

BARRISTERS & SOLICITORS

**Johnston
Withers**



Client focus and quality service

THE VERDICT

Autumn Edition 2011

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Elliott Johnston signing
Red Silk

Editor's Note By Emma Wilkinson



News from Johnston Withers...

We farewell the following staff and wish them well with future endeavours:

Sarah Minney (Whyalla Solicitor), Ben Hancock (Clerk), Steph Casey (Secretary), Di Miller (Secretary), Karyn Bloxham (Clare Solicitor), Gavin Coombs (Pt Augusta Solicitor) and Miriam Errington (Secretary).

We welcome:

Mark Johnson (General Manager), Stacey Tyrell (Whyalla Solicitor), Helen Steel (Secretary to Richard Bradshaw) and Crystal Swanson (Secretary to Graham Harbord).

Congratulations to the following staff:

Deb Lawrie (Secretary/Staff Supervisor) on her 10 years with Johnston Withers;

Sue Caruso (Debt Recovery) on her 25 years with Johnston Withers;

Heidi Moroney (Secretary) and her impending motherhood and Toya Nguyen (Solicitor) and Ted Gurthrie (Solicitor) on recently becoming parents; and

Erica Panagakos (Clerk) on receiving the Italian Consulate's Book Award for the highest achieving student in Italian at Adelaide and Flinders Universities.

Johnston Withers have recently been updating their premises.

BOOK LAUNCH—RED SILK

On the evening of Thursday 3rd March 2011 many members of the legal profession, friends, family, former colleagues and associates of Elliott Johnston gathered at the launch of his new book 'Red Silk' written by Penelope DeBelle. The book is a biography on the life of Elliott Johnston, the founder of the firm.

ANTI HOON LEGISLATION



BY ANNE SIBREE

Anne Sibree is a Lawyer at Johnston Withers and a member of the Law Society Human Rights Committee.

A number of amendments to the *Criminal Law (Clamping, Impounding and Forfeiture of Vehicles) Act 2007* and regulations became effective on 31 October 2010 – commonly referred to as the State Government “Anti-hoon Legislation”.

These amendments provide broad powers to seize and deal with motor vehicles in connection with certain offences and alleged offences.

The provisions apply to certain “prescribed offences” including a number of offences under the Road Traffic Act, including drink driving, misuse of a motor vehicle, excessive speeding and reckless and dangerous driving. However, the amendments also apply to a number of non-traffic related offences under the *Summary Offences Act* and the *Graffiti Control Act*.

Upon being charged with one of the prescribed offences, the new provisions allow police to impound your car for up to 28 days at your expense. The period of impounding can be extended by the Commissioner of Police, and can only be revoked in certain

circumstances upon application by the registered owner of the vehicle. In order for the vehicle to be released prematurely, the registered owner needs to satisfy the Commissioner either that the motor vehicle was, at the time of the offence, stolen; or that the offence occurred without the knowledge or consent of the owner of the motor vehicle. These provisions apply even for a first offence.

The Court may also make an order for *permanent forfeiture* of your motor vehicle if you have been convicted of a certain category of “forfeiture offences”, or if you have been found guilty of at least one other prescribed offence within the previous 12 months, or if you have been convicted of at least two other prescribed offences within, the preceding ten years.

It is important to be aware of the application of these new laws, particularly as many of them will apply regardless of whether or not you have been convicted of an offence, and with no option for review by the Courts.

WALK FOR JUSTICE

Emma Wilkinson (Lawyer) and Anthony Kerin (Managing Director) joined around 300 other walkers on 16th May 2011 to participate in the 3rd annual “Walk for Justice” to promote accessing justice and raise money for non-profit organisations and disadvantaged individuals.

ADVANCE NOTICE—PERSONAL PROPERTY SECURITIES

The way in which people register securities for loans, leases and other interests will fundamentally change in Australia this year. The laws were originally slated to commence this month but the commencement date has recently been delayed until October 2011.

Under the *Personal Property Securities Act*, a new regime will be set up to register securities, which will take over from most existing regimes. For example, the vehicle security register in South Australia will be obsolete, and all loans and other securities with respect to vehicles will be placed on this new register.

Our property and business clients will need to consider their own situation in light of the changed rules. For example, if you currently have a Bill of Sale over equipment, or have

leased equipment to somebody either directly or as part of a property lease, you may need to consider placing that interest on the new register when it comes into force. If you fail to register, in many cases a person with an earlier registration is likely to get first right over the equipment, irrespective of whether their claim would usually have ranked below yours.

Please note that the new regime does not affect security interests in land, which will continue to be regulated under the current systems.

Please contact our Mr Andrew Mitchard if you have any queries.



BY ANDREW MITCHARD

Andrew Mitchard is a Senior Associate of Johnston Withers as well as a member of the Australian Lawyers’ Alliance and a volunteer at the Roma Mitchell Community Legal Centre

HUMAN RIGHTS

Johnston Withers has a long and proud history of acting for disadvantaged clients in relation to human rights and anti-discrimination issues.

The Federal Government has now announced a number of matters arising out of the 2009 National Consultation on Human Rights (“the Brennan Report”). The Government has introduced a new Bill into Parliament, which establishes a joint Parliamentary Committee on human rights with representation from both the House of Representatives and the Senate. The proposed Committee will have the power to enquire into and report to Parliament on human rights issues. It will also have the power to enquire into legislation and to review its compliance with Australia’s human rights obligations.

The Committee will be able to conduct public hearings and to examine witnesses. It is anticipated that this Committee will raise the importance of human rights in this country and highlight where legislation is not compatible with international human rights connections to which Australia is a signatory.

A further proposal of the Commonwealth Government is that it will seek to consolidate the Federal anti-discrimination laws into one “Equality Act”. The aim is to remove inconsistencies between the current acts and to provide a clear, coherent basis for the prevention of discrimination in Australia.

There are currently four specific Commonwealth Acts which prohibit discrimination on the grounds of race, national or ethnic origin, sex, marital status, pregnancy, family responsibilities, disability and age. Unlawful discrimination under this legislation also includes offensive behaviour based on racial hatred, sexual harassment and harassment of people with disabilities. The relevant legislation is the Racial Discrimination Act 1975 (Cth) (“RDA”), Disability Discrimination Act 1992 (Cth) (“DDA”), Sex Discrimination Act 1984 (Cth) (“SDA”), and Age Discrimination Act 2004 (Cth) (“ADA”). Certain provisions concerning discrimination are also set out under the Australian Human Rights Commission Act 1986 (Cth). In addition, the Fair Work Act 2009 (Cth) specifically prohibits discrimination and contains

remedies arising from breaches in the employment context.

The RDA, DDA, SDA and ADA each provide that discrimination on the basis of certain attributes is unlawful. They require complaints by an aggrieved person to be first made to the Australian Human Rights Commission where they will proceed through a process of conciliation. If such conciliation fails, it is only then that the complainant may proceed to the Federal Magistrates Court or the Federal Court.

Whilst there are many similarities between these Acts, there are also a number of significant differences. For instance, the RDA contains more extensive protections against racial discrimination and more limited scope for exceptions or defences. It contains an exemption for racial discrimination if the discriminatory treatment amounts to a “special measure”, ie discriminatory treatment for the purpose of assisting a particular racial group to achieve a particular human right.

Each State has its own anti-discrimination legislation as well, and there are a number of differences between each State and between the States and the Commonwealth, both as to the relevant definitions of unlawful discrimination, the permitted exemptions to unlawful discrimination and the complaints process.

Whilst the proposed Equality Act is specifically aimed at consolidating Federal legislation, the Standing Committee of Attorneys-General has also been reviewing options for harmonising the Commonwealth, State and Territory anti-discrimination laws and complaint handling systems.

Johnston Withers welcomes a consolidated “Equality Act”, providing that it does give improved protection for people who may be subject to discrimination and harassment. Our firm also supports a range of issues by the Australian Government, such as improved education and programs in the community concerning human rights. There are still many people in our society who experience human rights abuses. Although Australia generally has a good human rights record compared to most other countries in the world, there is still room for significant improvement. Johnston Withers will continue to advocate on behalf of its clients for strong legislation which promotes human rights in this country.



**BY GRAHAM
HARBORD**

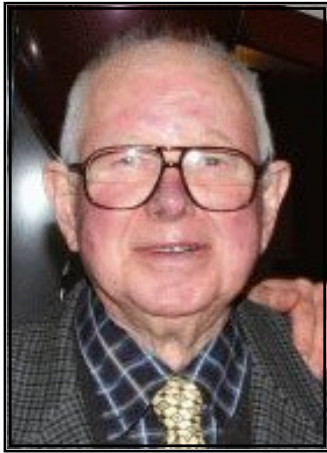
Graham Harbord is a Director of Johnston Withers and Chairperson of the Law Society Human Rights Committee.

AUSTRALIA'S BIGGEST MORNING TEA

Like many businesses around Adelaide and indeed Australia, Johnston Withers staff will be doing their part to raise much needed money for the Cancer Council by holding their 13th annual Biggest Morning Tea. Good luck to those other businesses and individuals taking part.



About Johnston Withers



Johnston Withers was founded in Adelaide in 1946 by Elliott Johnston QC. Elliott was later joined by his wife Elizabeth and the firm of Johnston & Johnston practised throughout the 1950s until Elizabeth took up a role at the Crown Law Office. They both had extensive backgrounds in Union organisations.

Throughout the 1960s, 1970s and 1980s the firm grew through its industrial work and was closely involved with numerous Unions and the Union movement generally.

The firm evolved and expanded throughout the 1980s and 1990s under the stewardship of Brian Withers. During this time Johnston Withers broadened its services to incorporate a commercial section including conveyancing.

Clients of the firm vary from individuals involved in situations of legal difficulty to corporate structures exercising specific legal rights. The firm takes pride in its reputation for fighting for the underdog and the disadvantaged,

and it recognises its practical and ethical obligations to provide top quality legal services to all members of the community or organisations which may seek its advice or assistance. Whilst the firm's major work base historically came from employee groups, various trade unions and their members and the labour movement generally, it has also served a broad general public clientele. The firm has continued to service clients in the personal injury, Work Cover, industrial, family and criminal law fields, but also in evolving and developing corporate areas, small business and in representing Aboriginal organisations.

Johnston Withers is the South Australian legal profession member of MSI Global Alliance, an association of independent law and accounting firms with over 250 member firms in 100 countries. The firm is also a member of the Statewide Legal Group, an association of one city, and five independent country legal firms.

Today Johnston Withers has permanent offices in Adelaide, Port Augusta, Clare and Whyalla, and in addition offers regular services to the communities of Roxby Downs. Currently legal services are provided to clients who range from individuals, families and small businesses ie to trade unions, community organisations and occasionally, large corporations.

Johnston Withers is proud to be part of the South Australian legal fraternity. It continues to practise in most areas of law and is strongly committed to its overriding principle, that of Client Focus and Quality Service.

STATEWIDE/MSI/Johnston Withers has been providing legal services to the South Australian community for over 60 years. We are a member of the International MSI Legal Accounting Network worldwide as well as a member of the State-wide Legal Group. This also includes Mason Westover Homburg (Murray Bridge), Catherine Leis (Port Lincoln) O'Briens (Berri), Voumard Lawyers (Port Pirie/Jamestown/Clare) and Ryans Lawyers (Mount Gambier), and delivers legal services to regional areas.

PLEASE NOTE: You should not act only on the basis of the material contained in this newsletter because the articles are general and may be liable to misinterpretation in particular circumstances. Also changes to legislation occur quickly and we recommend our advice should be sought before deciding how to proceed in a legal matter. The Lawyers at **JOHNSTON WITHERS** are always happy to assist with any enquiries. For further information on the material contained in this newsletter please contact **Tony Kerin** of our Adelaide office on **(08) 8231 1110**

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PORT AUGUSTA	14-16 Gibson Street, Port Augusta, 5700	(08) 8642 5122 / (08) 8641 0887
ROXBY DOWNS	1A Tutop Centre, Tutop Street, Roxby Downs 5725	
WHYALLA	5 Forsyth Street, Whyalla 5600	(08) 8644 0300 / (08) 8641 0887