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Her Honour then proceeded to consider what was encompassed by the expression “right of audience” in s55B(4).

After examining a number of relevant authorities, she concluded that this did not refer to a general right of practise but did necessarily encompass an entitlement to recover all the costs related to the preparation for and hearing of the matter before the Supreme Court by virtue of the exercise of federal jurisdiction and for which the solicitor was retained.

She said it followed that the defendants were entitled to seek indemnity for their costs from the plaintiffs.

Inconsistency between s209 and s55B

It was said for the defendants that, if there could be no harmonisation between s209 of the *Supreme Court Act 1995* (Qld) and s55B(4) of the *Judiciary Act 1903* (Cth) then s209 was inconsistent with s55B(4) and was an invalid exercise of the state’s legislative power.

White J found, however, that s209 did not impair the operation of the *Judiciary Act* in the circumstances where that provision gave a right of audience to practitioners on the Register of Practitioners of the High Court if a state court was exercising federal jurisdiction.

She said that s209 simply did not apply in that circumstance, but was “otherwise part of a well-recognised scheme for regulating the legal profession which has evolved since the inception of the federal system”.

Conclusion

As the court had been exercising federal jurisdiction, the conclusion was that s54B of the *Judiciary Act 1903* (Cth) enabled the defendants to recover the costs paid for the work done in the proceedings by solicitors who were not admitted to practise in Queensland and the reference from the deputy registrar should be answered accordingly.

Comment

It is clear that, had the Supreme Court not been exercising federal jurisdiction in the proceeding, White J would have found that the defendants were precluded from recovering the costs incurred in respect of their NSW solicitors from the plaintiffs. These costs exceeded \$500,000.

The decision is a timely reminder, particularly for practitioners engaged either in single partnerships operating nationally or as separate associated partnerships, of the imperative that all solicitors who are involved in litigation in this state in a manner which may reasonably be regarded as “appearing or acting on behalf of another person in the Supreme Court” hold valid Queensland practising certificates. ■

Book review:

Queensland State Lands Handbook

Christopher Boge is already well known to Queensland property lawyers as the author of the loose-leaf ‘Annotated Land Act 1994’. He has taken a measured next step in his profile in the area of Queensland Crown tenure with the publication of this very useful manual, which will quickly find its place on the bookshelves of practitioners and government alike.

The first impression is that the work is ambitious in its scope as well as its length (885 pages), covering not only matters that would be of interest to mainstream private practitioners such as the origin and mechanics of state leasehold, permits, licences, water rights, road closures and ‘wet’ leases, but also topics as esoteric as marine parks, fish habitats, major sporting facilities, forest reserves and stock routes.

Along the way the public sector is catered for in some fairly in-depth treatment of protected areas (for example, national parks) and trust lands (including reserves for community purposes). There is emphasis placed on the role of policy in the question of decision-making and the precepts that have given rise to the mechanisms in place today, but that treatment is not heavy handed and the reader, whilst sometimes feeling that the journey has been a little lengthy, nonetheless appreciates the context and understanding that has been the by-product.

Constantly updated

The work is thoughtful in its catering both to those whose knowledge of areas is in depth and wish to have reference to a work that is constantly updated, and the practitioner who may require some background to the area of Crown tenure. Of particular interest to those in the latter category is the impressively titled Quick Summary section at the front of the first volume that gives a very easy page turn outline to the detailed material covered in all the chapters, cross referenced, and the use in some key chapters of an epilogue in the form of a Quick Guide modelled on a ‘frequently asked questions’ concept.

For example, chapter 5 on state leases grapples with issues such as “How may a state lessee deal with his or her lease?” and includes a number of reference tables dealing with permitted classes of interest from which a state lease can be created (for example, unallocated state land – yes, roads – no). There is also an entire chapter (33) designed to be a glossary of concepts so that things like “access limitation strips” and “coastal management districts” need be mysteries no more to those on the fringes of Crown tenures.

The use of the expression ‘handbook’ is suggestive of a text that assists with more than the-

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ory, and Mr Boge peppers his volumes with resources geared at those dealing with the various departments administering the processes underpinning the Acts referred to in the text.

These can be as simple, but thoughtful, as listing out the government websites and administering departments that cover the field and providing a table of the policies that are referred to by government in a miscellany of areas such as the criteria and method for the disposal of unallocated state land, conversion of tenure and expiry and renewal of tenures.

In areas of key emphasis for practitioners keen to know a process which might otherwise have a ‘black box’ element – transfers of state leases and the terms and conditions required in sub-leases, amongst others – there are Practice sections, prominently labelled.

This attempt to deal with the questions of the approvals necessary, a chronology of the basic procedure, the applicable departmental policy and issues for consideration for each side at the contractual level, will cause many time-hungry younger and sole practitioners without the luxury of a specialised firm department dealing in the area to offer silent thanks.

From my perspective, the thing that most aptly demonstrates the relative complexity of the area that this book very credibly tackles is at its end – an annotated diagram of a mythical place known as ‘Reddale’ in which no less than 30 completely different tenure situations are illustrated, from tidal boundaries to busway land. Given the fact that a sizeable part of the book’s audience will be seeking to apply the principles in it to situations where a level of awareness is necessary to recognise an issue as relevant, possibly more concrete illustrations of development scenarios at the beginning of this text could make it more accessible to the generalist.

That aside, the book is a long-awaited contribution to the vacuum of commentary in this area. This title is available from lawbookpublishing.com.au and can be purchased via its website or send an email to orders@lawbookpublishing.com.au for a copy on approval. ■

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