



# STOP PRESS

A monthly newsletter from the NSW Bar Association

ISSN No: 1329 - 9727

“Servants of all yet of none”

No. 65 August 1999

## President's Column

### Bar Charity

To date, our nominated charity, the Motor Neurone Disease Association, has attracted donations from the Bar totaling \$8,340.00. We can do better.

The specific purpose of the charity is to raise funds for the purchase of wheelchairs for the victims of Motor Neurone Disease (MND). Each year the Motor Neurone Disease Association spends over \$60,000 on equipment for people disabled by the disease; it needs the money. One of the Association's objectives is to provide the best possible assistance for people living with Motor Neurone Disease (MND).

The disease is a progressive disease of the central nervous system resulting, inevitably, in muscular wasting and death. Slowly but inexorably it affects the sufferer's ability to walk, to use the hands, to speak, to swallow and to breathe. David Niven succumbed to it. Before he died he called it “a torture no man could have devised”.

A victim closer to us was John Edmund Hennessy, Assistant Crown Solicitor, who was appointed to the magistracy in



*Ian Barker QC, President.*

January 1997 and who died on 13 February this year. The disease strikes indiscriminately and kills about 360 people in Australia annually. At any one time there are some 1,600 people in Australia living with MND. The Motor Neurone Disease Association is run largely by volunteers, with a paid staff of four. It could use our help.

### Bar Council Elections

If the world does not end before

November, and as I do not intend appointing myself President for life, there will be another Bar Council election. A long dying myth is that the Bar Association is run by an elite cartel from Wentworth and Selborne Chambers. The statistics are these. At the beginning of August 1999, the Association had 1,826 members eligible to vote. Of these 438 (24%) have chambers in Wentworth or Selborne. The Bar Council has 21 members, six of whom are from Wentworth or Selborne (seven before Bergin J became a judge). At the last election, 947 members cast valid votes – approximately half of the 1,854 eligible members of the Association. If you feel like the one member who suggested the Council was some sort of elite cartel, a self-preentious oligopoly, you could probably influence things by casting a vote. My own experience suggests that the Council usually consists of barristers doing what they can for the Bar, without regard to what school they went to, what sort of professional practices they have, or where their chambers are located.

## The Millennium Bug: A Barrister's Guide

A great deal is being written and said lately about the so-called “millennium bug” or “Y2K” problem.

Many barristers will have been aware of the problem for some time and will have considered how it may affect them. Many others, particularly those with limited or no knowledge of computers, may not have done so, but may nevertheless be concerned as to whether they will be affected and whether there are precautions they should be taking. This note is directed to the latter group.

The following general description of the problem and its impact is adapted from the Web site maintained by

Standards Australia ([www.y2kregister.com.au](http://www.y2kregister.com.au)). There is a more detailed description in a book review at (1999) 73 *Australian Law Journal* 457-459. The Bar Library also has a detailed video about an hour long, which explains the issues and possible responses. This will be shown in the Bar Association conference rooms (see **Coming Up** page 6 for dates).

### What is the Millennium Bug?

It is a computer data problem which originated in the 1960s and 1970s when computer systems were programmed to use only the last two digits to describe the year. Only the last two digits were

used, as computers were in their infancy and had limited memory. Abbreviated data saved space. On 1 January 2000 these systems may assume 01/01/00 refers to 1 January 1900 or another incorrect date.

### What does it affect?

Any system relying on a date to function. For example

- Computer hardware
- Computer software
- Systems that utilise computer chips to carry out their functions, eg lifts, security systems and ATMs.

*continued page 4*

# Bar Council Business for June

## New Business

**Legal Assistance Scheme funding** - The Law Foundation supports the Bar Association's application to fund the Legal Assistance Scheme in 1999/2000. The Foundation will recommend to the Trustees of the Public Purpose Fund that the necessary monies be made available to the Bar Association to operate the scheme.

## President's Report

**Motor accidents legislation:** In a detailed report to Bar Council, the President listed the defects of the *Motor Accidents Compensation Bill 1999* and the Government's rationale for the legislation. He also outlined the efforts made by various members of the Association to inform the public about the effect of the legislation; to persuade the Government not to proceed with the Bill; and the Legislative Council to reject the Bill, or at least improve it, if the Government did not withdraw the legislation.

## Executive Director's Report

**Renewal of practising certificates:** The Executive Director advised Council there appeared to be problems with insurers being very slow to issue professional indemnity policies for 1999/2000. Members had been asked to lodge their renewal application by 21 June 1999, and provide their PII policy when it was available, to assist with processing and to avoid late fees.

**Professional Indemnity Insurance premiums:** The Executive Director had suggested to members concerned about the price of their PII premiums that they compare the cost of policies offered by other insurers. He understood that in each instance the member obtained a cheaper policy with another insurer. The Executive Director also advised that he was seeking on-going discussions with insurers focusing on a number of issues including regular reports on claims and risk management strategies and an agreement to discuss possible premium increases. Meetings with senior officers of the various insurers will take place over the next month or so. Other issues to be discussed include a possible Australia-wide policy to overcome some problems encountered this year with interstate members being required by s38R of the *Legal Profession Act 1987* to have a PII policy approved by the NSW Attorney General. It also appears that there are differences in the way insurers deal with barristers in different States. The Executive Director to raise the matter at the Australian Bar Association meeting on 19 June 1999.

**Bar Association and Federal Court pro bono schemes:** The Executive Director advised that about 85 members had responded to the President's request in the May edition of *Stop Press* for members to participate in the Bar Association/ Federal Court pro bono schemes.

## Items for consideration

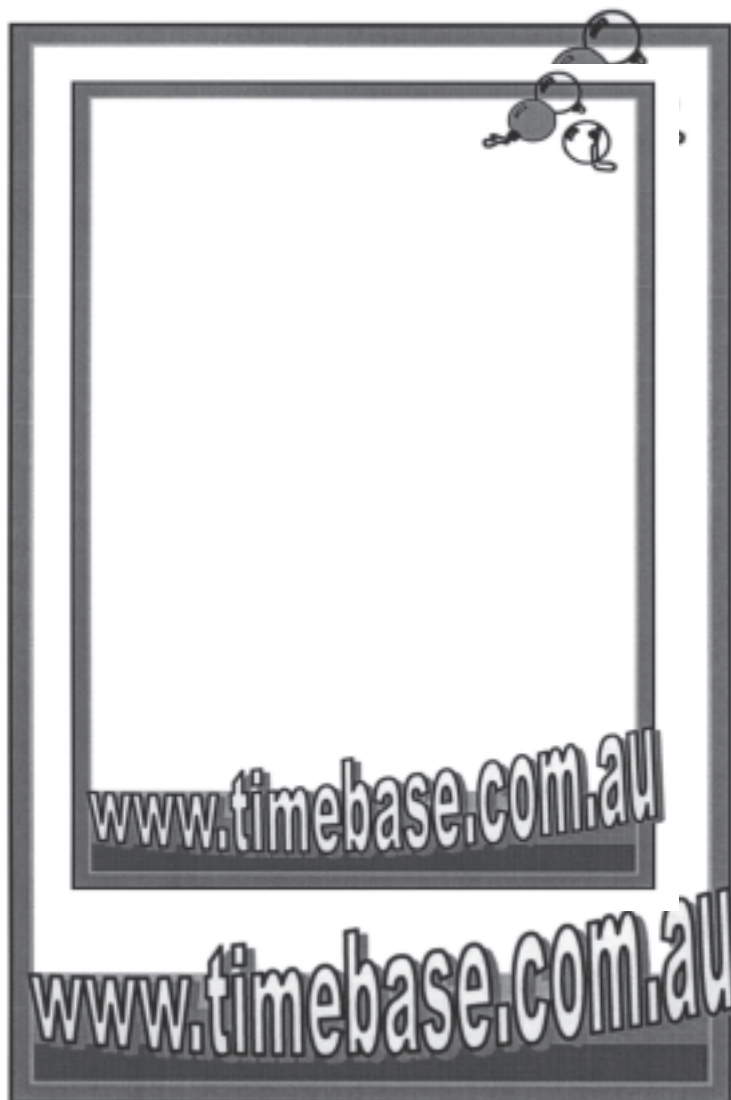
**Draft NSW Bar Association constitution:** Bar Council to provide the Executive Director with their comments on the draft constitution; the Executive Director to seek the views of other members of the Association who have assisted with recent Bar Council elections. A further draft to be considered by Bar Council as soon as possible.

**Investment Policy:** The Treasurer, Harrison S.C. and Grieve QC, with assistance from the Finance Manager, to review the ways in which the Bar Council and Bar Association staff receive advice concerning the investment and management of the Association's funds and those of the Benevolent Fund. Review reports to be presented to Bar Council at intervals of no greater than six months.

## Appointments

**Acting Public Defenders** - The secondment of Crown Prosecutor Paul Winch as an Acting Public Defender has been continued effective 27 July 1999 to 26 July 2000. Peter Pearsall and Dina Yehia have been appointed Acting Public Defenders effective 28 July 1999 to 27 July 2000.

The Executive Director Philip Selth has been appointed to the board of the Key Centre for Ethics, Law, Justice and Governance (KCELJAG) based at Griffith University effective 16 July 1999. KCELJAG is the first centre in law and ethics to receive Australian Research Council funding for teaching and research in those areas. Sir Anthony Mason AC KBE currently chairs the KCELJAG board; The Hon. Justice Tony Fitzgerald AC is shortly to succeed Sir Anthony as chair.



The Bar Association notes with regret the tragic death of Ms Clare Bleakley in The Fiji Air plane crash on 24 July 1999 in Fiji. Ms Bleakley, a member of AusAid, was the wife of member John Cauchi (Trust Chambers), currently Senior Crown Counsel, Crown Law Department of Tonga. Clare and John extended great hospitality, kindness and friendship to visiting instructors during the recent course conducted in Tonga.

## Bar takes advocacy training to Tonga



From left: Walmsley S.C., Leonie Flannery, Chief Justice Gordon Ward, Wendy Greenwood and Greenwood S.C.

In July *Stop Press* (page 9) John Cauchi, Senior Crown Counsel from the Crown Law Department of Tonga, praised an advocacy workshop led by Greenwood S.C. in Tonga last June. Here fellow tutor Walmsley S.C. writes about the experience.

Tonga's history is not often discussed at lunch in the Bar Common Room. Your correspondent only recently discovered that by the middle of last century Tonga had adopted a system of government based on the English model following extensive European contact dating back to 1616, and including visits from Captain Cook.

Since 1845, the system of government has been a monarchy, the current monarch being King Taufa'ahua Tupou IV, son of the hugely admired and loved Queen Salote Tupou III.

Tonga is governed by the King, the Cabinet (called the Privy Council when chaired by the King), and a Legislative Council. The Legislative Council has 30 members, of whom nine are directly elected and 21 appointed by the King or his 33 nobles.

Judges are appointed for fixed terms: their orders are respected by the Tongan Government. The resident judiciary consists of the Supreme Court with Chief Justice and one

puisne judge, and a Magistrate's Court with a number of magistrates.

Appeals from the Supreme Court are heard by the Court of Appeal of Tonga. That court consists of two Australian Federal Court judges, The Hon. Justice Beaumont and The Hon. Justice Burchett and a member of the New Zealand Court of Appeal.

The country has about 50 admitted legal practitioners (they practice as amalgams); about 35 are in full time practice, either in the private profession or in government. About one-third are women. The law in force is that of England unless amended by Tongan statute. The rules of court are simple and based on the English. The White Book is the main practice book.

Tonga does not have a university and most legal practitioners have obtained their degrees in Australia or New Zealand.

The University of South Pacific's law school, based in Port Vila, Vanuatu, quite recently introduced a diploma in law. Many of the more recently qualified Tongan lawyers have qualified that way. The course has its limits, however, in the practical legal training area.

In May 1998 a New Zealand lawyer practising in Tonga, John Appleby,

presented a forward-thinking paper on continuing legal education in Tonga. The paper came to the attention of Beaumont J, who then suggested to Greenwood S.C. that he take a group to Tonga to run an advocacy training course.

Greenwood (largely instrumental in setting up and running the NSW Bar Readers' course) visited Tonga last October and met with the puisne judge Dan Finnigan (a retired former New Zealand judge), the Law Society president, Mr Lake Niu, and John Appleby.

Encouraged by them, he set about putting together a group with previous experience of teaching advocacy in Bangladesh.

On 19 June 1999 Greenwood, his wife Wendy (an educator and a dab hand at the video machine), your Tongan correspondent and Public Defender Leonie Flannery arrived in the Kingdom. We took with us a letter of introduction from Barker QC proposing a "twinning" agreement between the Tongan Law Society and the NSW Bar Association. The NSW Bar Association assisted by providing a number of folders for course participants and lending some of its video recorders.

The five-day course consisted of pleading principles (including drafting exercises), case analysis and preparation, examination in chief and cross examination (with video and other reviews) final addresses, and the principles of trust accounts. (Ward CJ, who in his days as a criminal silk at the London Bar had represented one of the Birmingham Five, had made it known he would like us to add to the usual advocacy range lectures on pleading and trust accounting.)

Valuable contributions on pleading and advocacy respectively were made by Finnigan J and Ward CJ. The group fluctuated in number through the week but substantially the vast majority of the practising profession took part.

*continue page 6*

# The Millennium Bug: A Barrister's Guide

*Continued from page 1*

## What happens if nothing is done?

- Software may fail to operate.
- Computer controlled equipment may fail eg. security systems, transport systems, health systems etc.
- Computers may misinterpret the year and replace it with an irrelevant date. This problem may then cause calculations to yield incorrect answers.

## Other critical dates which are also an issue

### 9 September 1999

Computer programmers back in the 1980s often used 9/9/99 as a special value to signify that a file had "no expiration date". However, on 9 September 1999 computer programs may consider that such files have expired and may permit them to be overwritten with new material.

### 29 February 2000

Many computer programs may be unaware that 2000 is a leap year and thus will not accept the additional day, causing calendars and date based calculations to be incorrect.

## What particular issues does the Y2K problem raise for members of the Bar?

Barristers will be affected along with the rest of the community if organisations such as public utilities suffer disruptions in service. However, given the Court vacation in January, it is likely few barristers will find their professional lives much disrupted, even if there are breakdowns in supply systems.

Professionally there are two possible areas where barristers may be affected

- Computers or computer programs may malfunction
- Equipment other than computers which contain date sensitive chips may malfunction. Possibilities are mobile phones, photocopiers, fax machines and telephone switchboards.

## What precautions should be taken?

### Computers and Computer Programs

There is one precaution which is strongly advised, but which represents good housekeeping in any event. Back up your files! That is, prior to each of the critical dates mentioned above, copy any files you have created and want to keep into a storage medium separate from your computer. This way, even if your computer completely ceases to function, you will not lose anything irreplaceable.

If your computer does cease to function, it is probably due for replacement in any event.

There are various mechanisms available to check whether your computer is likely to have a Y2K problem: there are computer programs available that will test the computer's operating system; a computer technician can run diagnostic tests on a computer and if necessary correct any problems or suggest a solution. It is possible to change the date on your computer to 11.58pm on 31 December 1999, wait 3 minutes and see what happens (back up your data first). This is not recommended in any case where software subject to a limited licence is being used. Such software would include many legal information services, whether CD Rom or internet based. The risk is that altering the computer's time clock may cause the software to conclude the licence has expired.

Some computer programs might start to give erroneous results rather than ceasing to operate. However, it is a reasonably safe assumption that in any computer software likely to be utilised by barristers in their practices this will be quite obvious.

One particular area barristers ought to be wary of is accounting software.

Older versions of accounting software packages may not be able to deal with dates after 31 December 1999, in which case the difficulty will become apparent as soon as attempts are made to enter

transactions bearing such dates.

Either the date will not be accepted as valid or the program may read the date as 1900 in which case the transaction will not appear in reports of current accounts.

In either case it is unlikely that the software can be remedied economically. It is more likely that an upgraded or different software package will be required.

### Other office equipment

As with computers, there are various possible approaches to testing the Y2K readiness of office equipment. The first question is to consider how old the equipment is. The older it is, the more likely that it may malfunction after 31 December 1999. The second step may be to contact the supplier or manufacturer and enquire whether the particular model is "Y2K compliant."

But it seems reasonable to ask in each case, before spending time and money testing equipment for Y2K readiness; how critical is it that the equipment be fully operational on 1 January 2000?

### For further information contact:

National Y2K Hotline: 1800 11 2000  
Department of Fair Trading: 9895 0111

### or visit these web sites:

Standards Australia:  
[www.y2kregister.com.au](http://www.y2kregister.com.au)  
NSW Department of Fair Trading:  
[www.fairtrading.nsw.gov.au](http://www.fairtrading.nsw.gov.au)  
NSW Government Y2K home page:  
[www.y2k.gov.au](http://www.y2k.gov.au)  
AFR "millennium matters":  
[www.afr.com.au/y2k/](http://www.afr.com.au/y2k/)

**D. Robertson,**  
**Library and Technology**  
**Committee,**  
**Nigel Bowen Chambers,**  
27 July 1999.

# Getting to Know

The Administration Department is responsible for preferred supplier arrangements, liaising with Close Encounters and contractual arrangements of the Bar Association. The Department also oversees Liquor Bar operations, functions and bookings and provides administrative support to the Executive.

Within the office, the Department is responsible for Reception, human and physical resource management, records management and asset and heritage management.

The Administration Manager Lynne Colley provides administrative support to the Common Law, Criminal Law, Legal Aid, Human Rights and Facilities and Functions committees.

Lynne can be contacted on ph: 9229 1713 or email:

lcolley@nswbar.asn.au. Nicole Hyde provides support to the ADR and Arbitration and EEO committees. Nicole can be contacted on ph: 9229 1723 or email: nhyde@nswbar.asn.au. Nicole also provides support to the Barristers Resolution Service.



From left: Lynne Colley (Manager), Nicole Hyde, Monika Chudy and Farida Lim.

## Survey Series

This month the Administration Department of the Bar Association responds to the issues raised in the membership survey. Public Affairs responded in the April edition of *Stop Press*, the Education Department in the May edition and the Finance Department in the June edition.

Questions were raised in the survey regarding the liquor bar operations. The Bar Association's preferred supplier is Porters Liquor and as such the retailer regularly advises members of pricing deals. The Liquor Bar is staffed between 12 noon and 6pm, Monday to Friday.

There were also queries as to the official opening hours of the Bar Association office. Reception is staffed between 8am and 6pm, Monday to Friday although staff are often in the office until 7pm.

By now, most members will be aware of the new arrangements for the dining room, namely that the lease for Close Encounters was taken over by Blocus Pty Ltd on 28 April 1999. The Administration Manager is currently working with Wheelahan QC and J. Gleeson to find ways of increasing patronage to the Dining and Common Rooms.

Through the survey, members also advised that they found preferred supplier arrangements and/or member benefit arrangements such as travel deals of great use and that more should be explored. The Administration Manager reports that arrangements are currently being investigated regarding mobile phones, hire cars, credit cards and conventional phone services.

# UNCONVENTIONAL CONVENTIONS

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# Coming Up

## The 31st Australian Legal Convention

The 31st Australian Legal Convention, 8-10 October 1999, Hyatt Hotel, Canberra. Speakers include The Hon. A.M. Gleeson AC, Chief Justice of Australia, The Hon. J.J. Spigelman, Chief Justice of NSW (key note speaker) and The Hon. Daryl Williams AM QC, Attorney-General. For further information see the program brochure at Reception or contact Sue Burns of the Law Council on ph: 02 6247 3788 or fax: 02 6248 0629. The Convention is open to all legal practitioners.

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## PIAC & PILCH Annual Dinner

Geoffrey Robertson QC will speak at the Public Interest Advocacy Centre and Public Interest Law Clearing House Annual Fundraising Dinner on 18 August 1999 at Pavilion on the Park. For more information see the brochure at Reception or contact Sarah Mitchell at PIAC on ph: 9299 7833; fax: 9299 7855 or email: piac@fl.asn.au

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## CLEAA Annual Conference

The Continuing Legal Education Association of Australia Annual Conference, 14-16 November 1999, at the Judicial Commission of NSW. Topics include technology, stress management training and how professionals learn. For more information see the brochure at Reception or contact Ruth Windeler on ph: 9299 44221; fax: 9290 3194 or email: ruth\_windeler@agd.nsw.gov.au

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## 15 Bobber

**3 September** - The Hon Justice Roger Gyles  
Speaker: The Hon Bob Ellicott QC

The Hon Justice Dennis Cowdroy OAM  
Speaker: Cummins QC

**15 October** - His Honour Judge Ralph Coolahan  
Speaker: Williams QC

His Honour Judge Kevin Coorey  
Speaker: John Stratton

Tickets for 15 Bobbers cost \$12.00 or \$20.00 at the door. All 15 Bobbers are held in the Common Room and start at 5:00pm; speeches begin at 5:30pm.

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## Bench & Bar Dinner

Invitations have been mailed to members to attend the Bench & Bar Dinner on Friday, 17 September 1999 at the ANA Hotel. If you have not received an invitation, please contact the Administration Officer (Social Functions), Sharron Smyth, on ph: 9229 1739 or email: ssmlyth@nswbar.asn.au

## Y2K Video Presentation

A presentation of the video mentioned in D. Robertson's feature on page 1 of this month's *Stop Press* entitled *Year 2000: Is your PC ready?* will be shown in the Bar Association conference rooms at 5:30pm on Thursday, 9 September, Wednesday, 22 September and Wednesday, 6 October. Members should indicate their intention to attend by contacting Reception on ph: 9232 4055 or email: reception@nswbar.asn.au

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## Law Institute of Victoria

Law Institute of Victoria Annual Conference, 16-17 September 1999, Grand Hyatt Hotel, Melbourne. Sessions include litigation; property law; commercial law; family law and special interest law. For more information see brochure at Reception or contact the Institute on ph: (03) 9607 9377 or fax: (03) 9602 5270.

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## Australian Institute of Judicial Administration

The Second Annual AJJA Tribunals Conference, 10 September, Millennium Hotel Sydney. Sessions include: *Standards and Independence – The Relationship?; Establishing a Council on Tribunals; The Decision Maker's Obligation to provide a Statement of Facts, Evidence and Reasons – The Law and Common Problems Arising in Tribunal Hearings.* For further information see the program brochure at Reception or contact Kathy Jarrett on ph: 03 9247 6600; fax: 03 9347 2980 or email: k.jarrett@law.unimelb.edu.au

## Tonga training

*continued from page 3*

On the last night the Tongan Law Society entertained the group with a feast including a pig. The night commenced with a prayer and a hymn with exquisite harmonies and concluded with a number of speeches including from the Chief Justice, the President of the Law Society, and the Australian High Commissioner.

We came home with some excellent ideas. First, Tongan law maintains no contract is enforceable against a Tongan by a foreigner unless in writing. Second, jury panels usually come from one or at most two small villages. So the jurors may already know each other and, perhaps, be related. Third, livestock and vegetables are often used to pay fees. This avoids GST issues. Fourth, there are no regulations governing the keeping of trust accounts.

*Walmsley S.C.,  
5/Selborne,*

14 July 1999.

The NSW Bar Association extends its thanks to the Tongan Law Society for its gift of a beautiful hand-carved wood dolphin received in recognition of the work carried out by the training team of Walmsley S.C., Greenwood S.C., Leonie Flannery and Wendy Greenwood.

# Short Takes

**Australian cases wanted for international human rights list:** Butterworths' London office is seeking to include Australian human rights cases in a series of reports it publishes entitled *Butterworths Human Rights Cases*.

Members able to advise of relevant decisions with appeal to an international audience should write to: *Butterworths Human Rights Cases*, Butterworths Halsbury House, 35 Chancery Lane, London WC2A 1EL; fax: 0015 44 171 400 2598 or email: lisa.mcguinness@butterworths.co.uk

**Structured settlements: the new push for tax law reform:**

The Law Council of Australia recently became a member of the Structured Settlements Group, which is currently making representations to the Commonwealth Government on tax reform proposals. Other members of the Group include the Australian Plaintiff Lawyers Association, Injuries Australia, the Insurance Council of Australia and United Medical Protection.

A copy of the Group's submission, *Structured Settlement: A Tax Reform Proposal to Benefit Accident Victims and All Tax Paying Australians* is currently being reviewed by the Bar Association's Common Law Committee. Copies of the submission are available from Reception. Comments should be addressed to the Common Law Committee and sent to Lynne Colley at the Bar Association.

**Barrister's Clerks Elections:** The Barrister's Clerks Association NSW held its annual general meeting on 23 July 1999. At that meeting Mark Dalley (Henry Parkes Chambers) was elected President; Michael Bennett (5/Selborne) was elected Secretary and Nick Tiffen (7/Selborne) was elected Treasurer. The following clerks were elected to the Committee: John McDonald (44/Edmund Barton Chambers), Karmen McKinnon (4/Selborne), Chris O'Gorman (43/Edmund Barton) and Kim Sams (2/Wentworth).

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## Papers to Note

**Compensation Rule (Miscellaneous Amendments and Minor Law Revision) 1999:** The object of the above rule is to amend the Compensation Court Rules 1990 to identify matters to be commenced by summons, effect various miscellaneous amendments and for minor law revision purposes. Advice to Practitioners Numbers 2-4 1999 have been amended. Advice to Practitioners No. 2 relates to a new form of subpoena to produce documents; No. 3 relates to vacation arrangements as a consequence of the Olympic Games and No. 4 relates to proceedings commenced by summons. Copies of the amendments are available from the Bar Library.

**Law Council submission on professional fees in federal jurisdictions:** The Law Council of Australia has published its submission to the Attorney-General's Department in response to the *Report of the Review of Scales of Legal Professional Fees in Federal Jurisdictions*. A copy of the Report is available from Reception or the Law Council's web site at: [www.lawcouncil.asn.au](http://www.lawcouncil.asn.au)

# Letters

**Letter to the President,**

I am very grateful that the Bar has adopted the Motor Neurone Disease Association as its current charity.

The disease is a terrible one which results in the sufferer gradually losing speech and mobility, leading to a slow death.

There is no cure. The disease affects men mainly 40-60. Moreover, it seems that the disease is to a great extent hereditary so that many men who have had a close relative affected live in fear for the future.

The Motor Neurone Disease Association of which I have the honour to be a Vice Patron was originally formed as a support group of doctors and widows of former sufferers. It has expanded its activities so that as well as providing support and advice for sufferers and their families it actively seeks funds both for support purposes and also for research to see if there is a cure.

I would hope that the Bar would stand generously behind this cause.

*The Hon. Justice P W Young,*  
*Supreme Court,*  
23 July 1999.

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# Access to the Supreme Court for people with disabilities

The Executive Office of the Supreme Court has received several enquiries regarding access for people with disabilities who need to attend the Court.

The Court's Chief Executive Officer, Nerida Johnston, has advised the Executive Director that special provisions can be made for people with disabilities if the Court is given advance notice. Arrangements can be made for, and are not limited to, car-parking and escorting to courtrooms when necessary, infra-red hearing equipment and wheel-chair accessible court-rooms.

The Court generally lists cases several weeks ahead of actual hearing, and some services require equipment or facilities to be booked. To ensure that the needs of people before the Court are met, notification of specific requirements should therefore be given as soon as possible. The Court will endeavour to reasonably accommodate those needs. Enquiries should be directed to the relevant List Supervisor in the first instance:

Common Law Division (*civil*) ph: 9230 8104

Common Law Division (*criminal*) ph: 9230 8723

Equity Division ph: 9230 8081

Court of Criminal Appeal ph: 9230 8717

Court of Appeal ph: 9230 8665

A brochure detailing access to the Court, including information about facilities for people with disabilities, is now in the planning stages and members will be informed as to publishing dates once it is distributed.

## Rule 21 and Service of Medical Reports in Common Law Cases

The following article first appeared in the 1995 edition of *Bar News*. It is reprinted here for the benefit of members, as it is often a topic of enquiry.

Rule 21 of the NSW Barristers' Rules reads:

*A barrister must not knowingly make a misleading statement to a court on any matter.*

The tender of a medical report in common law proceedings where counsel making the tender is aware that in a subsequent report the doctor has changed his or her opinion constitutes making a misleading statement to a court.

If a situation arises where counsel has tendered the report of a medical practitioner and then subsequent to that tender becomes aware from a later report that the medical practitioner has changed his or her views counsel should, in order to comply with rule 21, either tender the second report or, alternatively, withdraw the tender of the first report.

There is, of course, no ethical obligation on counsel to adduce evidence unfavourable to a client's case. That is not the situation here. Where a personal injuries case is to be decided on reports, the tender of a report in the circumstances outlined above constitutes an assertion by counsel making the tender that the report contains the current opinion of that doctor when he or she knows that is not the case.

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## Walkabout

The following is a selection of meetings and events attended by the President on behalf of the Bar Association during July.

**2 July** – The President attended the Tutors and Readers Dinner.

**6 July** – The President and Executive Director attended a conference on the *Motor Accidents Compensation Bill 1999* organised by the Australian Insurance Law Association.

**15 July** – The President and Executive Director met with the Chief Justice of NSW to discuss a range of matters of interest to the Bar Association.

**16 July** – The President attended the 15 Bobber for Katz J and Bell J.

# Opening Commonwealth litigation to the private sector

In a letter to the President on 28 July the Attorney-General, The Hon. Daryl Williams AM QC, advised that the *Judiciary Amendment Act 1999* would commence on 1 September 1999.

The Act reforms the *Judiciary Act 1903* to establish the Australian Government Solicitor (AGS) as an authority separate from the Attorney-General's Department to enable the Attorney-General to issue Legal Services Directions in relation to Commonwealth legal work.

"The reforms contained in this Act will enable a significant opening up of Commonwealth litigation to the private sector," Mr Williams advised the President. "Greater freedom of choice for Commonwealth Departments and agencies in the conduct of their litigation will be one of the major results of the new legislation."

"At present, some Commonwealth litigation is conducted by private lawyers on the basis of approvals given by my Department. However, from 1 September prior approval will not be necessary," Mr Williams wrote.

Some areas of Commonwealth legal work and litigation will continue to be assigned only to Government lawyers, namely Constitutional, Cabinet, national security and public international law.

For further information about the reforms to the Commonwealth legal services market contact Ian Govey, First Assistant Secretary of the Office of Legal Services Coordination (OLSC) on ph: 02 6250 6611 or visit the OLSC web site at: [www.law.gov.au/olsc](http://www.law.gov.au/olsc). (The OLSC is part of the Attorney-General's Department.)

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## Media Briefing

### Press Releases issued by the Law Council of Australia

*Federal Court's Functions Could Not be Absorbed by State Courts, Warns Law Council*, 23 July 1999.

*1999 Australian Law Journalist Awards and 31st Australian Legal Convention*, 21 July 1999.

*Law Council Welcomes Attorney's Prompt Appointment of Family Court Judge*, 15 July 1999.

Visit the Law Council of Australia web site at :[www.lawcouncil.asn.au](http://www.lawcouncil.asn.au) for a full list of its press releases and submissions.

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## New Members

Richard Butler, 12/Selborne  
Keith Chamberlain, Gosford Chambers

Thomas Davie, Queen's Square

Kenneth Gilson, Forbes

Anthony Iuliano, St James Hall

Philip Massey, Sir Owen Dixon

Barry Murphy, G/Windeyer

Elizabeth Peden, University of Sydney

Andrew Pickles, 6/Windeyer

Ian Polak, North Coast

Richard Pontello, Sir Owen Dixon

Anthony Porthouse, 2/Selborne

Michael Shaw, Samuel Griffith

John Sheahan SC, 16/95 North Quay,  
Brisbane

Eric Shields, West Pennant Hills

Sabine Thode, Jack Shand

Bart Vasic, Frederick Jordan

Peter Walsh, University

Benjamin Zipser, 8/Selborne

Trevor Bailey, 8/Garfield Barwick

Jeremy Clarke, 7/Wentworth

Jane Knox, Frederick Jordan.

### Associate Members

Stephen Moloney, Foley's List,  
Melbourne.

## Bar Briefs

- The Senior Counsel Appointment Committee for 1999 comprises: the President, Barker QC; the Senior Vice President, McColl S.C.; Robberds QC; Palmer QC and King S.C.
- Higgs S.C. will represent the Bar Association on the Department of Health's Health Care Liability Reference Group to consider issues relating to the liability of health care professionals. Levy S.C. to be the alternate representative.
- R. Letherbarrow and A. Stone will represent the Bar Association on a Motor Accident Authority working party considering proposed regulations on advertising and legal costs to be made under the *Motor Accidents Compensation Act 1999*.
- The following members will represent the Bar Association on the Company List Users Group established by The Hon. Justice R. P. Austin of the Supreme Court: Oakes S.C. (alternate Bathurst QC); J. Thomson (alternate Justin Gleeson); R. Newlinds (alternate F. Gleeson) and J. Johnson (alternate A. Bell).
- A. Bell will represent the Bar Association on a Supreme Court committee established to consider the arrangement of the law lists consequent on the abolition of most Divisions of the Supreme Court on 1 July 1999.
- The President would like to thank Robertson S.C. for assistance with a submission to the Attorney General on a proposal to permit the Supreme Court to transfer certain matters to the Administrative Decisions Tribunal.
- The President would like to thank the Family Law Committee, chaired by Richardson S.C., for drafting a letter to the Managing Director of Legal Aid concerning a possible reduction in fees paid in respect of family law matters. The President would also like to thank the Committee for preparing a submission on behalf of the Association in response to the Commonwealth Attorney-General's Department discussion paper, *Federal Property & Family Law – Options for Change*.

# At the Lectern

## Regional Bar Conference Byron Bay

The conference opened on Saturday, 31 July 1999 with a session conducted by S. Odgers (Forbes) on the *Evidence Act 1995*.

The discussion focused on issues including privilege, hearsay and tendency.

Members said later that the session was highly useful and that they would have been happy to spend "days" listening to Odgers discuss the legislation.

In the afternoon, conference participants took part in an advocacy workshop led by G. Laughton (13/Selborne) which focused on a case where a woman had slipped and injured herself while visiting a shopping centre.

Dr Ian Coyle assisted with the session by acting as an expert witness for the plaintiff. Dr Coyle is an occupational health and safety consultant based in Queensland who has appeared as an expert witness for both plaintiffs and defendants.

Over the afternoon eight participants, representing four teams, performed either an examination in chief or a cross-examination.

Dr Coyle said that barristers using a particular expert witness for the first time should always schedule a conference to go through his or her report with them.

"Ensure your expert can explain things simply. If they cannot explain it to you in non-technical language then they are not going to be able to explain it to a court so tell them to go away and do it (the report) again," he said.

The conference closed on Sunday after a session conducted by the Bar Association's Librarian, Lisa Allen, on how to use the library to access the Internet as a research tool.

Course participants included: P. Costello (St Pauls); L. Wong (Campsie); P. McGuinness (Lismore); B. Kinsella (Lismore); K. Roser (Coffs Harbour); M. Burnett (Brisbane); D. Rickard (Bundjalung); A. Cook (14/Wardell); P. O'Connor (Lismore); Jason Watts (14/Wardell); P. Mason (North Coast); D. Hawes (Broadbeach);



Dr Ian Coyle, B. Kinsella (Lismore) and G. Laughton (13/Selborne).



S. Odgers (Forbes) discusses the *Evidence Act 1995*

The NSW Bar Association and Federal Litigation Section of the Law Council of Australia present an Industrial Law Seminar.

## Pay Equity and Equal Remuneration: *Where To Now?*

Date: Tuesday 24 August 1999

Time: 5.15 pm - 7.00 pm

Venue: The NSW Bar Association  
Common Room

Chair: Peter Kite S.C.

### Speakers

#### Grant Poulton

Lawyer and industrial advocate representing Australian Business Ltd. in response to the application by the Labour Council of NSW to create a new equal remuneration principle.

#### Patricia Lowson

Currently briefed to appear as junior counsel on behalf of the Minister for Industrial Relations in the above proceedings.

**\$60** General admission

**\$40** NSW Bar Association  
members

**\$40** Federal Litigation  
Section members

**\$30** Members of both

In December 1998 the Report of the *Inquiry into Pay Equity* conducted by Glynn J of the Industrial Relations Commission of NSW was released. More than 25 years after the 'equal pay' case, Glynn J found that work in female dominated industries remains undervalued. Amongst other things, the Report suggested legislative amendments and the development of a new equal remuneration principle to stand alongside the wage fixing principles. The Labour Council has made an application to the NSW Industrial Relations Commission to create such a principle, which would provide a mechanism to address undervaluation of work in female dominated industries. The recommendations of the Report have significance for the industrial system and the labour market in NSW and nationally. This seminar seeks to analyse the issues raised by the Report and explore potential future developments.

For further information contact the  
Education Manager, Kelly Wright on  
ph: 9232 4055 or  
email: [kwright@nswbar.asn.au](mailto:kwright@nswbar.asn.au)

# Appointment of Senior Counsel 1999

The President has invited applications to the Inner Bar for 1999 via a circular sent to all members of the Outer Bar on 26 July 1999.

The circular details what members must do to ensure their applications are considered and anyone wishing to obtain an additional copy should contact Reception.

Members of the Outer Bar must notify the President of their intention to apply for Senior Counsel in writing by 31 August. Applications should include name, date of admission and details of the applicant's areas of practice, including any special areas or notable features. Applicants may also include aspects of matters in which they have appeared as junior counsel which are regarded as significant and any other matter considered relevant.

It is not necessary for applicants to notify members of the Inner Bar or more senior members of the Outer Bar.

Any applicant who has not received an acknowledgment letter by 6 September 1999 should contact the Librarian Lisa Allen on ph: 9229 1726 or email: lallen@nswbar.asn.au.

In accordance with the protocol adopted by the Bar Council on 20 May 1999, the President will appoint Senior Counsel after selection by a committee of five, including three other Senior Counsel, not more than one of whom can be a member of Bar Council. The committee comprises the President, Vice President ex-officio and three senior counsel nominated by the President, namely Robberds QC, Palmer QC and King S.C. The committee will consult with members of the Bar, the Bench and solicitors, in accordance with the protocol, before reaching their decisions.

Members who do not have a copy of the protocol can visit the Bar Association's web site or contact Reception.

## Australian Advocacy Institute

ACN 061 146 825

### Appellate Advocacy

24-25-26 September 1999

Supreme Court, Queens Square Sydney

*The workshop will focus on the application of the principles of advocacy in appellate argument*

**Moderator: The Honourable Justice Hampel**

**Teaching Faculty includes: David Jackson QC of the New South Wales Bar, Felicity Hampel QC and other experienced instructors**

### Advocacy Workshops August-October 1999

General Skills Workshop: 27-28-29 August, Sydney

General Skills Workshop: 3-4-5 September, Brisbane

Advocacy for Family

Law Practitioners: 1-2-3 October, Brisbane

General/Advanced

Skills Workshop: 1-2-3 October, Melbourne

General Skills Workshop: 15-16-17 October, Sydney

### Registration/Enquiries:

Rosanna Stephenson, Executive Officer

Australian Advocacy Institute

Level 4, 360 Little Bourke Street, Melbourne 3000

GPO Box 853k Melbourne 3001 or DX 460

**Phone: (03) 9642 0222**

**Fax: (03) 9642 0444**

e-mail: aai@austai.com.au

Website: www.austai.com.au

# Membership of the NSW Bar Association

## as at 31 July 1999

### Number of Members who hold NSW Practising Certificates (including those Members based interstate & overseas)

Male 1601 (88%)

Female 225 (12%)

### Number of Senior Counsel (QC or S.C.)

**229**

Male 225 (98%)

Female 4 (2%)

### Number of "Junior" barristers

**1596**

Male 1376 (86%)

Female 220 (14%)

**Total 1825**

### Breakdown of Members' "home" jurisdiction

New South Wales 1696

Victoria 3

A.C.T. 38

Queensland 61

South Australia 7

Western Australia 4

Northern Territory 1

Tasmania 0

Overseas 15

### Associate Members (including those Associate Members based interstate & overseas)

Male 391 (89%)

Female 49 (11%)

Judges 170

Retired practitioners 102

### Breakdown of retired practitioners

Retired judges 72

Retired barristers 30

Honorary Life Members 20

Honorary Member 1

### Other:

University Lecturers (non practising) 1

Non Practising Barristers 16

Magistrates 9

Government officers 5

Member of Parliament 2

Interstate barristers 114

**440**

### Total number of Members

**and Associate Members 2265**

# Practitioners Holding NSW Practising Certificates

(including practitioners based interstate & overseas) 1900

Male	1663 (88%)	<b>Overseas</b>	23
Female	237 (12%)	Male	19
		Female	4
<b>Number of Practitioners who are Senior Counsel (QC or S.C.)</b>	<b>237</b>	Silks	8
Male	230 (97%)	Juniors	15
Female	7 (3%)		
<b>Number of Junior barristers</b>	<b>1663</b>	<b>Breakdown of overseas practitioners by country of residence:</b>	
Male	1433 (86%)	<b>United States of America</b>	1 male junior
Female	230 (14%)	<b>United Kingdom</b>	9 practitioners
<b>New South Wales</b>	<b>1744</b>		4 - Silks (3 male, 1 female)
Male	1525 (87%)		5 - Juniors (4 male, 1 female)
Female	219 (13%)	<b>Hong Kong</b>	4 practitioners
Silks	210 (12%)		2 - Silk (male)
Juniors	1534 (88%)		2 - Junior (male)
<b>A.C.T.</b>	<b>46</b>	<b>New Zealand</b>	5 practitioners
Male	40		1 - Silk (male)
Female	6		4 - Juniors (2 male, 2 female)
Silks	3	<b>Tonga</b>	1 male junior
Juniors	43	<b>Cook Islands</b>	1 male silk
<b>Victoria</b>	<b>3</b>	<b>Bermuda</b>	1 male junior
Male	3	<b>Spain</b>	1 male junior
Juniors	3		
<b>Queensland</b>	<b>66</b>		
Male	61		
Female	5		
Silks	12		
Juniors	54		
<b>South Australia</b>	<b>13</b>		
Male	11		
Female	2		
Silks	5		
Juniors	8		
<b>Western Australia</b>	<b>4</b>		
Male	4		
Silks	1		
Juniors	3		
<b>Northern Territory</b>	<b>1</b>		
Male	1		
Juniors	1		
<b>Tasmania</b>	<b>0</b>		

ADVERTISEMENT

## Investment and Home Loans

**Wizard Mortgage Corporation** offers a special discount to Association members. This allows members to obtain a fully-optional residential mortgage at 5.89% p.a. variable, (a discount of 0.10%). Loan features include no ongoing fees, additional repayments, unlimited redraws and conversion to fixed rate. Conditions and fees apply.

Please contact Andy Stucken BA LL.B on ph: 9554 7998, 0411 515 664 or email: andy@wizardcorp.com.au

*Stop Press* is produced monthly for the NSW Bar Association by:

Weavers,  
Studio 9  
5 Parsons Street  
Balmain 2041  
Tel: (02) 9555 7866  
Fax: (02) 9555 7861  
Email: weavers@weavers.com.au  
Web site: www.weavers.com.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.*

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