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ARTICLES

JUDICIAL STRESS AND JUDICIAL BULLYING

Hon Michael Kirby AC CMG

In 1997, in this Journal, the author tackled the previously largely ignored issue of stress and depression in the legal profession, including the judiciary. There was some resistance at the time. However, later research, empirical studies and well known cases of illness and even suicide have tended to affirm the importance of the subject. Now, the issue of bullying is considered with reference to bullying of, and by, judges. Being usually about disputes and conflict, litigation will often contain ingredients for stress. Judges need to uphold standards and public criticism of advocates may sometimes be justified. However,

injection of excessive or counterproductive bullying by judicial officers can cross the line and amount to error, even misconduct. After listing instances of judicial bullying, the author suggests 10 steps that should be taken to deal with the problem. These will maintain the independence of judicial office holders and their legitimate needs for firmness and efficiency. But a minority of judges abuse the public power entrusted to them. Ways for lawyers to handle such cases without harming clients or damaging careers are listed. Remedies against bullying in other workplace situations exist today and the author suggests that courts will be no exception. 516

THE VICTORIAN BAR: SOME HISTORY AND A LITTLE LORE

Hon Peter Heerey AM QC

This account looks at the Irish origins of the Victorian Bar, legislation and litigation over barristers' liability for negligence, and developments of practice and custom over the years. 528

ISSUES AND CHALLENGES IN SETTLING CLASS ACTIONS

Ken Adams

This article addresses the differences between class actions and unitary litigation when it comes to settlement. Courts' management of litigation has improved materially in recent years. An area for potential development is to ensure that by the time of any mediation, the parties in a class action are able to rationally engage on an informed basis. This article addresses the features of class actions which make them prone to information deficiencies and asymmetries, and the steps that practitioners and the court may consider taking to advance the policy in favour of settlement. 537

CORPORATIONS AND THE AGGREGATION OF KNOWLEDGE

Andrew Eastwood

Issues relating to corporate knowledge arise in a range of litigious contexts, both criminal and civil. Establishing corporate knowledge is often fraught with difficulty. This article examines the issue of whether it is permissible to "aggregate" the knowledge held by different employees of the corporation. As a result of the decision of the specially-constituted Western Australia Court of Appeal in *Westpac Banking Corporation v Bell Group Ltd (in liq)* [No 3] (2012) 270 FLR 1; 89 ACSR 1, this is now a topic on which inconsistent views have been expressed by intermediate appellate courts. The author seeks, through a detailed review of the authorities, including the leading decision of the High Court in *Krakowski v Eurolynx Properties Ltd* (1995) 183 CLR 563, to identify some key principles in this area, and argues that the views expressed by the majority in *Westpac Banking* should not be followed. 553

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 - ² Hayton, n 1, p 286.
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