for breach of her common law right to privacy.

Grosse v Purvis [2003] QDC 151; (2003) Aust Tort Reports 81-706.

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Raising the Bar on Officers' Duties

Two decisions of Austin J in the New South Wales Supreme Court are evidence of a marked shift towards increased responsibilities for corporate officers. Both decisions centre on the statutory duty of care and diligence found in s 180(1) of the *Corporations Act 2001* (Cth).

Austin's J first judgment, in *ASIC v Rich*, focussed upon the standard of care and diligence expected of the non-executive chair of the board of One.Tel Ltd, John Greaves. ASIC brought an action seeking declarations of contravention of s 180(1) of the *Corporations Act 2001* by Messrs Rich, Keeling, Greaves and Silbermann.

ASIC submitted that a higher standard (than that expected of other non-executive directors) of care and diligence was expected of Mr Greaves by virtue of his significant training and expertise and his special responsibilities as chair of the board and the Finance and Audit Committee.

Austin J considered the case law in relation to the position of the chair of the board and found himself in agreement with Rogers J in *AWA Ltd v Daniels* (1992) 7 ACSR 759, in holding that the chair is responsible to a greater extent than any other director for the performance of the board as a whole and each member of it.

In finding that a higher standard of care and diligence is expected of a well-qualified and experienced non-executive chair who is also the chair of the Finance and Audit Committee, Austin J held that:

It is now commonplace to observe that the standard of care expected of company directors, both by the common law (including equity ...) and under statutory provisions, has been raised over the last century or so. One might correspondingly expect that the standard for company chairmen has also been raised.

Austin's J judgment, in *ASIC v Vines*, expanded upon the position taken in *Rich* to encompass executive officers.

The defendant was a director of GIO Insurance and the Chief Financial Officer of the GIO Group. Austin J concluded at [33] that:

there are different standards for directors qua their directorships, on the one hand, and executive officers qua their executive positions, on the other. ... the directorial duty, the same for executive

and non-executive officers alike, may be supplemented by an executive duty in the case of an executive director.

Thus, the decision in *Vines* confirms that while the standards of care and diligence expected of non-executives and executive directors may be the same at a fundamental level, this standard is elevated in the case of executive officers who are appointed by virtue of their particular special skills.

That is, an executive director is faced with a different standard of care and diligence in respect of the performance of his or her duties as a director from that which is expected of the director in the performance of his or her duties as an executive of the company.

To conclude, in his judgments in *Rich* and *Vines*, Austin J has located, within the statutory duty of care and diligence, the scope to enhance the duties of chairs of the board and executive directors by reference to the individual's particular skills.

ASIC v Rich [2003] NSWSC 85; (2003) 44 ACSR 341

ASIC v Vines [2003] NSWSC 1116

“... the standard of care expected of company directors ... has been raised over the last century or so. One might correspondingly expect that the standard for company chairmen has also been raised.”

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ALTA Conference Report for 2003: Changing Law

A grand total of 202 delegates attended the 2003 ALTA Conference, held at the Novotel, Brisbane, on 6-9 July, and hosted by Griffith Law School. The conference theme was 'Changing Law', and the 10 plenary speakers and many interest group presenters addressed this theme, in all its ambiguity, in their papers.

The conference began with an opening Cocktail Reception on the evening of 6th July, at which delegates were welcomed by the Dean of the Griffith Law Faculty, Professor Rosemary Hunter, and by Aboriginal and Torres Strait Islander elders associated with Griffith University.

The Reception was followed by a screening of the Australian space horror movie 'Pitch Black', which was then elegantly deconstructed by a panel of legal film crits at the next day's Workshop on 'Law and Culture'.

The three days of conference sessions saw presentations of 90 interest group papers in 37 interest group sessions, an exciting and challenging series of plenary papers, two other Workshops, on Legal Education and on Legal Academics and the

Media.

The ALTA Executive meeting and Annual General Meeting were also held, together with the inaugural meetings of two new networks of Law Associate Deans/Directors of Research, and Associate Deans/Directors of Teaching and Learning.

The Publishers dinner was held at Rydges Hotel, South Bank, and was followed by a disco at which those of a certain age bopped until we dropped to the sounds of the '70s and '80s.

The Conference dinner was held at the historic Brisbane Customs House, where delegates were vastly entertained by the insights into the legal, political and educational process by Queensland Minister for the Arts and former Attorney-General, Hon. Matt Foley MP.

Feedback from the conference, both formal and informal, has been excellent. Votes for best plenary speaker were given to Jane Kelsey ('Serving Whose Interests? Free Trade Agreements and the Transformation of Public Services from Human Rights to Global Commodities'), Larissa Behrendt ('Advancing

Indigenous Rights in the Era of Practical Reconciliation'), Erica McWilliam ('Risky Subjects'), Clifford Shearing ('Governing Security: New Regulatory Challenges') and Andrea Durbach ('Conscientious Participation: Working the Law Back to its Bones') – indicating the quality and diversity of the plenary presentations.

An undertaking on this scale incurs many debts. Heartfelt thanks are due to the Sponsors: Cavendish Publishing Ltd and LexisNexis Australia (Publishers' Dinner), QUT Law Faculty (Opening Cocktail Reception), TC Beirne School of Law, University of Queensland (Conference Dinner), and Thompson Legal & Regulatory Ltd., and also to Professor John Dewar, Pro Vice Chancellor (Business & Law), Griffith University, who provided the initial seed funding for the conference.

To the conference managers, Conference Solutions, who provided a highly professional and effective service before, during and after the conference.

To the permanent and local interest group convenors, and to those who chaired interest group and plenary sessions.

To the Program Committee: Professor Rosemary Hunter, Professor Richard Johnstone, Ms Mary Keyes, Mr Shaun McVeigh and Dr William MacNeil, Griffith Law School, and especially to Mary Keyes who coordinated the interest group program.

And to the Conference Organising Committee: Professor Rosemary Hunter, Ms Mary Keyes and Mr Graeme Orr, of the Griffith University Law School, for the time and energy they devoted to ensuring that the conference was a great success.

ALTA 2004 will be held in Darwin, hosted by the Charles Darwin University Law School.

Good luck to all involved!

**Prof Rosemary Hunter
2003 ALTA President
Dean of Law,
Griffith University**

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Legal Education Digest

For over ten years, the NSW Centre for Legal Education has produced a 20-page digest of the main literature on legal education covering the USA, UK, Australia and New Zealand.

For a number of years, *Legal Education Digest* (LED) has been carefully edited by Dr John Nelson. This has made the LED a very useful resource for academics interested in

legal education.

The LED provides a summary of key articles published and a full citation to enable libraries to obtain the full-text versions.

During 2004, we will be providing a "free" (worth A\$55) electronic subscription to all the paid-up members of ALTA. A sample will be email on ALTA members

2004 renewals being paid. The latest volume is in colour and has a new style/layout.

LED was published by the University of Newcastle as host of Centre for Legal Education. In 2003, both the CLE and LED moved to the UTS Kuring-gai Campus at Lindfield.

For more details, please email:
LED@law.uts.edu.au

Positions Vacant – University of Sydney

The School of Business at the University of Sydney is seeking to make a number of appointments at Associate Lecturer, Lecturer and Senior Lecturer level to strengthen and further develop its research and teaching capability in the discipline of business law.

For full advertisements, please refer to the University of Sydney's website:
www.usyd.edu.au/personnel/

For further information, please contact Professor Graeme Dean, Chair of the Discipline of Accounting and Business

Law on (02) 9351 3107 or g.dean@econ.usyd.edu.au

Alternatively, you may contact Professor Sid Gray, the Head of School of Business on (02) 9351 3552 or s.gray@econ.usyd.edu.au

**Applications close
5 February 2004.**

Obituary – Leila Wong

Leila Wong, who served as Executive Assistant to the ALTA Secretariat passed away on Monday 12 January 2004.

Leila began working at Sydney University in the

1950s and assisted the ALTA Secretariat for many years.

Leila will be missed by many ALTA members and her Sydney University colleagues.