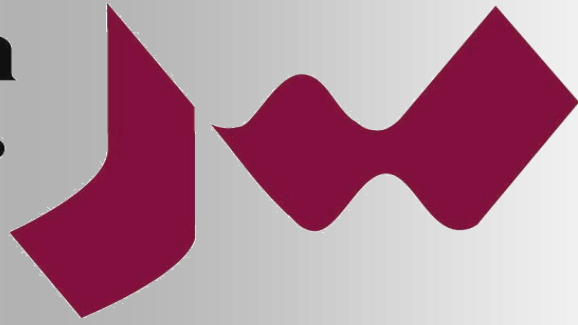


BARRISTERS & SOLICITORS

**Johnston
Withers**



THE VERDICT

Summer Edition 2010

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Editor's Note

By Emma Wilkinson



As we wind up 2010 and prepare for Christmas, we would like to wish everyone a safe and happy holiday break. Please see our Christmas Closure dates below.

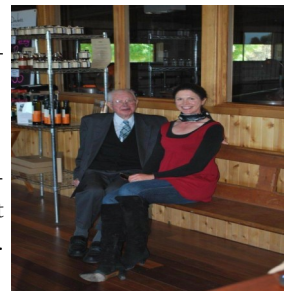
We farewell Maggie Chan (Clerk) who is embarking on a 12 month exchange program for university at Sweden. We also farewell Carly Malycha (Accounts Clerk) who will be spending the next 12 months working in Canada. We wish them both well and look forward to their return.

Congratulations to Deb Lawrie (Administrative Supervisor) on her 10 years service at Johnston Withers.

Well done to Erica Panagakos (Clerk) who recently completed her law degree with Honours.

We also congratulate Sarah Minney (Solicitor - Whyalla) on her appointment as a Member of Council to the City of Whyalla.

Congratulations to Paulett Wines on the 4 trophies won at the International Wine Challenge in Canberra in October, including Best Riesling in the World for their 2005 museum release Riesling. Katherine Vincent from our Clare office took some time to help celebrate with our Elliott Johnston.



Elliott Johnston & Katherine Vincent



Christmas Closure

Our **Adelaide** office will close at noon on Thursday 23rd December 2010.

Our **Whyalla, Port Augusta and Clare** offices will close at 5.00pm on Wednesday 22nd December 2010.

All our offices re-open at 8.30am on Wednesday 5th January 2011.

The team at Johnston Withers wish everyone a safe and happy Christmas and New Year

WORK COVER CHANGES TO PERMANENT IMPAIRMENT ASSESSMENT



BY HUGH
RISCHBIETH

On 1 April 2009, changes to Permanent Impairment Assessments have substantially reduced the number of injured workers who are entitled to lump sum compensation for non economic loss as a consequence of work injuries. Further, these assessments are extremely complex.

A worker must have a Permanent Impairment Assessment of 5% Whole Person Impairment to enable lump sum compensation for permanent impairment. Unless workers have serious injuries, in many instances workers with permanent injuries will not reach the required 5% threshold.

For assessment of permanent impairment, injuries must be:

1. Permanent, and
2. Stable.

Only a Permanent Impairment Assessor accredited by the Work Cover Corporation is able to perform these assessments.

In some specialities there are considerable medical appointment delays and, despite Work Cover suggesting that the assessment of permanent impairment is simplified by the amendments operative from 1 April 2009, the opposite appears to be occurring in some instances.

No entitlement exists for permanent psychiatric injury. Further, complaints of pain in many cases are irrelevant.

Workers should not allow their Case Manager to arrange

Permanent Impairment Assessments and should seek legal advice as to an appropriate Permanent Impairment Assessor.

IMPACT OF DISQUALIFICATION ON YOUR DRIVER'S LICENCE

Following a period of licence disqualification (from full licence conditions) for any drink driving offence, you will be required to go on a probational licence for 12 months. A probational licence is slightly different from the provisional licence or P1/P2 regime but still means that you are on a restricted licence for 12 months.

During this period, you do not need to wear "P" plates, but you must adhere to the following conditions:-

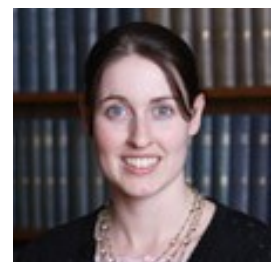
You must carry the probational licence with you at all times;

You can only incur one demerit point during the 12 month period;

You are restricted to driving at 100km per hour; and

You cannot have any alcohol in your blood whilst driving.

If you break any of these conditions, then you will automatically have your licence disqualified for a further 12 months.



BY ADRIA
DOHERTY

SUPPRESSION ORDERS

Open justice has long been one of the most important principles of the common law system. However, different common law countries have taken different approaches to what constitutes open justice.

Only recently, England held one of its few criminal trials ever to take place in closed court therefore preventing media speculation. However, in England and Wales, the courts may order a “super-injunction” which prevents the media from reporting even on the existence of an injunction. In the US, media reporting of cases has been found to be constitutionally protected, thus while a court can order the parties from commenting on a case, it cannot prevent unrelated persons from doing so. However, the FBI may administer an administrative subpoena known as a National Security Letter which prevents the recipient from ever mentioning that they have been served with the subpoena.

In Australia, open justice means that proceedings must take place in an open court, unless justice cannot be achieved otherwise. As a result, while the default position is usually that judicial proceedings are open to the public, Australian

courts have powers to make suppression orders that restrict the reporting of judicial proceedings. These orders may bind all members of the public even if they are not present at proceedings. Because of this, suppression orders may affect all of us, as simply posting a comment on the internet may constitute publication of proceedings.

The rules regarding suppression orders in Australia are not consistent across all jurisdictions. At common law, superior courts have an inherent power to make suppression orders in relation to what is necessary for the proper administration of justice. Commonly orders will be made having regard to the welfare of minors, sexual assault victims, the identity of police informants, national security or blackmail victims. Under federal legislation, courts will usually need to consider whether it is “desirable” to make a suppression order for any reason (for example s35 *Administrative Appeals Tribunal Act 1975* (Cth) and s106 *Trade Practices Act 1974* (Cth)) or “necessary” to do so to prevent prejudice to the administration of justice or the security of the Commonwealth (for example s50 of the *Federal Court of Australia Act 1976* (Cth)).

The states may have differences in the automatic grounds on which a suppression order may be made and grounds on which an application for a suppression order may be made. The difference in the legislation between states can be seen to have had a very real effect on the amount of suppression orders issued. For example, from 2006 to mid-2008 New South Wales saw 54 suppression orders being issued, the Northern Territory 48, Tasmania 1 and South Australia 549.

One reason for this is that the general grounds for an application for a suppression order in South Australia are broader than most other states. Part 8 of the *Evidence Act 1929* (the code that governs applications for suppression orders) is not only concerned with the proper administration of justice, but whether publication would result in any undue hardship to an alleged victim, witness or potential witness or to a child. A sufficiently serious threat of prejudice or undue hardship must then be weighed against the public interest in open justice. In contrast, other states tend to pose questions such as whether the presence of the public would “defeat” the ends of justice or whether it is “necessary” to make the order to prevent prejudice to the administration of justice.

BY JO BATTISTE

CHILD SUPPORT AND COMMON LAW CLAIMS

When a person receives damages (compensation) following the completion of a common law claim, in most cases, lump sum compensation will not affect the amount of child support you pay. This is because the Child Support Agency does not consider this to be part of a person’s “taxable income” when assessing a person’s child support liability and therefore the income is not added to the formula used for those purposes.

Common law damages will only form part of a person’s taxable income in rare circumstances. Usually damages are considered a “capital event” as opposed to an “income event”.

However, the person in receipt of child support payments could

apply to the Child Support Agency for a “Change of Assessment” on the basis that the child support payer (usually the father) has the capacity to pay more child support due to the lump sum compensation that they received.

A Change of Assessment moves away from the traditional formula to an individual assessment based on the circumstances of the individual case.

The assessment is usually performed by an independent reviewer. The reviewer will take into consideration the financial circumstances of both the mother and father and any other circumstances relevant to that individual case.

The outcome of the independent

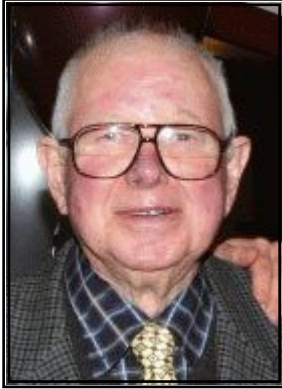
review could go in either parent’s favour depending on the circumstances of the individual case.

For further information regarding Child Support, you could call the Child Support Agency Information Service on 131 107, or please feel free to contact the writer.



BY ADRIA
DOHERTY

About Johnston Withers



Johnston Withers was founded in Adelaide in 1946 by Elliot Johnston QC. Elliot 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 organisation 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 had 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 State-wide Legal Group, an association of one city and five independent country legal firms.

Today Johnston Withers has permanent offices in Adelaide, Port Augusta and Clare, and in addition services Roxby Downs and Whyalla on a regular basis. Currently legal services are provided to clients who range from individuals, families and small businesses, 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.

Offices	Address	Phone/Fax
ADELAIDE	17 Sturt Street, Adelaide 5000	(08) 8231 1110 / (08) 8231 1230
CLARE	245b Main North Road, Clare 5453	(08) 8842 1132 / (08) 8842 1896
PORT AUGUSTA ROXBY DOWNS	14-16 Gibson Street, Port Augusta, 5700 1A Tutop Centre, Tutop Street, Roxby Downs 5725	(08) 8642 5122 / (08) 8641 0887
WHYALLA	5 Forsyth Street, Whyalla 5600	(08) 8644 0300 / (08) 8641 0887