



# STOP PRESS

A monthly newsletter from the NSW Bar Association

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"Servants of all yet of none"

No. 57 December 1998

## President's Column

Congratulations to the members of the newly elected Council. I am indebted to all those on the last Council for their various contributions to the affairs of the Association. The Bar Association is sometimes accused of being a bastion of male chauvinism. Women comprise about 12 per cent of NSW barristers. It is interesting that they now comprise one third of the Bar Council.

In the November edition of Stop Press I thanked the various chairs of the committees and sections but a line thanking the Constitutional Law Section chaired by Jackson QC was omitted. My apologies and thanks for the work done by the section.

### Legal Assistance

The legal aid crisis has reached the point that the NSW Legal Aid Commission has received \$11m less from the Commonwealth for 1997-1998, and will receive \$11m less for each of the ensuing two years, than it received in 1996-1997. The funding is insufficient to meet the requirements of people eligible for legal assistance under the Commonwealth's own guidelines.

Priority is given to criminal trials, but the fees paid are at a level where the ordinarily competent barrister has no incentive, beyond goodwill, to accept briefs. From 1 July 1999 new family law grants are to be reduced by one third, or about 2000. Grants for family law cases for the litigation stage are to be reduced by 500, and assistance for the separate representation of children will be capped at 750, a reduction of 120 from the current year.

In an address by Chief Justice Nicholson at the Third Family Law Conference on 20 October 1998, he said:

"Family Law is in crisis in our community and one of the prime reasons for this is the reduction in legal aid that has occurred over recent years. . . .The ready availability of Legal Aid was an essential concomitant to the Family Law Act at the time of its



Ian Barker QC, President.

introduction as a reading of the Act of 1975 makes clear. It also makes sense, because the conferring of rights upon people in marriage and other relationships and their children quickly becomes meaningless, if there is insufficient funding to enable them to enforce those rights. That is precisely what we are seeing today. . . .Legal Aid Authorities do not fund a large number of cases where the Court considers that a child or children should be represented. Doesn't anyone care about these children?"

We wonder.

In 1994 the Bar Association formalised its Legal Assistance Scheme, which operates administratively with an annual grant of around \$100,000 from the Law Foundation. The scheme is generously supported by barristers, who give unstintingly of their time to assist clients bereft of legal aid. Heather Sare and Sue Divall, who run the scheme, receive some 20 to 25 requests a week for assistance. The requests have increased significantly since the Commonwealth abolished legal aid for immigration cases. Apart from the Legal Assistance Scheme, barristers from time to time act in complex cases for no charge, or no win, no fee. But there is a limit, and the generosity of lawyers should not be relied upon to make up the deficit caused by a mean spirited

government.

### Wigs and the Federal Court

In an exciting development, Chief Justice Black has announced that counsel appearing in the Federal Court will appear wigless from the new law term in February 1999. In this limited area barristers will have thus caught up with the bishops, who abandoned wigs in about 1840. We will still be permitted to mourn the death of Queen Anne by wearing black robes, and pay tribute to Cromwell with white bands. Alternatively, the jabot, an inferior accoutrement designed to hide coloured or dirty shirts, may also be worn.

The Chief Justice's decision will be discriminatory in its effect. The hand of fate has not dealt equitably in the distribution of hair, so those practitioners in the Federal Court who hitherto were able to conceal their misfortune will henceforth be obliged to reveal it. The Bar Council, ever conscious of changing needs, is working on a code of appropriate conduct for those most vulnerable to ultra violet rays whilst walking to and from the Court. For example, senior counsel may be accompanied by a clerk, who may shelter the barrister with a suitable umbrella (black). For juniors, tasteful straw hats may be worn with appropriate bands (black). The code will be published shortly. It will be (I hope) of little interest to women. It will not apply to those privileged souls in 174 and 180 Phillip Street, who have the benefit of a roof.

### The Member Survey

A total of 1,545 questionnaires were sent to members, of which 587 (38%) were returned. The Council will carefully consider the responses. Some interesting statistics are that daily fees range from \$350 to \$6,000, 19% of those responding would benefit from the provision of child care arrangements and 82% consider they are adequately informed about Bar Council activities. We will inform you further about the survey as soon as practicable.

# Bar Council Business for October

## President's Reports

The possibility of a 'Recorder system' was raised with the Chief Judge whereby senior members of the Bar would be appointed to the bench on a full-time basis to sit for periods on a country circuit. A note will be prepared on this for Bar Council.

The President to discuss with the Attorney General and the Shadow Attorney General the possibility of reduced judicial sittings for country circuits in 1999.

Bar Council was advised that careful consideration needed to be given to both the Government and Opposition sentencing policies. However, it was noted that the Bar Association had yet to be consulted by either side about proposed legislation.

The President advised that he had asked Trevor Morling QC to review the protocol covering the selection of Senior Counsel and that as part of the process Morling QC would consult with whomever he saw fit.

The President noted the Government had introduced the Motor Accident Amendment Bill 1998. Amongst other provisions, the bill reintroduces a regulation to fix a fee scale for legal practitioners that overrides cost agreements.

## Business arising/correspondence

Letter from the Chief Justice concerning a proposed Practice Note limiting oral argument. The President was asked to convey the Bar Council's concerns to the Chief Justice that this would mean a fundamental change to the manner of presentation.

Letter to Bar Council from barrister Greg Watkin concerning the Law Society's scheme of accredited specialists. Bar Council agreed there was a need for a formal policy on barristers advertising their accreditation. Peter Maiden was asked to prepare a paper on the Law Society accreditation scheme, including the renewal process, and related issues.

Memorandum from the Chairman of the Professional Standards Committee concerning development of a model for compliance with Barristers' Rule 80 and development of a best practice model for settlements. Bar Council supported the proposal.

Bar Council noted that the business paper for the Law Council of Australia meeting of 19 September 1998, National Cooperation: National Competition Policy Legislative Review, raised the issue of regulation of the legal profession. The Australian Council of Professions and the National Competition Council are working on proposals that would bring the professions under the aegis of the Trade Practices Act 1974. This would provide for the reservation of professional titles underpinned by guidelines or codes setting out competency standards which would be administered by the Australian Competition and Consumer Commission (ACCC). Bar Council expressed concern that the overall regulation of the profession be handed over to the ACCC and resolved that its representative do all that is possible to have the Australian Council of Professions reverse its position.

The Executive Director advised that he did not propose to conduct the usual annual election for the New Barristers' Committee at the same time as the Bar Council elections. He noted that some members of the Bar Council and others had queried whether the Committee should be disbanded. Bar Council resolved that elections for the New Barristers' Committee be held early in

1999 and that it comprise four elected members and one member appointed by the President.

Memorandum from Kate Traill concerning the Duty Barrister Scheme. Bar Council noted that it was intended to reactivate the scheme whereby Senior Counsel act as mentors for those participating in the scheme by providing advice by telephone, at short notice, on any given day. Traill undertook to take up the matter with Senior Counsel and members of Bar Council. Traill will also discuss with the Education Committee the possibility of scheme participants in their second year at the Bar being able to claim CLE points.

*PLEASE NOTE that the Bar Council Business items above are an abbreviation from Council minutes. Any member interested in a particular matter should contact either the relevant member of Council or the Executive Director for details.*

The NSW Attorney General's Department has released the Report of the National Competition Policy Review of the Legal Profession Act 1987. Copies are available from the Bar Library or on the Attorney General's Department web site at [www.lawlink.nsw.gov.au](http://www.lawlink.nsw.gov.au). Once at the site click on What's New.

## NISAD plans world first

The 1998 Bar charity, the Neuroscience Institute of Schizophrenia & Allied Disorders (NISAD), has announced that the First Australian Schizophrenia Prevention Conference will take place at the Garvan Institute in early March, 1999.

This will be the first Australian conference to focus on the latest research aimed at preventing the brain disease that attacks one per cent of the population, and which is the major cause of lifelong disability in young people. Other conferences to date have explored treatment issues and early intervention programs.

"This is the first time that top researchers have been invited to discuss primary prevention, that is the possibility of detecting and stopping schizophrenia

before it starts," said NISAD Chairman Dr Stan Catts. "It symbolises the new spirit of optimism which fast-developing neuroscience techniques have brought to schizophrenia research."

As host institute of the conference, NISAD has invited speakers from Australia and overseas who represent the cutting edge of the world's neuroscientific knowledge on the causes of schizophrenia.

Dr Catts said he would also like to take the opportunity to thank the Bar for the \$24,000 in donations received to date.

Any member who can assist NISAD with further sources of support or who would like to join the NISAD Board should contact Dr Catts on ph: 02 9295 8407 or fax: 02 9295 8415.

# Bar Council Elections 1998



(Left to right) Front row: Katzmann S.C. (Secretary), Harrison S.C. (Treasurer), McColl S.C. (Senior Vice-President), Barker QC (President); Walker S.C. (Junior Vice-President) and Philip Selth (Executive Director). Middle row: Jacqueline Gleeson, Chrissa Loukas, Wheelahan QC, Bergin S.C., Kate Traill, Jeremy Gormly, Andrew Bell and Jonathan Priestly. Back row: Greenwood S.C., Peter Maiden, Ross Letherbarrow, Stephen Odgers, Jane Needham and Bellanto QC.

## 1998 Silk Appointments



(left to right) George Inatey, Paul Brereton, Paul Roberts, Campbell Bridge, Tony Bartley, Matthew Walton, Michael Rudge, Guy Reynolds, Ian Wales, Raymond McLoughlin, Robert Greenhill, Peter Hennessy, Michael Sexton, Rodney Smith, Paddy Bergin, Richard White, Brendan Sullivan and David Murr. Stephen Crawshaw was in court at the time the photograph was taken.

## The International Criminal Court

Amnesty International is calling for the ratification of the Statute of the International Criminal Court as soon as possible. The Statute provides for the establishment of a permanent International Criminal Court with jurisdiction over the worst international crimes, including genocide and other crimes against humanity. Those interested in taking part in a letter writing campaign calling for ratification should contact Malcolm Reid on 03 9427 7055 or email [savic@ozemail.com.au](mailto:savic@ozemail.com.au).

## Works of Art

On behalf of The Bar Association the President would like to extend his thanks to the Hon. Judge J L O'Meally RFD, President of the Dust Diseases Tribunal for making a gift of the oil painting by J. Morgan that once hung in the 5<sup>th</sup> Floor Wentworth Chambers occupied by his father, J D (Denis) O'Meally. Barker QC would also like to pass on his gratitude to Hon. David Selby QC for his donation of the metal sculpture *Order in the Court* and the Hon. Judge T F M Naughton QC for his gift of the caricature *Bar Association* by Barry Leighton-Jones.

## Election Results

The Returning Officer, Philip Selth, declared the ballot on 24 November 1998. The following vote tally was recorded for each candidate.

Barker I.M., QC	807
Walker B. W., S.C.	611
McColl R.S., S.C.	513
Katzmann A.J., S.C.	505
Bellanto A.J., QC	488
Harrison I.G., S.C.	467
Bergin P.A., S.C.	430
Gormly J.P.	421
Greenwood P.H., S.C.	354
Wheelahan D.A., QC	337
Maiden P.G.	320
Needham J.A.	301
Grieve D.E., QC	294
Traill K.	285
Odgers S.J.	276
Gleeson Ms J.S.	273
Burbidge R.J., QC	271
Loukas C.T.	255
Tonner R.C.	251
Letherbarrow R.V.	239
Street A.W., S.C.	238
Fernon J.J.	223
Rares S.D., S.C.	220
O'Connor C.E., QC	202
McEwen P.J., S.C.	193
Perram N.	192
Gleeson Mr J.T.	177
Marshall H.J.	164
Kearns W.P.	163
Torrington S.E.	162
Elkaim M.A.	159
Quickenden R.E.	158
Babb L.A.	153
Poole G.S.	144
Winch P.M.	138
Kite P.M., S.C.	137
Hodgekiss C.C.	135
Conti D.R.	129
Margo R.F.	128
Daily J.	125
Bell A.S.	125
Graves J.J., S.C.	124
Lydiard V.J.	123
Kerr S.A.	123
Ronzani D.L.	121
Davenport C.A.	118
Gillotta S.P.	115
Bennett J.L.A.	114
Underwood G.E.	110
Priestley J.J.	110
Leggat C.J.	102
Sharpe J.L.	99
Magnus K.N.	97
Goot R.M.	96
Wilson D.P.	94
Hooke D.J.	94
McCulloch M.T.	88
Egan C.M.	87
Howard D.M.	86
Confos N.A.	84
Harper R.R.I.	81
Druitt R.R.	81
Gerber P.C.	80
Reoch A.R.	71
Goodridge R. I.	68
Reuben S.Y.	66
Evans M.B.	66
Monaghan A.P.	66
Kalfas S.D.	65
Dick R.A.	65
Parker A.B.	64
Sindone M.P.	64
Maxwell M.J.	59
Rasmussen R.K.M.	58
Anderson M.W.	55
Svehla J.T.	55
Kennedy G.J.	54
Rich G.A.	53
Kaur-Bains S.	53
Scotting A.C.	44
Stone A.J.	41
Macpherson N.T.	36
Morris B.	35
Johnston G.M.	33
Miller D.T.	30

# In support of acting judges - a letter from the Attorney General

Dear Colleague,

The President of the Bar Association has taken the opportunity in the 62<sup>nd</sup> Annual Report to criticise the acting judge program in the District Court.

"Most thinking lawyers", it is asserted, see the program as a scandal. I assume, therefore that some "thinking" lawyers do not. And this stigmatises those lawyers who support the program as not "thinking" (apart from the thinking dissentients).

What of the Law Society of NSW, presumably "thinking" lawyers? Their expressed view is this:

"In principle we support the short-term measure of appointing acting judges as such appointments have proved successful in reducing the backlog of cases, particularly in the District Court."

Acting judges have been around for as long as anyone can remember. In England, the Recorder system (barristers acting as judges) has a statutory base and is widespread as a means of determining civil cases without, so far as I can ascertain, any real controversy.

The President's point seems to focus on the number of acting judges at present.

But the principle surely cannot be determined by quantity. In any event, the number is a temporary phenomenon: the aim is to get rid of the unacceptable backlog of civil cases which have languished in the lists for a decade or more.

The utility of the program has been clearly demonstrated.

The scheme has been instrumental in eliminating the backlog of pre-1996 civil cases, some of which were up to 5 years old. The number of pending actions in the Court's list has been reduced from about 23,000 at the beginning of 1996 to just under 12,000 matters by the end of June 1998, excluding the Supreme Court transfers which are being dealt with separately.

The appointment of acting judges has allowed the Court to address its immediate and short term needs and, at the same time, implement better case management systems, driven by the judges. The effect of the new case management regimes in the District Court will mean the court should, in the longer term, be able to deal with its caseload without resorting to additional resources.

The heads of jurisdiction in Australia

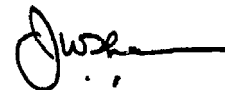
have acknowledged that acting judges can be appointed in accordance with principle. They have said that there is no objection, in principle, to:

"the appointment of an acting judge, whether a retired judge or not, provided that the appointment of an acting judge is made with the approval of the judicial head of the court to which the judge is appointed and provided that the appointment is made only in special circumstances which render it necessary."

Of course, as the heads of jurisdiction point out, it would be wrong to replace permanent appointees with acting judges. But this has not happened in NSW.

The acting judges have been appointed at the request and with the encouragement of the Chief Judge of the District Court. I respect their work, which has been very much in the interest of litigants, and, I may add, their legal representatives.

Yours sincerely,



Jeff Shaw QC MLC  
Attorney General.

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## The Australian Bar Association provides an opposing view

"Traditionally, acting judges have only been used to fill a temporary space created when a permanent judge retires or is on extended leave. That remains the case in most places in Australia," said the President of the Australian Bar Association, Robert Gotterson QC, in a media release on 30 November 1998.

"However, over the last three years, and particularly the last year, the number of part-time acting judges in NSW has increased to such a degree as to make plain the pressing need for the NSW

Government to fund the appointment of more permanent judges," he said.

"While the ABA understands the strong desire to reduce court delays in NSW, there can be no escaping the fact that in doing so public confidence in the judiciary is being jeopardised."

"Part-time acting judges have to juggle judicial duties with their responsibilities as practising barristers or solicitors or as academics with a lecturing workload. Practising lawyers must keep their practices running. This is a day to day

distraction for part-timers on the bench. As well, they have little or no administrative support at court level. They cannot deliver the quality of justice we must expect from all our courts no matter what the jurisdiction."

Mr Gotterson said it was vital the independence of the judiciary was protected. He said that while the ABA believed those appointed to the bench on a temporary basis carried out their duties with the utmost integrity, the use of part-time acting judges still left the bench open to accusations of bias.

"The Hon. Justice Michael Kirby AC CMG of the High Court stated in a speech last September that the use of acting judges undermined the tenured judiciary and that tenure was essential

# The 15 Bobber series takes a break



To great applause and laughter (from left) Menzies QC, Barker QC and Poulos QC took turns to share their thoughts on Justice Kirby, Justice Adams and Justice Waddy respectively. Each of the targets were equally amusing in reply.



The popular Bar sport of roasting judges came to an end for the year on 20 November 1998 with (from left) the Hon. Justice D Kirby, the Hon. Justice M Adams and the Hon. Justice L D S Waddy feeling the heat.

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## The Australian Bar Association provides an opposing view (continued)

to judicial independence," Mr Gotterson said. "The Australian Bar Association agrees, particularly when the acting appointments are part-time and many in number."

"Rightly or wrongly, an acting judge could be accused of delivering a verdict that pleased a State Government with control over just who will fill the tenured positions when they arise," he said.

"Difficulties also arise in cases involving plaintiffs or defendants from an industry where the acting judge acts as counsel. For instance, finding an insurance company not liable could result in an

accusation of bias while finding against the same company could be seen as trying to disprove bias."

"The difficulties are multiplied many times over when there are many acting appointments. Clearly the judiciary should not be exposed to these kinds of dangers."

"The Australian Bar Association calls for the NSW Government to recognise the need for more permanent judges, and recognise the very real concerns that arise from the continuing appointment of literally dozens of part-time acting judges," Mr Gotterson said.

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## Lawyers wanted for Rwanda

The International Criminal Tribunal for Rwanda is compiling a list of qualified counsel willing to appear for indigent suspects or defendants.

The Tribunal's manager of Lawyers and Detention Facilities, Alessandro Caldarone has asked those interested to send applications to him at the Lawyers and Detention Facilities Management Section of the Arusha International Conference Centre, PO Box 6016, Arusha, Tanzania.

Legal practitioners who speak French and or English and who have had at least 10 years relevant experience qualify for application.

Please include with your application an original or certified copy of your Admission Certificate, current Practising Certificates, a resume specifying practical experience in criminal law and or international law and a note stating any language qualifications.

# At the Lectern

The NSW Bar Association's Continuing Legal Education section took its program "on the road" on 21-22 November to present the first Regional Bar Conference.

The success of the conference, held in Orange, was largely due to the high level of involvement of local barristers Bill Walsh, Tony Smith, John Tancred and Philip Cantrill.

On day one of the conference, Graves S.C. conducted an advocacy workshop and Dr Evan Hunt, Associate Professor of Animal Production at Orange Agricultural College, the University of Sydney, gave a briefing on his work since 1987 as an expert witness.

Poulos QC entertained delegates later in the evening as the featured speaker at the conference dinner.

On day two, delegates took part in a technology workshop run by Tony Smith, a lecturer in law at the University of Sydney's campus in Orange, before a wine tasting tour of the Bloodwood and the Canobolas Smith vineyards.

## There's more than one way to skin an expert

Leaning forward with his hands firmly planted on a student desk, Poulos QC skillfully cross-examined



Graves S.C.

Dr Evan Hunt on his report.

A veterinary expert and equine specialist, Dr Hunt had prepared the report after being engaged by counsel representing a person sued by a horse breeder injured in a car accident.

Poulos QC, appearing for the Plaintiff, used Dr Hunt's report, commissioned by the defendant, to demonstrate his client's claim of economic loss.

The mock cross-examination was part of an advocacy workshop conducted by Graves S.C. at the Regional Bar Conference held in Orange.

During the workshop Graves S.C. asked John Berry, Cassidy QC, Philip Cantrill and then Poulos QC to perform an examination in chief or cross-examination.

Graves S.C. also discussed issues such as the role of a barrister in the selection of an expert witness, techniques for challenging "the believability of a

witness rather than just his qualifications" and the importance of checking that the specialist knowledge of an expert witness has particular relevance to the case at hand.

In an earlier session, Dr Hunt provided delegates with an insight into ways in which a barrister could maximise the testimony given by an expert witness.

He told the conference that in "six out of 10 cases" he had met the barrister he was to work with "on the steps of the court".

Dr Hunt urged barristers to provide enough time to go through any expert report with the witness and to specify what testimony would be of particular importance.

He said experts should be briefed on what they might encounter in the courtroom, including whether they would be questioned by more than one opposing counsel, and the dangers of the judge viewing them as an advocate.

Dr Hunt said uniform direction was needed on issues such as pro bono work; fees acknowledging the different time demands placed on the expert witness; and an accepted definition of whom the witness "was really working for".

He said counsel could do more to utilise expert witnesses, citing successful cases where he had not only provided a report and court testimony but assisted in preparing the cross-examination of opposing expert witnesses.

The Federal Court and the Law Council of Australia jointly developed a Practice Direction last September governing the use of expert witnesses that has now been published on the web.

*Guidelines for Expert Witnesses in Proceedings in the Federal Court of Australia* direct that "an expert witness has an over-riding duty to assist the Court on matters relevant to the expert's area of expertise."

The guidelines also specify that an expert witness not act as an advocate for a party and reminds the expert witness that his or her "paramount duty is to the Court and not the person retaining" them.

Copies of the guidelines are available from Reception or visit the Law Council's web site at [www.lawcouncil.asn.au](http://www.lawcouncil.asn.au)



From left: Brian Ralston and John Tancred "surf" the net during a workshop run by Tony Smith.



From left: Paul Regattieri, Poulos QC, Brian Ralston, Andrew Fennell and Philip Cantrill at Bloodworth vineyard.

# Papers to Note

*The Hired Gun - The View of the Advocate* - presented by Fabian Dixon RFD, President, Law Council of Australia at the Australasian Conference of Planning and Environment Courts and Tribunals, 12 October 1998.

*Judicial and legal education in a changing civil justice system*, Australian Law Reform Commission, Education Workshop, 19 November 1998.

Court of Appeal - On 25 November 1998 the full bench delivered a judgment in the case of *Whyte v Brosch* affirming the importance of complying with the rules governing the filing of written submissions. The Chief Justice, the Hon. JJ Spigelman has asked that members read this judgment as a reminder of the importance of compliance.

District Court of NSW - Practice Note No. 48 - Listing Procedures in Downing Centre, 13 November 1998.

Final Report on the Inquiry into the Motor Accidents Scheme (Compulsory Third Party Insurance), NSW Legislative Council Standing Committee on Law & Justice, 17 November 1998.

*The 1998 Profile of the Solicitors of New South Wales*, November 1998. Profiles NSW solicitors in terms of employment, location, gender and age.

Access to Justice, December 1998, Final Report, The Law Society of NSW.

Copies available from the Bar Library or on the Law Society's web site at [www.lawsocnsw.asn.au](http://www.lawsocnsw.asn.au)

# Letters

## Apology

Due to a technical error during the printing of the November edition of *Stop Press* a line was omitted from a letter written by Callaghan S.C. Here is the correct version of the letter.

(Letter to the President)

On Wednesday evening 21 October, the 193<sup>rd</sup> anniversary of the Battle of Trafalgar, the NSW Royal Australian Navy Reserve Legal Panel entertained a gathering of 60 or so for drinks in the Bar Common Room.

R.W.R. Parker QC delivered an occasional address, which was quite outstanding and warrants dissemination by the Association. On concluding his address, Parker QC made a most generous gift to the Panel of a copy of the famous Hoppner painting of Lord Nelson and I am arranging for this to be hung in the new Court room which has been set up on Garden Island in the refurbished Barracks Building (built in the 1880s to house the Royal Marines).

The evening was attended not only by Naval personnel but by lawyers from the Army and the Air Force, together with interested friends including various (non-service) members of the Bar. Attendees included Sir Laurence Street (who served in the Navy in World War II and is a former Panel leader); Captain Bill Cook LVO RAN (Ret.), a former Registrar of the Bar Association; Colonel Stephen Scarlett RFD, Senior Children's Magistrate and NSW leader of the Army Reserve lawyers; and Wing Commander Michael O'Brien of Shelgrove & O'Brien, Solicitors of Castle Hill, Leader, Sydney RAAF Legal Reserve.

Functions of this sort emphasise the extra-curricular activities and influence of members of the bar and perhaps we should publicise them a bit more.

Peter R. Callaghan S.C.,  
Captain RANR,  
Nigel Bowen Chambers,  
27 October 1998.

A copy of the Trafalgar Day Address given by Parker QC is available from the Bar Library.

(Edited extract from a letter to the President)

I write to express my strong disapproval of the recent decision to remove the right of Barristers to wear full court dress in the Federal Court.

In a press release issued in response to the Federal Court announcement, the Australian Bar Association President, Gotterson QC, has suggested that in the Federal Court the need for tradition and formality is not as great because it deals with civil matters. I might remind Mr Gotterson that the Family Court is a civil court. To suggest that, for example, taxation, immigration or bankruptcy matters do not attain the same level of controversy and bitterness as some Family Law and criminal matters is nonsense.

Tradition lends force to the protocol and workability of our system. One of the strongest arguments for robing formally is the fact that most clients prefer it. The formality of the court plays an essential role in reinforcing respect for the court.

Unfortunately *Stop Press* was unable to publish in full a letter on this issue from John Coombs (30 July 1998). I highly recommend it for the factual information it contains. Of particular interest was a detailed UK survey that showed overwhelming public support for the retention of wigs and gowns in the belief that it increased the dignity of the court. I believe the average Australian likes tradition and it would be a bad move for the profession to ignore the views of their clients in preference for their own comfort.

While the recent survey of Bar members on the issue of wigs could not be described as overwhelmingly decisive, the survey does not show any groundswell of support for change from within the Bar. Clearly there is no mandate from the members of the NSW Bar for removing wigs.

D.W. Phillips,  
11<sup>th</sup> Floor Garfield Barwick  
Chambers,  
9 December 1998.

A copy of the original letter is available from the Bar Library.

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## American Bar calls for new members

The American Bar Association invites Australian barristers to join its Center for Professional Responsibility Membership Committee. For information contact Ray Trombadore, chair of the Membership Committee at 14<sup>th</sup> Floor, 541 North Fairbanks Court, Chicago, Illinois 60611-3314 or ph: (312) 988 5304; fax: (312) 988 5491 or email [CTRPROFRESP@ABANET.ORG](mailto:CTRPROFRESP@ABANET.ORG)

# Appointments

## Family Court of Australia

Peter Rose QC has been appointed to the bench effective 21 December 1998.

## Compensation Court of New South Wales

Allan Hughes has been appointed to the bench, effective 9 December 1998.

## Drug Court of NSW

Her Honour Judge Murrell, S.C. has been appointed Senior Judge, effective 14 December 1998.

## Acting Crown Prosecutors

Kenneth Magnus, Anthony McCarthy and Luigi Lungo have been reappointed Acting Crown Prosecutors, effective 19 December 1998 to 18 December 1999.

## Industrial Magistrates

Magistrates Michael Morahan, Paul Johnson and John Keating have been appointed industrial magistrates, effective 2 December 1998.

## Motor Accidents Authority

Dr Andrew Morrison RFD S.C. has been appointed a Director, effective 2 December 1998.

## Senior Counsel - Victoria

The Governor in Council appointed the following persons as Her Majesty's Counsel on 24 November 1998: Neil Williams, Remy Van De Wiel, John McArdle, Martin Bartfeld, John Forrest, Gregory Davies, Rowan Downing, Eamonn Moran, Peter Bick, Phillip Priest, Alexandra Richards, Christopher Maxwell and Oliver Holdenson.

## Queensland

The Chief Justice, the Hon. Paul de Jersey, appointed the following persons Senior Counsel effective 17 November 1998: David Cooper; Grant Britton; John Baulch; Glenn Martin; Richard Douglas; Mark Hinson; Donna O'Reilly; Sandy Thompson and Debra Mullins.

## South Australian Bar Association

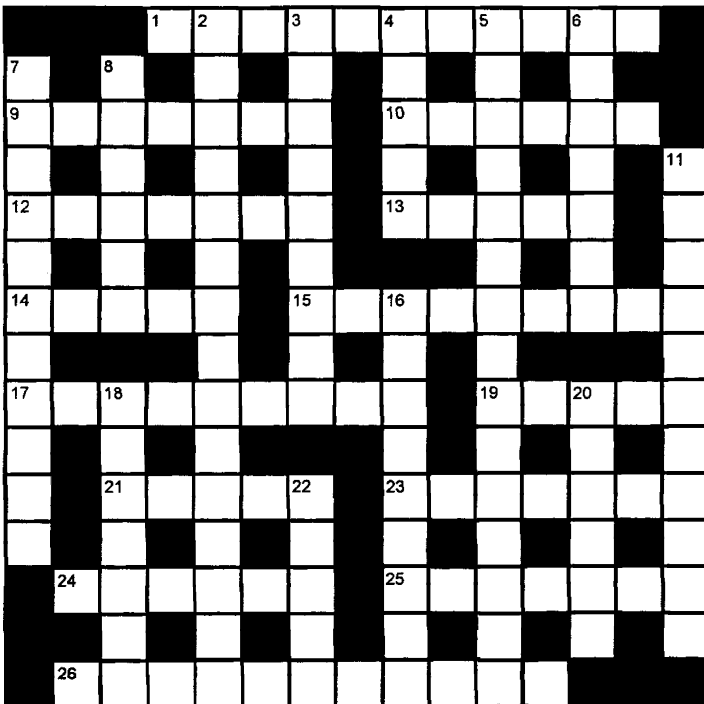
Malcolm Gray QC has been elected President of the South Australian Bar Association, Ian Robertson Hon Secretary and John Morcombe Hon Treasurer. Committee members elected were Michael Abbott QC; Brian Hayes QC; Tony Besanko QC; Maurine Pyke; David Howard; David Greenwell; Roger Sallis; Tom Birchall and Jonathan Hyde.

University of Technology, Sydney Retired High Court Judge Sir Gerard Brennan AC KBE was elected Chancellor of the university for the next four years effective 19 November 1998.

The Australian National University Bennett S.C. was appointed Pro-Chancellor effective 14 November 1998.

# CROSSWORD

by Rapunzel



The solution to this crossword will be published in the next edition of Stop Press.

## Across

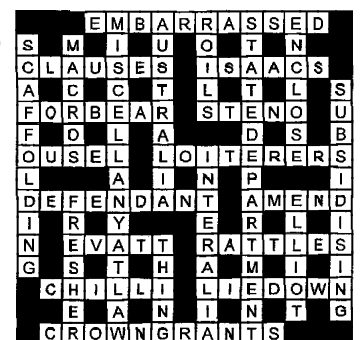
- 1 Barristers in a mess of red seams and red-faced (11).
- 9 Bill's children left among the makers of effects (7)
- 10 Is before (as around current) federal engineer (6)
- 12 Withhold progenitor (7)
- 13 (Ad in New York Law Journal, 20 July 1973) "legal experience and excellent skills required, dictaphone and light.." (sixthard?) (5)

14. A blackbird, or counsel with neither leader nor new leader? (5)
15. They may be...with intent to commit a felony, though for portions of time enjoying the races: Olholm v Eagles [1914] VLR 379. (9)
17. Uphold worker when person sued (9)
19. Change rated people in these times (5)
21. It never rains but it pours? Lost priorities to human, Doc! (5)
23. Baby toys and almost speaks as a child (7)
24. Heater sounds cooler (6)
25. Set differently now after having given false testimony, soap (3,4)
26. One hundred wrong rights by ravings. Magna Carta an example? (5,6)

## Down

2. A title of Robert Mugany reviews law *seriatim* (10-2-3)
3. Lady country gold before a trial's sun and (9)
4. Six ups and rules (5)
5. Australian unit and French unit make up US foreign legion (5,10)
6. Shut after half-measure, a measure of disseisin (Blackstone III.10) (7)
7. Bamboo curtain bending behind scarf without revolutionary leader (11)
8. Former dictator reissued defining terms (6)
11. Roman auxiliaries engulf head of state and New Guinea government providing aid (11)
16. Among other things Roman, I entered one Lateran reconstruction (5,4)
18. Refresh absurd reader (7)
20. Monster's haven... sound safety gone... untouchable (6)
22. Another night, lean towards midnight (5)

Solution to November's Crossword



# Federal Court revokes Notice to Practitioners

On November 23 1998 the Federal Court revoked a Notice to Practitioners - *Filing of Exhibits and Annexures to Affidavits* - issued on 25 July 1998. Practitioners are reminded that the filing and serving of affidavits and exhibits or annexures to affidavits are dealt with in Order 14 of the Federal Court Rules and Practice Note No. 5 issued by the Chief Justice on 8 April 1994. For information contact John Mathieson, District Registrar, NSW District Registry on ph: 02 9230 8567 or email: johnwm@fedcourt.gov.au.

## Usted Habla Español?

The Legal Assistance Scheme recently received a call from a woman requesting a Spanish-speaking barrister "urgently".

Scheme staff are used to receiving requests for barristers who can speak anything from Hindi to Mandarin and many are needed at short notice so the request was not unusual.

However the reason behind the urgent request was.

When asked the routine questions relating to the sort of legal matter the caller wanted assistance with, the woman replied evenly: "I have just received a wedding invitation and it's all in Spanish... I need someone to read it to me."

The caller was politely referred to the Spanish Consulate.

## VALE

Philip John (Jack) Kenny QC

It is with sadness the Bar Association notes the passing of Kenny QC who died on 16 November 1998 aged 85.

Admitted to the Bar in 1940, Kenny QC practiced law for 50 years and was known for his tremendous depth of legal knowledge and his great generosity towards colleagues seeking his opinion.

The Hon. Justice P.A. McInerney of the Supreme Court delivered the eulogy at a Requiem Mass for Kenny on 20 November.

He paid tribute to Kenny's many attributes, including his remarkable courtroom skills: "I know of no counsel who could compare with Jack in the sense that he could take on any case in any jurisdiction and do a top job."

A copy of Justice McInerney's eulogy is available from the Bar Library.

## FOR SALE

NSW Law Reports 1971 - 1998  
COMPLETE SET. EXCELLENT CONDITION.  
For details phone District Court:  
(02) 9377 5817

## Coming Up

*Open Government in NSW*, a conference hosted by the Public Interest Advocacy Centre, 10 February 1999. The conference will focus on Freedom of Information and the new Administrative Decisions Tribunal. For information contact Sarah Mitchell at PIAC on ph: 9299 7833 or email: [Sarah\\_Mitchell@fcl.fl.asn.au](mailto:Sarah_Mitchell@fcl.fl.asn.au).

*Joint Conference on International Commercial Arbitration*, organised by the Institute of Arbitrators & Mediators Australia, 8-10 March 1999. For information contact Leigh Cunningham, Chief Executive Officer on ph: (03) 9629 6799 or email: [instarb@werple.net.au](mailto:instarb@werple.net.au)

## Qantas Club

A reminder that the discount offer of \$220 for new Qantas Club membership finishes on 23 December, 1998. Please contact Annette Fercher on ph: 9229 1729 or forward your application to her via fax: 9221 1149 or email: [afercher@nswbar.asn.au](mailto:afercher@nswbar.asn.au) before the closing date.

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# Legal Assistance Scheme



From left: Law Foundation Director, Mr Simon Rice, Bar Association Executive Director, Philip Selth, Gurline Dillon-Smith of the Public Interest Advocacy Centre, Barker QC, the Hon. Dr James Macken and barrister Tony McQuillen.

## Spreading the word

The Bar Association held a lunch to thank those who have assisted the Legal Assistance Scheme and to launch the Scheme's new information brochure on 11 November 1998.

The scheme was formalised by Bar Council in 1994 and has been funded by the Law Foundation since 1996. Since its inception, barristers have provided some 7,000 hours of their time to those who could not otherwise afford legal representation.

Demand for assistance has been growing rapidly. For example, in the last financial year referrals from Community Legal Centres and Legal Aid offices alone have grown by 400 per cent.

The brochure has been designed to assist referral centres in explaining the services offered by the scheme.

For a copy please contact Heather Sare, Legal Assistance Scheme Manager on ph: 02 9229 1733 or email: [hsare@nswbar.asn.au](mailto:hsare@nswbar.asn.au).



Legal Assistance Scheme Manager Heather Sare, the Hon. Dr James Macken and barrister Alex Radojev.



Jenny Huxley of the Hawkesbury Legal Centre and Angela Jones and Gabriella Sullivan of the Redfern Legal Centre.



Judith Walker of Legal Aid and John McCarthy QC.

# Travel Specials

Harvey World Travel is offering the following packages exclusively to NSW Bar Association members.

## PACKAGE ONE

### CAIRNS

Price From \$781\* ex Sydney  
From \$861\* ex Melbourne  
From \$661\* ex Brisbane  
From \$831\* ex Adelaide  
From \$930\* ex Perth

#### Inclusions

Return economy airfare from the above gateways to Cairns.

7 nights accommodation at the Rydges Plaza Cairns - based on a Stay 7 Pay for 5 night package.

#### Conditions

- Bonus nights applicable for travel from 25 December 98 - 31 March 99
- Valid for sale until 22 March 99
- Seasonal surcharges and special conditions apply
- Price is per person twin share
- Price and inclusions are subject to change without notice

## PACKAGE TWO

### THAILAND

Price From \$1311\* ex Sydney, Melbourne, Brisbane, Adelaide  
From \$1105\* ex Perth via Singapore using Swissair

#### Inclusions

Return economy class airfare from Australia to Bangkok.

Return airport / hotel transfers.

6 nights accommodation at the Dusit Thani Hotel, Bangkok based on a Landmark Suite upgrade.  
Qantas Holidays ticket wallet.

#### Conditions

- Valid for sale until 31 March 99
- Valid for travel to 30 November 98 and 11 January 99 - 31 March 99
- Price is based on per person twin share
- Seasonal surcharge and special conditions apply
- Price and inclusions are subject to change without notice

## PACKAGE THREE

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From \$2287\* ex Brisbane

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Sydney

#### Inclusions

Return economy class airfare from Australia to Noumea.

Return airport/hotel transfers.

7 nights accommodation at the Le Meridien - deluxe ocean view room.  
Indulgence package.

Qantas Holiday ticket wallet.

#### Indulgence

One bottle of French champagne upon arrival.

#### Inclusions

Six full American buffet breakfasts for two persons at the Le Sextant Restaurant.

Three theme buffet dinners including one bottle of house wine for 2 persons at Le Sextant Restaurant on the evening of your choice.

One Gourmet table d'hôte dinner including one bottle of house wine for 2 persons at L'Hippocampe, on the evening of your choice (except Sunday as the restaurant is closed.)

Complimentary use of all non-motorised watersport equipment, health club (except massage and beauty treatments), tennis courts and mountain bikes.

Free entrance to the Grand Casino de Noumea and 500 XPF worth of gambling chips and one welcome drink per person.

#### Conditions

- Valid for sale and travel until 31 March 99



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For further details contact Harvey World Travel on ph: 132 757.

# Bar Association Committees and Appointments

As mentioned in a recent circular, the President has asked that all current, appointments, convenors, liaison officers and the like continue for the time being.

The President wants to avoid any disruption to on-going work as the new appointments are expected to take some time to confirm.

However, it is important that all members have an opportunity to be

considered for membership of a committee.

Barker QC asks that any member who would like to be a member of a committee let the Executive Director know by the end of the year (by letter; fax 9221 1149 or email: [executivedirector@nswbar.asn.au](mailto:executivedirector@nswbar.asn.au)).

Similarly, if a present member of a committee or one of our many

appointees to various Bar Association and 'external' posts feels it time to step down, would they please let the Executive Director know.

Details of Bar Association committees are in the Annual Report.

The President and Executive Director will be meeting with each committee chair early in the new year to settle the composition of the committees for 1999.

## Media Briefing

Letters to the Editor

*Out of Court*, written by the President. *The Sydney Morning Herald*, 23 November 1998 outlining the reasons the Bar Association opposes legislation allowing the Attorney General to refer sentencing matters directly to the Court of Criminal Appeal for review.

Press releases issued by the NSW Bar Association:

*Reopening of Parramatta Jail*, 23 November 1998.

*NSW Bar Council Executive*, 26 November 1998.

Copies are available from Reception or the Bar Association's web site.

Some of the press releases issued by the Law Council of Australia: *Government Must Act Urgently on Federal Privacy Legislation, Given Business Sector Support*, 25 November 1998.

*Commonwealth Legal Aid Restrictions Result in Abhorrent Situation*, 26 November 1998.

*Immigration Minister's Comments "Appalling"*, says Law Council, 7 December 1998.

Copies are available from Reception or the Law Council's web site at [www.lawcouncil.asn.au](http://www.lawcouncil.asn.au)

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*Contributions and advertising bookings and material for Stop Press must be received by the end of the month prior to publication.*

## Association email Directory

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[accounts@nswbar.asn.au](mailto:accounts@nswbar.asn.au)

Sickness & Accidents Inquiries

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Membership Inquiries

[membership@nswbar.asn.au](mailto:membership@nswbar.asn.au)

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## Office/Library hours over Xmas

Office

The Bar Association's office will be closed from 2.45pm on 24 December until 8am on 4 January 1999. Phone answering machines will be on over the holiday break.

Liquor Bar

The Liquor Bar will be closed from 7pm on 23 December until 1 February 1999.

Over the Christmas/New Year break the following libraries will be open:

Bar Association Library

Closed from noon on 24 December 1998 until 8am 18 January. Please return all items on loan by 18 December 1998.

University of Sydney Law Library

Monday, Thursday 9am-8pm

Tuesday, Wednesday, Friday 9am-6pm

Saturday 9am-4.45pm

Attorney-General's Department

Library

From 4 January 1999

Monday to Friday 9am-5pm

Both libraries offer access for barristers but no borrowing service.

The Law Courts Library

Closed from 18 December 1998 to 27 January 1999.