





## From our AustLaw Chairperson

I am delighted to welcome Belbridge Hague Solicitors to AustLaw as our first Associate Member. We look forward to renewing our association with Rob Meers and his team, who were previously AustLaw members.

The Membership committee has been active in seeking out new members for AustLaw, and ensuring that the benefits and value of AustLaw is known to prospective members. The committee members are looking to all firms to assist in connecting with prospective members, and taking the first step to grow our network. Our aim is to have members in each capital city and major regional centres. The membership committee consists of Luke Murphy (MurphySchmidt), Warrick McLean (Coleman Greig), Gareth Jones (Septimus Jones and Lee) and myself. We encourage you to get in touch if you know of a firm who could benefit from AustLaw membership.

Earlier in the year I had the pleasure of meeting with NZLAW Chairman, Simon Price. There are common challenges and opportunities for both associations, and member firms in both countries, and we look forward to strengthening the relationships between our two organisations.

We are pleased to be holding our next Symposium in Wellington, New Zealand from 17 to 18 October, 2014, jointly with NZLAW. The final touches are being put on the programme which will include specialty meetings for Family Law, Accident Compensation, Wills & Estates. A great line-up of speakers will be presenting and a great social programme has also been arranged. It is hoped that a large AustLaw contingent will be in attendance, and it is certainly an event not to be missed.

Finally, a big thank you to Coleman Greig for hosting us all in Parramatta in March this year. I am sure that all who attended learnt a great deal and enjoyed the opportunities to catch up with other members.

I look forward to seeing everyone in Wellington in October.

**Angus Edwards** AustLaw Chairperson

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Is there an online article that you want to share with AustLaw Members?

Join the LinkedIn Group and share the link





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The Plaintiff, Evan Joseph Kelly, was a 23 year old Irish tourist who, in July 2007, arrived in Australia for a three month holiday.

On 27 September 2007 he sustained severe personal injury as a result of an incident at Lake Wabby, on Fraser Island. He was running down the sand dunes approximately 10 to 15 metres from the water's edge when the sand gave way under his feet, causing him to fall into the water.

### Mr Kelly landed on his head and suffered incomplete tetraplegia.

The Plaintiff's account of how the injury occurred was accepted by the Trial Judge, His Honour Justice McMeekin.

At first instance, it was held:

- 1. the State had breached its duty of care in that its response to the risk of injury was inadequate. In determining this, the Court considered a number of factors, including:
  - a. the history of injury occurring at Lake Wabby;
  - b. the adequacy of the warnings given to visitors/entrants to Lake Wabby including the safety video shown by commercial operators to tourists; and
  - c. the provision of warning signs at the entrance track to Lake Wabby.

- 2. the instructional video shown by commercial operators to visitors to Lake Wabby should have dealt with what was one of the most significant risks on the island.
- 3. taking into account the particular circumstances of the Plaintiff and the activity he was undertaking, the risk was not an "obvious" risk pursuant to section 13 of the Civil Liability Act 2003 ("CLA"). In fact, His Honour went so far as to say that it was not an obvious risk but more in the nature of a trap.
- 4. the plaintiff contributed to his injury by 15%.

The State of Queensland appealed the decision. The central issues in the Appeal were whether the Trial Judge:-

- erred in finding that the risk of injury was not an 'obvious risk' within the meaning of section 13 of the Civil Liability Act 2003 (Qld); and, in the alternative
- made an insufficient reduction of damages for the plaintiff's contributory negligence.



### "The Respondent's activity was not an 'obvious risk' within the meaning of Section 13 of the Civil Liability Act 2003"

The Court of Appeal, comprised of Fraser JA and Philippides and Henry JJ, (separate reasons given by each member with the lead judgement given by Fraser JA) unanimously held that the trial judge was correct in concluding that the risk of injury that materialised was not an 'obvious risk'.

In deciding whether the risk was 'obvious', Fraser JA considered whether the warning signs at the entry to the track and the lake effectively communicated the risk inherent in the activity undertaken by the respondent.

Fraser JA stated "The signs should have been regarded as important since, as each sign notified, they had been placed by the State. The significant question then is whether, in all of the circumstances, the signs effectively communicated the risk which materialised so as to make that risk obvious to a reasonable person in the respondent's position." He went on to say at [44] "In all the circumstances the signs did not effectively communicate that running down the dune into the lake involved the risk of serious injury which materialised."

Of particular significance, Fraser JA found "There was no apparent danger in running and jumping into the water in the way in which the respondent had done on about 10 occasions without incident. This might have been reinforced in the mind of a reasonable person by the circumstance that the video shown to the respondent included warnings about other dangers and activities on the Island but did not include any warning about running down the sand dunes into Lake Wabby."

In determining whether the risk was 'obvious' the Court was influenced by other factors including:

- the presence of numerous persons repeatedly running down the sand dune into the lake:
- the absence of any warning of that activity in the video which warned of different dangers on the Island;
- the unusually high degree of the risk of very serious injury involved in running down the sand dunes into the lake;
- the respondent's own experience in running into the lake without mishap on nine or ten occasions;

Fraser JA reviewed all the factors taken into consideration by the Trial Judge, concluding at [48] that "These circumstances justified the Trial Judge in finding that the risk of serious injury which was inherent in the Respondent's activity was not an "obvious risk" within the meaning of Section 13 of the Civil Liability Act 2003."

It was apparent from the Judgments of all three members of the Court that the determination of what is an obvious risk is to be decided objectively and is very much dependent on the individual circumstances of each case.

Although it suggested the apportionment of 15% for contributory negligence could be thought to be generous to the plaintiff, the Court of Appeal did not consider the assessment was unjust or unreasonable so as to indicate an error that would justify a different result.

### **Legislative Amendments:**

In a direct response to what the State sees as its increasing exposure to large personal injury claims, The Nature Conservation and Other Legislation Amendment Act (No 2) 2013 was assented to on 7 November 2013.

The amendments abolish the State's exposure to liability arising out of incidents that occur on Queensland Parks and Wildlife Service managed land. In particular, the amendments impact on the following Acts:

- Nature Conservation Act 1992;
- Forestry Act 1959;
- · Recreation Areas Management Act 2006; and,
- Marine Parks Act 2004.



There have been further developments recently in workers compensation legislation, which will affect workers compensation claims. In order to understand these developments, it is necessary to examine the decisions that the Courts have made in the case of *Goudappel v ADCO Constructions Pty Ltd*.

### Workers compensation legislation

### Goudappel v ADCO Constructions Pty Ltd.

### The Goudappel Case: The Facts

Mr Goudappel was injured on 17 April 2010 and made a claim for compensation two days later, on 19 April 2010. On 14 July 2011, he was assessed by an orthopaedic surgeon as having 6% whole person impairment as a result of his work injury.

The Government's changes to lump sum compensation commenced on 19 June 2012. The new legislation contained a provision stating that the changes applied to claims even if the date of injury occurred before 19 June 2012. Furthermore, the amendments abolished the right to claim compensation for pain and suffering.

On 20 June 2012, Mr Goudappel's solicitors made a claim for lump sum compensation i.e. 6% whole person impairment. The workers compensation insurer declined the claim on the basis that Mr Goudappel did not exceed the new threshold for lump sum compensation i.e. he was not assessed as having greater than 10% whole person impairment. The insurer argued that in order to escape the amendments, Mr Goudappel must have made a specific claim for lump sum compensation before 19 June 2012. Mr Goudappel argued that his rights accrued on the date of his injury, being 17 April 2010, and that he had made a claim for those rights when he submitted his original claim form to the insurer on 19 April 2010.

### **How the Case Progressed**

The argument first came before the Workers Compensation Commission. President Keating decided that the amendments applied to Mr Goudappel's claim because he had not made a specific claim for lump sum compensation before 19 June 2012. Mr Goudappel appealed the decision of the Workers Compensation Commission in the Court of Appeal of NSW.

In October 2013, the Court of Appeal of NSW determined that Mr Goudappel's claim was NOT caught by the amendments and he was entitled to make his claim for 6% whole person impairment.

The Court of Appeal found that Mr Goudappel could rely on the claim that he lodged on 19 April 2010 and therefore the amendments did not apply to his claim. In other words, Mr Goudappel did not have to make a specific claim for lump sum compensation to be exempt from the amendments.

This meant that any injured workers who were injured before 19 June 2012 could make a claim for lump sum compensation even though their injuries had been assessed as being less than 10% whole person impairment. If they were assessed as being greater than 10% whole person impairment, then a claim for pain and suffering of up to \$50,000 could also be made.

### **ADCO Constructions appealed this decision**

On 16 May 2014, the High Court of Australia handed down its decision in ADCO Constructions Pty Ltd v Goudappel & Anor. In its decision, The High Court determined that the workers compensation amendments in relation to lump sum compensation apply to all claims even if the date of injury was before 19 June 2012 and a claim had been made before 19 June 2012.

The High Court also determined that in order to be exempt under the amendments, Mr Goudappel should have made a specific claim for lump sum compensation before 19 June 2012.

#### What does this mean for other workers?

The amendments to workers compensation legislation state that there is no entitlement for pain and suffering compensation for any injured workers in NSW.

The High Court's decision in the Goudappel case means that injured workers are no longer entitled to claim pain and suffering compensation because the amendments apply to all claims, irrespective of the date of injury.





# Coleman Greig continue to give back to the Western Sydney Community

Coleman Greig Lawyers, in conjunction with our sponsors St George Bank, Deloitte, the University of Western Sydney and 360HR, was thrilled to host Anna Bligh - Australia's first popularly elected female Premier of Queensland and now CEO of YWCA NSW at their most recent Women in Business Forum.

Anna spoke about her time in politics and about what it means to be a woman in a leadership role. She inspired the room with her stories of managing her personal life alongside a public profile and shared a fantastic perspective on how far women have come on numerous fronts over the past 100 years.

The event raised over \$5,000 to support YWCA NSW Big Brothers Big Sisters, a mentoring program for at risk young people.

Coleman Greig has continued to focus their efforts on the community with the upcoming Coleman Greig GWS Executive Challenge in support of Northcott and St. Gabriel's School. Last year, the event raised \$50,000 for these two worthy charities and with more than 20 Western Sydney businesses already signed up to take part this year, the Challenge looks set to be even more successful in 2014.





One of Coleman Greig's Cadetship Program graduates, Neil Palmer has been admitted this month and will stay on with the firm as part of the Coleman Greig Litigation and Dispute Resolution Team.

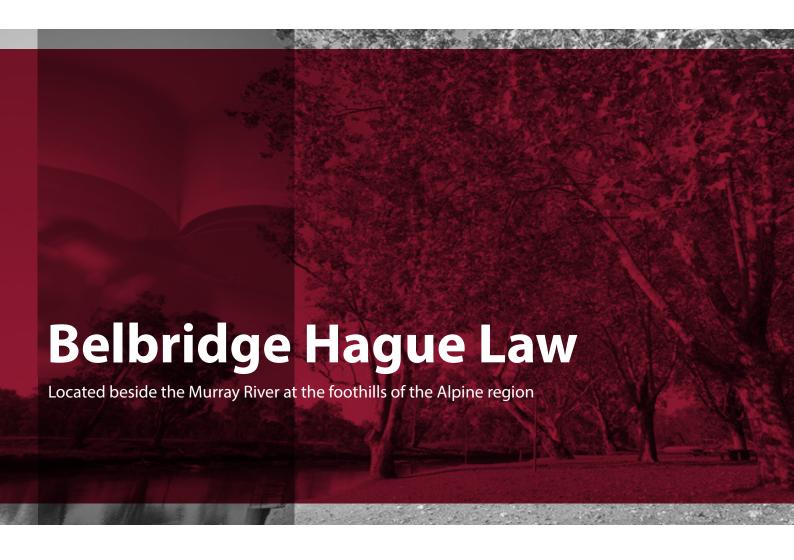
Neil has been a credit to the firm over the past six years after joining Coleman Greig as a Cadet in 2008. As part of the program, Neil gained valuable experience in Commercial Advice, Litigation and Dispute Resolution, Employment Law, Property and Finance, and Family Law, and received ongoing professional support and guidance from various mentors at Coleman Greig.

While completing his Bachelor of Business and Commerce/Bachelor of Laws, Neil also completed an Honours degree in Management in which he was awarded the UWS Honours Scholarship and graduated with First Class Honours.

On top of this, Neil was one of ten students nation-wide selected to present his thesis, "Implementing Corporate Social Responsibility in Medium-Sized Law Firms in Western Sydney: An Action Learning Approach", at the 2011 National Honours Colloquium. He went onto use this study to assist the firm in implementing the Coleman Greig GWS Executive Challenge in 2013.

In early 2014, while completing a Graduate Diploma of Legal Practice at the College of Law, Neil accepted a fulltime law graduate position with Coleman Greig's Litigation and Dispute Resolution Team in which he has been working exclusively for the past four years.

COLEMAN GREIG



We are 145 years young, and our Director and Principal, Rob Meers, has been with the firm for 28 of those years. As a group we aspire to continue to be a pro-active and forward thinking firm, and the employer of choice, for the region for another 145 years.

#### Our practitioners advise on:

- Business and General Commercial Law;
- Wills & Estates and Probate;
- · Will disputes
- · Family Law;
- Commercial Litigation and Dispute Resolution;
- · Property and Conveyancing NSW and Victoria; and
- · Employment Law.

Within these traditional practice areas, we continually seek out new trends and growth areas so that we can provide relevant and in-depth advice to meet the needs of particular industries and groups. We particularly recognise that clients increasingly need more complex advice, which we refer to as "pointy end advice", and that we need to extend ourselves beyond being generalists.

Hence our firm has a strong commitment to life-long learning, and continually seeking out new and emerging areas of practice, supported by the relevant technology to get us there. One particular growth practice area is Migration Law, focusing on business and skilled migration as the governments of NSW and Victoria seek to attract people to regional areas and one of our practitioners has recently gained accreditation as a Migration Agent.









Trustees of Self-Managed Super Funds (SMSFs) must maintain a vigilant attitude to the review of their SMSF and the legislation that controls them.

We recommend trustees regularly review the SMSF's strategy and deed to ensure that member's personal circumstances and objectives are continually being considered.

#### The Trust Deed

A SMSF's trust deed contains the rules by which the SMSF is governed. These rules operate in conjunction with SMSF legislation. A trustee can only act in accordance with the rules of the SMSF deed. Importantly, a trustee is not able to undertake certain actions if it is not permitted by the SMFS's trust deed. Accordingly, a trustee can be prohibited from undertaking certain actions even where the action is permitted by SMSF legislation.

Trustees should avoid having a SMSF deed that contains out of date or invalid clauses. They increase the risk that the trustee will exercise a power that the law does not allow for example, to set up a pension that would be in breach of current superannuation law and cause the SMSF to lose its tax advantage status. Similarly, if the SMSF deed is out of date, the SMSF may be unable to take advantage of recent changes to SMSF legislation.

### Trustee's obligations to review

Trustees are under strict obligations to ensure compliance with the rules of the SMSF deed and the governing SMSF legislation.

Severe penalties for failure to comply apply to both the trustee and the SMSF, including:

- SMSF becoming non-complying and losing its tax concessions;
- disqualification, removal or suspension as a trustee of the SMSF;
- civil or criminal prosecution; and
- financial penalties.

A new penalty regime commenced on 1 July 2014. The new regime includes penalties ranging from \$850 to \$10,200 for trustees who fail to comply with their obligations. These penalties must be paid by the trustee and not reimbursed by the SMSF. The penalties can also be applied to directors of corporate trustees.

Trustees should ensure they understand the rules contained in the SMSF deed and should regularly review the deed to ensure the rules are up to date.



### Self-Managed Superannuation Fund Deeds (Cont.)

### Should you update?

The legislative rules governing SMSFs has evolved substantially since their inception.

Recent changes to legislation include:

- 1. changes made to borrowing options for SMSFS;
- 2. how a deed is to govern the release of funds;
- 3. contribution splitting options;
- 4. changes to pension payments after death;
- 5. changes to excess contributions tax;
- 6. increases to concessional contributions; and
- 7. auditing of SMSFs.

While not always necessary, there can be benefits in updating the SMSF deed to reflect recent changes in legislation. These benefits include:

- 1. ensuring the SMSF is able to take full advantage of the current legislation; and
- 2. reducing the risk that a trustee will act in breach of the trust fund rules

We recommend updating any SMSF deed which has not been updated since 2009.

For more information contact: Gabriel McKinnon on (07) 3232 1900 or email gmckinnon@blackston.com.au.

# 4 Practical Steps to ensure your business complies with the new 2014 Australian Privacy Principles (AAP) Laws.

### 1. Update or implement a privacy policy

It is essential that your business implements a privacy policy or updates its privacy policy to comply with the APP.

It should address:

- how an individual may complain about a breach of the APP; and
- whether your business is likely to disclose personal information to overseas recipients.

### 2. Conduct an internal privacy audit

It is imperative that businesses conduct an internal privacy audit to assess how it collects, discloses and securely stores personal information. Failing to comply with the collection, disclosure and storage of personal information attracts harsh consequences under the new laws. For example, if your business discloses personal information overseas, your business may be responsible for any breach of the APP by the overseas recipient.

### 3. Update or implement an internal privacy guide

Your business must take reasonable steps to implement practices, procedures and systems to ensure compliance with the APP.

Your business's internal privacy guide at the minimum should include:

- procedures to deal with a privacy complaint;
- procedures to identify and manage APP compliance issues;
- procedures of collecting, storing, using and disclosing personal information; and
- details of staff who are responsible for privacy compliance within your business.

#### 4. Train staff

Any staff handling personal information must be trained to ensure they understand your business's obligations under the APP.





# Kells launches new television campaign



The ads, featuring a mix of lawyers from different practice areas are airing on both Prime and WIN television stations in the Illawarra. "The purpose of the campaign was to create three branding advertisements that demonstrated the breadth of services Kells offers and to convey the firm's points of difference," said Joe Lyons, Kells Marketing Manager.

"Many of our competitors are currently advertising on television and we needed to come up with a creative concept that would make the ads stand out and to maximise cutthrough. The feedback we have received so far has been very positive.

The consensus is that utilising our own people providing unscripted personal commentary has added to the credibility of the claims we make in the advertisements and has presented our lawyers as accessible people who relate to their clients and whom prospective clients can comfortably engage with."

In addition to the television ads, three radio ads utilising the audio from the television commercials were created along with five partner video profiles. The content has been promoted via social medial channels that are part of Kells' social media strategy.

The television ads and profiles can be viewed on the Kells You Tube Channel.

https://www.youtube.com/user/kellsthelawyers/videos







#### **Kells Announce New Associate**

Kells is proud to announce the appointment of Adam Bye as an Associate of the firm.

Adam commenced employment at Kells as a Law Cadet in 2008 and was admitted as a lawyer in 2011. Adam's appointment is another success story for the Kells' law cadet program that has seen several Law Cadets progress to the positions of Associate and Partner at Kells over the years.

"Adam has worked extremely hard in developing the family law and criminal law practice over the past several years," said Partner Peter Chodat. "His appointment as an Associate is a testimony to his hard work and dedication. I congratulate Adam on this appointment, it is well deserved."

### Lorri Field – Best Graduating Student in the Master of Applied Law

Associate, Lorri Field, was one of 70 graduates of The College of Law Applied Law Program to receive their diploma at an awards ceremony held recently.

Lorri was awarded Best Graduating Student in the Master of Applied Law (Commercial Litigation).

"Lorri's achievement has come after two years of combining her studies with a heavy workload and her numerous high performance sporting pursuits," explained Partner Amy Harper.

"During her studies, Lorri has achieved many high distinctions and was profiled in the Australian Legal Business publication as an example of the high quality students in the course. Congratulations to Lorri on this fabulous achievement."

### Kells Supports House With No Steps - Step Up Challenge

Kells participated in the annual House With No Steps - Step Up Challenge on 27 July.

The Step Up event challenges teams to run or walk the stairs of the Western and Southern Grandstands at WIN Stadium in Wollongong for 60 minutes non-stop.

All money raised from registration fees and donations go towards assisting people supported by The House With No Steps to live as independently as possible.

Karena Nicholls, Associate and Kells' community engagement team member commented, "we all thought one hour of climbing the stairs was impossible, but as the sweat fell and the legs ached, we watched those with a disability up on the hill watch us and that spurred the team on."

There were plenty of sore and sorry staff reporting for work the next day, but it was all for a very good cause.









### **EXPRESSION OF INTEREST**

### AN INNOVATIVE AND SUPPORTIVE NETWORK OF LAW FIRMS

With 12 member firms located across the eastern states of Australia, AustLaw is a well-recognised and respected legal network that exists purely to help and support its members.

For members, AustLaw is about sharing resources and co-operation. It is also about networking with peers in a non-competitive forum and providing benefits and opportunities that may not otherwise be available to independent firms. This is in turn means that clients using an AustLaw firm can be assured that their law firm has access to the most up to date resources and expertise.

### THE BENEFIT OF BECOMING AN AUSTLAW MEMBER:

### **Valuable CLE and Networking Events**

AustLaw offers members the opportunity to attend regular seminars and workshops that specifically relate to the areas of Family Law, Business Law, Accident Compensation Law, Wills and Estates, Criminal Law and Practice Management. These workshops are free to members and valued between \$500 - \$1100 per attendee.

Through these events, members build long lasting and valuable networks with their peers in a non competitive environment. The network enables lawyers and managers to broaden their knowledge and request skills and advice

from outside of their firm. Members have commented that "When I ring an AustLaw Member, they pick up my call. There's no hesitation to assist me with my legal enquiry".

### **Client Referrals**

Members refer business to other firms who do not operate in a geographic region or area of law. Recently AustLaw embarked on the Trans Tasman Partnership with NZLaw opening the door to a wider network of firms and referral system.

### **Member Newsletter**

Members receive regular newsletter from AustLaw and NZLaw announcing specialists, new hires and firm projects.

### Surveys

AustLaw undertakes surveys between members to allow benchmarking in the areas of Salaries, Charge Out Rates and Disbursements.

### **Group Purchasing Power**

As a network of law firms, AustLaw is in a position to negotiate better buying rates for its members. Two such arrangements are in place with the plans to build this benefit for members.



\$ 770 (incl GST)

### MEMBERSHIP POLICY

### **MEMBER:**

#### **AustLaw Member Criteria**

Prospective members would be expected to:

- Have a high standing and reputation in the legal profession, and occupy a strong position in their geographic region;
- · Produce a high standard of work;
- · Be committed to quality control;
- Possess a substantial clientele, relative to location;
- Have a progressive approach to technology and practice management;
- Be of sufficient size to provide a broad-based service to clients and other members;
- Have a desire to grow and increase profitability;
- Co-operate with other AustLaw firms and actively promote the cross-referral of work, and the sharing of expertise;
- Participate in approved group purchasing arrangements and annual AustLaw Benchmark Survey.

### **NON-MEMBER:**

## AustLaw Members may invite non-member firms to attend one day workshops or conferences if the following applies:

- There is no known conflict with any of the current AustLaw Members
- 2. The non-member agrees to pay the registration fee in line with the current schedule of fees
- 3. If there is a likelihood of the non-member becoming a member

### **Process**

- The Member shall contact the secretariat whereby a memo will be circulated to all Firm Representatives to confirm whether or not a conflict would arise by their participation
- 2. The Secretariat will confirm within a reasonable period if the registration can proceed
- 3. Registration will not be confirmed until the registration fee is paid in full.

### **Advertising**

Members can distribute event fliers to colleagues in other firms or the event can be displayed to the public via the web site.

### Fee Schedule

1. One Day Workshop

	Additional Delegate Same Firm	\$ 550 (incl GST)
2.	Two Day Conference	\$1,200 (incl GST)
	Additional Delegate Same Firm	\$ 990 (incl GST)

### **Associate Membership**

The Associate Membership group has been developed to provide vital networking, referrals and learning opportunities for firms with five or less fee earners.



### MEMBER LIST

### AUSTLAW BOARD MEMBERS

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## Strength of Networks

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