

# Letter to the Editor

## The death of buddy diving?

Dear Editor,

By focussing on the details of the Watson case, I believe Bryan Walpole has missed the thrust of my earlier letter.<sup>1,2</sup> I agree this was a complex case, which is why I deliberately avoided the murky specifics in order to consider the 'big-picture' ramifications of the judgement. My concerns relate to the potential consequences of the unintended interplay between unrelated developments in the medical and legal arenas. Taken together, I believe these developments threaten the very institution of buddy diving.

I have been unable to verify Dr Walpole's claim that the statute under which Mr Watson was convicted has not been used previously in a criminal trial. I must, however, refute his assertion that this legislation is some sort of idiosyncratic historical hangover or legal curiosity unique to Queensland. Although the original legislation pre-dates Australian federation, this statute has survived intact through 110 years of reviews and amendments to the Queensland Criminal Code. The application of this 19th century law to the Watson case now provides a direct, post-federation, 21st century relevance. Nor is Queensland alone in having such a statute on its books. Section 151 of the Criminal Code Act in Dr Walpole's home state of Tasmania states "When a person undertakes to do any act, the omission to do which is or may be dangerous to human life or health, it is his duty to do that act."<sup>3</sup> Similar statutes can also be found in the legislation of other Australian states and as far afield as New Zealand and Canada.<sup>4-6</sup> The phrasing of the relevant sections is, in many cases, almost identical to Queensland's, reflecting the common judicial heritage of these places.

Even if this ruling's reach extended no further than the Queensland border its ramifications would be immense. Tourism statistics reveal that over 1.2 million visitors perform nearly 3.5 million dives/snorkels in Queensland each year.<sup>7</sup> An estimated 93% of international divers visiting Australia stopover in Queensland and 40% of domestic recreational diving holidays occur there.<sup>8</sup> This ruling, however, has implications potentially far beyond this single State. In the absence of local precedents, courts may examine precedents arising in other jurisdictions with which they share a common legal heritage. Rare cases may indeed make bad law but precedent is one of the cornerstones of our legal system.

The medical profession, through the revised SPUMS guidelines on recreational diving medical examinations, has now made explicit the level of support expected from dive buddies (e.g., to diabetic divers). The legal profession, through the Watson judgement, has demonstrated the

potential consequences of failure to perform an act that a diver has undertaken to perform towards their buddy. The halcyon days of casually agreeing to act as someone's buddy are now gone. Serious consideration should be given to the personal consequences of undertaking this role. The potential to face a custodial sentence for criminally negligent manslaughter if a diver fails in his/her duty-of-care increases the pressure to save their buddy at all costs – or die in the attempt.

### References

- 1 Cooper PD. The death of buddy diving? [letter] *Diving Hyperb Med.* 2011;41:38.
- 2 Walpole B. The death of buddy diving? [letter] *Diving Hyperb Med.* 2011;41:107.
- 3 *Criminal Code Act 1924* (Tasmania) s 151 and s 152. Available from: <<http://www.thelaw.tas.gov.au>>.
- 4 *Criminal Code Act Compilation Act 1913* (Western Australia) s 267. Available from: <<http://www.slp.wa.gov.au>>.
- 5 *Crimes Act 1961* (New Zealand) s 157. Available from: <<http://www.legislation.govt.nz>>.
- 6 *Criminal Code R.S.C., 1985, c. C-46* (Canada) s 217 and s 219. Available from: <<http://laws-lois.justice.gc.ca>>.
- 7 Tourism Queensland. *Recreational dive and snorkel market.* YE March 2007. Available from: <[http://www.tq.com.au/fms/tq\\_corporate/research/fact\\_sheets/Microsoft%20PowerPoint%20-%20Dive%20and%20Snorkel\\_final.pdf](http://www.tq.com.au/fms/tq_corporate/research/fact_sheets/Microsoft%20PowerPoint%20-%20Dive%20and%20Snorkel_final.pdf)>.
- 8 Tourism Queensland. *Dive tourism.* September 2003. Available from: <[http://www.tq.com.au/fms/tq\\_corporate/research/fact\\_sheets/dive\\_tourism.pdf](http://www.tq.com.au/fms/tq_corporate/research/fact_sheets/dive_tourism.pdf)>.

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