



STOP PRESS

A monthly newsletter from the NSW Bar Association

ISSN No: 1329 - 9727

“Servants of all yet of none”

No. 64 July 1999

President's Column

The Motor Accidents Compensation Bill 1999 has passed both houses of Parliament. Along with the Law Society we achieved some amendments, but the fundamentals of the scheme remain. Worthwhile amendments were:

- loss of earning capacity will be compensable
- the limit on economic loss was increased from \$1200 net per week to \$2500 net per week
- psychiatric injury may be treated as causing permanent impairment of more than ten percent (but it cannot be aggregated with other injuries for that purpose)
- damages may be recovered for the cost of attendant care services (in the limited way prescribed) even if the carer is a relative (in the first draft the relative was to work for nothing).

There is a strange provision for review by a court of a medical assessor's certificate, but it is so limited and circumscribed as to be more or less useless to claimants. In fact, as drafted it is incomprehensible and is to be re-visited, but not to the advantage of victims.

To the extent that the Bill focuses upon the need for early treatment and speedy settlement of less serious claims, the object is laudable. However, that is to be achieved by discouraging claimants from having legal representation and the substitution of bureaucratic procedures for the right to go to court. Parties may be legally represented in the assessment process and, no doubt, there will be occasions when it will be seen to be necessary.

As to injuries such as serious spinal or cerebral trauma, or serious disputes about liability, the intention seems to be that the claimant may take court proceedings in the usual way. This is not spelled out, but clause 92 of the Bill provides for exemption of claims from assessment if of a kind exempt under Motor Accidents Authority (MAA)



Ian Barker QC, President.

guidelines or determined to be not suitable for assessment. As I understand it, the guidelines will exempt complex claims in respect of the seriously injured, and most such claims are necessarily complex.

As to costs, the MAA General Manager Mr David Bowen informs us that when the new system was costed an assumption was made that there would be no change in legal costs where liability was contested or in matters which raised significant or complex legal or factual issues, such as assessment of long term care and other compensation for those catastrophically injured. The main saving in legal costs is to come from a substantially reduced role for lawyers in smaller matters. The starting point for the MAA when entering discussions with the legal profession will be to look at an event based ad valorem scale for matters involving assessment of compensation only, and no scale fees for other matters.

Our workaholic Executive Director and I wore a path to Parliament House before and during debate, without much success. He spent many long hours listening to an uninspiring debate. On 6 July we attended a day long conference convened by the Australian Insurance Law Association about the Bill. It was largely a propaganda exercise, but there were some useful papers presented. (Copies are available to

members from the Bar Association Reception.)

We were all urged to be of good cheer and accept the cultural change to be wrought by an enlightened experiment in social engineering. Not much was said about the loss of rights to accident victims.

Not for the first time, I heard the veiled threat that if the new scheme does not work, something more awful will replace it, like the Victorian scheme, so the legal profession had better fall into line. No matter how the Government dresses it up, the scheme is clearly designed to favour insurance companies, who are the winners. Our community will pay a very high price for the almost illusory promise of \$100 reduction for some vehicle owners for one year.

I am grateful for the considerable assistance provided by members of the Bar Association, in particular McCarthy QC, Morrison S.C., Ross Letherbarrow and Andrew Stone, also Burbidge QC, Murray QC and Katzmann S.C. It will be important for the Bar Association to maintain an anecdotal record relating to claims under the new regime, which will commence on 5 October. The Association will depend upon members for information.

* Members can peruse a copy of the Bill in the Bar Library or obtain a copy by visiting the NSW Parliamentary web site at: www.parliament.nsw.gov.au/

In this issue . . .

| | |
|---|----|
| Supreme Court changes | 3 |
| The Rule of Law | 4 |
| Papers to Note | 6 |
| Getting to know...The Finance Department | 7 |
| A win for the rule of law in Cambodia | 8 |
| Bar Briefs | 9 |
| Improving the Listing Process in the NSW District Criminal Court | 11 |
| Appointments | 11 |
| Media Briefing | 12 |
| Walkabout | 13 |
| Obligation to disclose fees under Part 11 of the <i>Legal Profession Act 1987</i> | 14 |
| The NSW Bar Association Sections | 15 |

Bar Council Business for May

New Business

Court services during the Olympic Games: - The President to write to the Chief Justice of NSW and the Chief Judge of the District Court to ascertain planning arrangements for the vacation period during the Olympic Games.

Tonga twinning proposal: Bar Council to offer a 'twinning' relationship to the Tongan Law Society. The Bar Association will offer printing and administrative assistance to the program through the Bar Association office rather than financial assistance. Members to be asked to volunteer their assistance in providing training courses in Tonga.

President's Report

Motor accidents legislation: The President and the Executive Director met with The Hon. John Della Bosca MLC, Special Minister of State, on 22 April to discuss a proposed new scheme for compensation of motor accident victims. On 5 May the President, Senior Vice President, the Executive Director and members of the Common Law Committee met with Mr David Bowen, General Manager of the Motor Accident Authority, to discuss proposed changes to the present scheme. The Common Law Committee has prepared a draft response to the discussion paper provided by Mr Bowen subsequent to that meeting.

Executive Director's Report

Law Society of NSW - appointment of 'Senior Attorneys': The Executive Director advised that the Law Society was intending to appoint 'Senior Attorneys' similar to the appointment of Senior Counsel by the Bar Association. Officers of the Society have consulted the Executive Director about the preparation of a protocol for these appointments.

DDP v Campillo: The Executive Director advised that further problems had arisen in this matter concerning the payment of fees for counsel listening to tapes and for visiting clients. The Commonwealth DPP would not agree to pay for visits to confer with witnesses unless counsel first advised the DPP who those witnesses were. The President asked that the Bar Association again intervene; Porter QC has agreed to appear for the Association.

Note: Further consent orders were made the day after the Bar Council meeting on

21 May 1999, in the following terms:

The Defendant's solicitors to engage the services of a Spanish interpreter to have interpreted audio tape material served which is spoken in Spanish.

The Defendant's senior and junior counsel to listen to all audio tape evidence (that is in English) sought to be relied upon by the Prosecution at the committal proceedings, prior to the committal proceedings.

The Defendant's solicitor and junior counsel to interview and societies to have conferences with those lay witnesses prior to the committal proceedings, as senior counsel for the Defendant considers necessary.

The Defendant's solicitor, junior and senior counsel to have a view of those places considered necessary to view by senior counsel for the Defendant.

Legal Aid: Following the departure of the Managing Director of the Legal Aid Commission, Mr Mike Cramsey, the Executive Director met with NSW Attorney General's Department Director General, Laurie Glanfield; Law Society Chief Executive Officer Mark Richardson and Acting Legal Aid Commission Managing Director Bill Grant. Mr Glanfield and Mr Grant advised that proposed changes to the Commission's management and administrative structure and its method of handling applications were under consideration. Mr Glanfield stated that the Bar Association would be formally consulted on proposals for change.

Items for consideration

Legal Profession Amendment (Cost Assessment) Regulation 1999: Harrison S.C. to settle a 'reminder notice' to members for regular publication in *Stop Press* regarding their duty to make disclosure as to costs. The Costs Assessors' Rules Committee chair Mr G. Buckworth had raised concerns about the non-compliance of barristers with the provisions of Part 11 of the *Legal Profession Act, 1987* regarding cost disclosure.

Proposed change to cost assessment scheme: The Bar Association to oppose a recommendation by the Workers' Compensation Advisory Council that the present costs assessment scheme be replaced in favor of taxation by Compensation Court officers.

Sponsorship request: Bar Council did not support sponsorship requests from the law student societies of the University of Newcastle and UWS Macarthur. Bar Council resolved that in future NSW university law societies be invited to make sponsorship applications at the beginning of each year to be considered in April. A specific budget for sponsorships would be included in future Bar Association annual budgets.

EEO Committee: Bar Council approved a policy statement on the use of non-discriminatory language by members subject to some minor amendments.

[A copy of the policy is available from Reception and from the Bar Library]

Professional Indemnity Insurance: Bar Council approved a proposal by McColl S.C. that the Executive Director have the wording of the professional indemnity insurance policies reviewed each year by a firm of solicitors well before the Attorney General's annual approval needs to be sought to the various policies.

Supreme Court Rules Committee: Bar Councillors to forward to McColl S.C., as the Bar Association's representative on the Supreme Court Rules Review Committee, their views on areas where the Supreme Court rules lead to the greatest incursion of costs for litigants in areas where improvements are feasible; and where there may be problems with standardising the rules as between the Federal and Supreme Courts

New Members

David Aquilina, Sir Owen Dixon
Terence Bates, Church Street Chambers, Newcastle
Mark Cleary, Jack Shand
Ian Duncan, Windeyer
Leslie Kelety, 9/Selborne
Paresh Khandhar, Frederick Jordan
Ian McCluskey, Blackstone
Christopher Millard, Lachlan Macquarie
Peter Robinson, Garfield Barwick
Margaret Sneddon, Jack Shand
William Walsh, William Owen, Orange
Helen Wilson, Crown Prosecutors, Campbelltown.

Associate Members

Paul Urquhart J, Police Integrity Commission.

Supreme Court changes to administrative arrangements

The following is taken from a letter dated 30 June 1999 from by The Hon. J.J. Spigelman, Chief Justice of New South Wales, to the President:

“On 1 July 1999 all Divisions of the Supreme Court, except for the Common Law Division and the Equity Division, will be abolished by the *Courts Legislation Further Amendment Act 1998*.

As a result, proceedings presently assigned to the Administrative Law Division or to the Criminal Division will be handled within the Common Law Division. Proceedings assigned to any other abolished Division will, from that date, be assigned to the Equity Division.

Rule amendments, commencing on 1 July, make provision for form headings in proceedings presently assigned to the Probate Division, the Protective Division or the Administrative Law Division. The Construction List will be transferred to the Equity Division in the near future.

The legislative changes reflect administrative arrangements within the Court which will facilitate the more effective handling of the Court's caseload.

Specialist areas of the Court's work will be the responsibility of designated Judges, who will supervise the following lists.

| | |
|------------------------------|-----------|
| Probate List | Young J |
| Protective List | Young J |
| Adoptions List | Bryson J |
| Professional Negligence List | Abadee J |
| Constructions List | Rolfe J |
| Commercial List | Rolfe J |
| Admiralty List | Rolfe J |
| Defamation List | Levine J |
| Administrative Law List | Dunford J |
| Corporations List | Santow J |

On 1 July 1999, rule amendments making provision for entry in, and removal from the Administrative List, will also commence. Ex parte or urgent applications in proceedings in the Administrative Law List, or in proceedings which on commencement would be appropriate for that list, should be made in the first instance to the Judge administering that list.

Some minor modifications to the arrangement of the law lists have been made to reflect the Court's new Divisional Structure. Details of those changes to operate from 1 July are set out below:

Law List of Court of Appeal, Court of Criminal Appeal and NSW Supreme Court

INITIAL CHANGES

From 1 July 1999 the current form of the law list will change to reflect the new divisional structure of the Supreme Court. The effect will be to rank matters within the list according to the following order:

Divisional/List headings:

- Court of Appeal
- Court of Criminal Appeal
- Common Law Division
- Bails/Criminal
- Administrative Law List
- Equity Division
- Commercial List
- Construction List
- Admiralty List
- Adoptions List
- Probate List
- Protective List

Under each Divisional/List heading matters will be ranked in the order of:

- Judicial officer in seniority order
- type of listing
- time of day (but where a conflict arises between type of listing and time of day, time of day prevails).

***What's a loan without the
Features and Benefits
you need?***

THE MONEY TREE LOAN CENTRE

Tailoring loans to meet your needs

Warwick Plumsted

Phone **02 9635 5929**

Mobile **0416 10 32 34**

Email warwickp@pip.com.au

W.A.P. Enterprises Pty Ltd

ACN 082 878 519

Trading as: The Money Tree Loan Centre

The Rule of Law

In his June President's Column, Barker QC has written of the rule of law, particularly in the context of events in Malaysia. The just rule of law is misunderstood by many people, especially by those who support the inappropriate exercise of power by public officials. Reprinted below is an article on the subject by Cowdery QC, which first appeared in the May issue of *HRI News*, the newsletter of the Human Rights Institute of the International Bar Association. Cowdery QC is co-chairman of the Institute.

The Preamble to the Universal Declaration of Human Rights (1948) states that 'it is essential, if man is not compelled to have recourse, as a last resort, to rebellion against tyranny and oppression, that human rights should be protected by the rule of law'.

What is the 'rule of law' and how does it operate? And how may it protect human rights?

It does not mean rule by law; that is, so long as there is a law on the subject, the rule is operating. Nor does it mean the law of the ruler. It is not 'law and order'. A clue would be given by the addition of one word to the phrase: the just rule of law. Justice requires the importation of principles that arise under other headings, such as peace, freedom, democracy and fairness. Those principles are echoed in the rule of law.

The rule of law is a difficult notion to define comprehensively. It is both normative and descriptive. It is a universal ideal. It is a restraint on arbitrary power. The International Commission of Jurists (ICJ) in 1959 described two ideals underlying the concept of the Rule of Law:

- all power in the State should be derived from and exercised in accordance with the law; and
- the law itself must be based upon the respect for the supreme value of human personality.

Human personality carries with it human rights - and so the circle is drawn. [In what follows, acknowledgement is made of the comprehensive treatment of the subject in *The Rule of Law*, by Geoffrey

de Q Walker, Melbourne University Press, 1988].

There are said to be two principal features of the rule of law which are allied with the ideals described by the ICJ:

1. the people, including the government, should be ruled by the law and obey it; and
2. the law should be such that the people will be able and willing to be ruled (or guided) by it.

From those features scholars have deduced 12 more particular requirements to be met before it can be said that the rule of law is truly in operation.

- (i) There must be laws prohibiting and protecting against private violence and coercion, general lawlessness and anarchy.
- (ii) The government must be bound (as far as possible) by the same laws that bind the individual
- (iii) The law must possess characteristics of certainty, generality and equality. Certainty requires that the law be prospective, open, clear and relatively stable. Laws must be of general application to all subjects and apply equally to all.
- (iv) The law must be and remain reasonably in accordance with informed public opinion and general social values and there must be some mechanism (formal or informal) for ensuring that.
- (v) There must institutions and procedures that are capable of speedily enforcing the law.
- (vi) There must be effective procedures and institutions to ensure government action is also in accordance with the law.
- (vii) There must be an independent judiciary, so that it may be relied upon to apply the law.
- (viii) A system of legal representation is required, preferably by an organised and independent legal profession
- (ix) The principles of 'natural justice'

(or procedural fairness) must be observed in all hearings.

- (x) The courts must be accessible (without long delays and high costs).
- (xi) Enforcement of the law must be impartial and honest.
- (xii) There must be an enlighten public opinion - a public spirit or attitude favouring the application of the foregoing propositions.

The protection and enforcement of human rights depend upon the existence in large part of all these features. They provide, in the first place, an environment for the acceptance, observance and incorporation into domestic law of the general standards prescribed by the international Declarations and Covenants. Secondly, they are the basis for internal mechanisms for the effective enforcement of those standards.

As Professor Walker has written, this definition of the rule of law demonstrates that "it is plainly the essential prerequisite of our whole legal, constitutional and perhaps social order ... The rule of law is not a complete formula for the good society, but there can be no good society without it".

Nicolas R Cowdery QC,
Co-Chairman,

Human Rights Institute
International Bar Association,
May 1999.

New Staff Appointment

The NSW Bar Association has appointed Liz Maconachie as Deputy Professional Affairs Director effective 4 August 1999.

Liz was admitted as a legal practitioner in December 1994 and has practiced principally as a litigation solicitor since then. For the past 9 months she has worked as a solicitor with the Professional Standards Department of the Law Society of NSW.

Liz replaces Michelle Goodman, who has rejoined the Legal Aid Commission to take up a senior position in the Indictment Section.

Coming Up

Family Court of Australia

The Hon. Alastair Nicholson AO RFD, Chief Justice of the Family Court of Australia, will preside over a sitting of the Full Court on 29 July 1999 to mark the retirement of The Hon. Justice Gee. The ceremonial sitting will take place at 4.30pm in Courtroom 9, Level 3 of the Parramatta Registry.

Trial of King Charles I

The Anglo-Australasian Lawyers Society and the Australia-Britain Society (NSW) jointly present *The Trial and Execution of King Charles I* by The Hon. Justice Michael Kirby AC CMG with commentary provided by Geoffrey Robertson QC. The event will be held on Thursday, 29 July 1999 in the Strangers' Dining Room, Parliament House.

For further details see the brochure at Reception or contact M Young on ph: 9235 1019.

Corporate Law Conference

The conference will be held in the Sheraton Towers in Melbourne on 27 August 1999. Organised by the Leo Cussen Institute, the conference features four sessions: *CLERP Update; Information Technology - Good Samaritans or Spin Doctors?; GST - the Reality* and *Crisis Management*.

For more information contact program coordinator Di Rooney on ph: (03) 9602 3111; fax: (03) 9670 3242; email: lpd@leocussen.vic.edu.au or visit the Institute's web site at: www.leocussen.vic.edu.au

Union Internationale congress

The Union Internationale Des Avocats will hold its 43rd Congress between 3-7 November 1999 in New Delhi. The conference program features 40 subject areas plus a special session on *Multidisciplinary Practices (MDPs) and corruption*. A copy of the Congress program is available for perusal at Reception. For more information about the program or travel discounts contact the Director of Congresses, Mrs Marie-Pierre Richard on ph: 0011 33 1 45 08 82 34; fax: 0011 33 1 45 08 82 31 and email uniacentre@wanadoo.fr. or visit the Union web site at: www.uianet.org

Motor Accidents seminar

The Australian Plaintiff Lawyers Association – new motor accidents legislation

The Australian Plaintiff Lawyers Association (APLA) is hosting a seminar on the *Motor Accidents Compensation Act 1999*, 21 July 1999, 5.30pm on Level 1 of the Masonic Centre, 279 Castlereagh Street, Sydney. Speakers include senior solicitors specialising in motor accident cases, an actuarial consultant and a forensic psychiatrist. Cost: \$60 APLA members; \$75 non-members.

For more information contact APLA (NSW) Branch Co-ordinator Kathy Thompson on ph: 9261 4755 or fax: 9261 5859.

www.nswbar.asn.au

CHIEF JUSTICE – HIGH COURT OF KIRIBATI

Does life in a secluded tropical island in a judicial role commanding responsibility, challenge and diversity appeal? The role of Chief Justice of the High Court of this former British Colony north of Fiji has now become available.

The role involves heading the High Court, which has unlimited jurisdiction and hears appeals from Magistrates' Courts, serious criminal matters and the full range of civil matters. As a former Colony, the legal system is inherited from Great Britain. The Chief Justice also has constitutional functions and is President of the Court of Appeal.

The successful candidate will have an extensive background in litigation, including criminal and civil cases, either as a Barrister or Solicitor, or within the judiciary. Experience in a broad range of matters is preferred, as is prior judicial experience. Some criminal law experience is essential. The age contemplated for the role is completely open, and an accommodating perspective and high degree of self-reliance is a definite advantage.

The benefits include a tax-effective package, reflecting the seniority of this role, with first class travel and accommodation, a car and driver, air-conditioned chambers and courtroom, supported by a substantial library and Chief Registrar.

This recruitment is being handled exclusively by Warnecke Consulting. To discuss this rare opportunity, please contact Andrea Warnecke, B.A., LL. B. or Lynda Clark on (02) 9251 9260.



Ph: (61-2) 9251 9260

Level 9 139 Macquarie Street Sydney NSW 2000
warnecke@ozemail.com.au

Ph: 02 9251 9260 Fax: 02 9251 9266

Papers to Note

High Court Practice Direction re the use of initials or pseudonyms

This practice direction relates to the use of initials or pseudonyms in applications for Leave or Special Leave to Appeal and Applications for Removal Pursuant to s 40 of the *Judiciary Act 1903* (Cth) (Practice Direction No 1 of 1999). It replaces Practice Direction No 5 of 1996 and applies to applications made after 15 June 1999.

Federal Court Practice Direction – the 'usual undertaking as to damages'

Practice Note No.3 issued on 8 April 1994 has been revoked and replaced with the following:

The 'usual undertaking as to damages' if given to the Court in relation to any interlocutory order made by it or any interlocutory undertaking given to it, is an undertaking:

- (a) to submit to such order (if any) as the Court may consider to be just for the payment of compensation, to be assessed by the Court or as it may direct, to any person, whether or not a party, adversely affected by the operation of the interlocutory order or undertaking or any continuation (with or without variation) thereof; and
- (b) to pay the compensation referred to in (a) to the person there referred to.

District Court Rules amendments

The following amendments have been made under the *District Court Rules Act 1973*:

District Court Rule (Professional Negligence Claims) 1999; District Court Rule (Expert Witnesses) 1999 and District Court Rule (Appeals Amendment) 1999. A copy of the amendments, published in the *NSW Government Gazette* on 11 June 1999, is available from the Bar Library.

JCA responds to Victorian Attorney-General

On 30 April 1999 the Victorian Attorney-General, The Hon. Jan Wade MLA, wrote

to the Judicial Conference of Australia (JCA) regarding proposals for future judicial appointments and education programs for judges. In a five-page letter dated 31 May 1999, JCA chairman, The Hon. Mr Justice B. H. McPherson CBE, responded to the Attorney-General's proposals and offered to work with her to achieve reform that would maintain the high standards of the bench and protect it from political pressure. A copy of this letter is available from Reception.

Proposals to change the legal profession in Queensland

The Legal Profession Reform Green Paper has been released by the Queensland Government. The paper lists a number of proposals for change, including Queensland taking part in a national practising certificate scheme and for practising certificates to be issued by a new statutory body, the Legal Profession Authority. A copy of the Green Paper can be obtained from the Bar Library or by visiting the Department of Justice and Attorney General web site at: www.justice.qld.gov.au. Written submissions in response to the Green Paper are invited up until 9 August 1999 and should be sent to the Legal Profession Reform Project, the Department of Justice and Attorney General, GPO Box 149 Brisbane, 4001. For more information phone: 07 3239 6360 or fax: 07 3239 3046.

Speeches

Legal institutions in transition, modes of appointment and training of judges - a common law perspective, an address by The Hon. Justice Michael Kirby AC CMG, 8 June 1999 at the ICJ, CIJL and CAJ seminar in Belfast, Northern Ireland. Justice Kirby also delivered *Global Moves of Legal Protection of Human Rights* at the same conference. For a full list of speeches made by members of the High Court visit its web site at: www.highcourt.gov.au

Sentencing Guideline Judgments, an address by The Hon. J.J. Spigelman, Chief Justice of NSW, 24 June at the National Conference of District and County Court Judges. Copy available from the Bar Library or by visiting the Supreme Court web site at www.agd.nsw.gov.au/sc/sc.nsf/pages/index.

TimeBase™

TimeBase Federal Cases

\$890 provides ten CD updates to TimeBase Federal Court and High Court Cases. They contain CLR, FCR and ALR citations and page references as well as the official High Court citations and paragraph numbers.

TimeBase Legislation

SIX full jurisdictions with Case Link all on one CD (NSW, FED, VIC, QLD, SA and WA)

DAILY Internet Updates to Commonwealth Legislation

Weekly Internet Updates to other jurisdictions

FREE Legislation List Services at www.timebase.com.au

TimeBase (previously trading as Aunty Abha's) is now the leading Australian publisher of value added electronic legislation. Our products are used by hundreds of barristers, nine out of the top ten law firms, major government departments and all others that need accurate and very up to date products.

Please visit our web site where you will find a lot of useful information (including pricing) and free services.

As always, if you contact us, we will immediately send you a full information pack and a **free evaluation CD of either or both products.**

TEL: (02) 9261 4288

(8:30am to 8:30pm EST)

e-mail: service@timebase.com.au

www.timebase.com.au

Getting to know . . . The Finance Department



Basil Catsaros (Manager) (top left) and Tess Santos (top centre) handle general accounts within the department, while Stacey Hatch (top right) administers the Sickness & Accident Fund, maintains the membership database and processes practising certificates for Members. Accounting enquiries should be directed to Basil on ph: 9229 1716 or email: bcatsaros@nswbar.asn.au or Tess on ph: 9229 1734. Membership, Sickness & Accident and practising certificate enquiries should be directed to Stacey on ph: 9229 1740 or email: shatch@nswbar.asn.au.

Survey Series

In a continuing series, the various departments of the Bar Association respond to the issues raised by members in the membership survey. The Public Affairs Department responded in the April issue of *Stop Press* and the Education Department in the May issue. Here the Finance Department responds.

Members rated the administration of the Sickness & Accident Fund favourably at a 3.7 and 3.8 out of a possible 5.

Finance Department staff assist the directors of the Fund (all practising barristers) with the administration of the Fund. The Barristers' Sickness and Accident Fund offers disability insurance to barristers at very competitive rates. In addition, the terms of the Fund's policy relating to the period of disability that entitles the insured to claim are most favourable.

Some feedback was expected on debtors, but none was forthcoming. The Bar Association's credit terms for alcohol and library debtors are 30 days. Bar Council has resolved that where these terms are exceeded, no further credit will be extended and interest will be charged on the overdue balances. It is pleasing to note that the majority of members are aware of these terms and adhere to them. These terms have been restated for the benefit of those members who may have overlooked them.

ADVERTISEMENT

Republic or No Republic?

In the interest of an INFORMED vote at the November 1999 referendum, those who are entitled to vote are encouraged:

1. To obtain a (free) copy of the republican model (the Communiqué) we must vote on, go to www.dpnc.gov.au/convention or call (02) 6271 5534, or fax (02) 6272 5776.
2. To obtain a copy of the ONLY two competent commentaries on that model, one of Australia's Top Constitutional lawyers from BOTH SIDES of the delegate eg. Prof. G. Winterton, Prof. C. Saunders, Sir Harry Gibbs and others – a BIPARTISAN set of papers. Its patrons are six of Australia's leading law firms and the Law Society of NSW go to <http://www.law.unsw.edu.au/unsmfj/thematic/index.html>

Or to order it: The UNSWM Law Journal Forum, call 9385 2237 or Fax 9385 1175, and it will be sent with an invoice for \$10.00. It was launched by His Excellency the Governor of NSW on 23 June 1998.

For an abbreviated summary Email aiv@cyberone.com.au or Fax (02) 9232 4166 requested it (can be sent by email only).

3. The other, a 17 point commentary by the Clerk of the Senate. Fax (02) 6277 3199 or email clerk.sen@aph.gov.au for a free copy.

APPELLATE PRACTICE SEMINAR

Thursday, 29 July.

5.30 pm to 7.00 pm

at Bar Association Dining Room

Cost: \$15

Convenor: Barry QC.

Speakers: The Hon Justice
W.M.C. Gummow

The Hon Justice
K. Mason

The Hon Justice
M. Wilcox

Jackson QC

Papers will not be available for this seminar. Advertising flier with registration slip will be sent separately to all members by DX or post.

DPP to offer more briefs to the private bar

The Director of Public Prosecutions expects to brief the private Bar more extensively in the near future. Members who are interested in being briefed for the Crown in right of the State, usually in District Court trials - and usually in Sydney - (but occasionally in committal proceedings and less often in appeals), should write with a brief CV to:

N R Cowdery QC
Director of Public Prosecutions
DX 11525 Sydney Downtown

Or

Locked Bag A8
Sydney South NSW 1232

Barristers whose expressions of interest have already been acknowledged need not write again. Anyone wishing to be taken off the list should so advise. The fee presently payable to private counsel briefed in the District Court is \$600 per day all inclusive, plus any travelling expenses at the same level as those paid to Crown Prosecutors. Some preparation fees may be payable in some cases, but only by prior agreement.

A win for the rule of law in Cambodia

Bar Association member Bill Wodrow, of Henry Parkes Chambers in Canberra, flew to Phnom Penh last month to represent the family of a murdered Australian backpacker. Like most others involved in the case, he expected a "show trial". Here he tells Stop Press just how quickly things can happen in a Cambodian courtroom.

When word circulated that Bill Wodrow was headed for Phnom Penh his friends at the Bar called his chambers and advised him not to go. When they failed to convince Wodrow that he risked death in his quest for justice on behalf of the family of a murdered Australian tourist, they appealed to his wife, Areti.

"My wife is a very compassionate woman. She said: 'we have five sons, what if it had been one of our boys and no-one wanted to help us?'" Wodrow recalls.

On 26 July 1994, Australian backpacker David Wilson, Frenchman Jean-Michel Braquet and Briton Mark Slater were on a train attacked by Khmer Rouge guerillas. The trio were forced off the train, held captive for three months and then executed when negotiations for their release failed. The Wilson family engaged Wodrow to appear for them in the Phnom Penh Municipal Court at the trial of Khmer Rouge Commander Nuon Paet for abduction and murder. The Wilson family regarded Paet as a scapegoat and had continued to press for further indictments after his arrest. The only funds available for the case came from the Wilson family to cover Wodrow's airfare and accommodation.

Wodrow arrived in Phnom Penh on Saturday, 5 June 1999 and spent two days "on the ground" preparing.

"The Cambodian court system is a hybrid - it is an inquisitorial system but you are allowed to cross examine witnesses," explains Wodrow. He wanted to cross-examine at least four witnesses in addition to Paet, including

two of his superior officers - General Sam Bith and Colonel Chhouk Rin. His initial request was denied.

Sunday, 6 June was spent planning court strategy with counsel representing the French victim and the Braquet family. It was decided that a list of questions designed to uncover crucial evidence should be compiled in Khmer, English and French and then submitted to the Court. "It was essential the questions were written in Khmer to comply with rules of admissibility. The question was how would we achieve this immense task when the trial was starting early the next day?" Wodrow said. "I have been told such a task would usually take an Embassy four weeks."

"We got it done in eight hours by way of what I might call divine intervention in the form of Opposition Leader Mr Sam Rainsy and his wife, Ms Tioulong Samura, a Member of the Cambodian Parliament."

"At very short notice they both volunteered to provide, at no cost, a team of people who could interpret and type copies of some 88 questions in Khmer and French," he said. Wodrow completed the English version.

About an hour before proceedings got underway on Monday, 7 June before Her Honour Judge Buninh Bunnary, the Cambodian lawyer representing the Wilson family met with the Judge in Chambers. There, unknown to the rest of the legal team, he provided the Judge with a copy of the 88 questions.

As a result, the Judge started proceedings with the shock

announcement that both Bith and Rin would appear as witnesses without the protection of immunity.

The trial started at 8am. Wodrow began by tabling the list of questions. To protect the Cambodian lawyer, he publicly claimed responsibility for penning the questions and passed copies of the list to the media present.

"I have no doubt that the impact of the questions, together with having the wife of the Opposition Leader introduce me to the Court in the Khmer language, greatly influenced the conduct and outcome of the trial," said Wodrow.

"Charges, including abduction and murder, were laid against Bith and Rin as well as eight other members of the former Khmer Rouge," he said.

"If anything, the outcome of the trial has been a victory for justice and for the future of the Cambodian people who are anxiously striving to convince the international community that at last they are prepared to accept the rule of law."

"The trial of all ten will be held in the next three to four months and I am hoping to be there to represent the Wilson family and bring this matter to a conclusion," he said.

"The Australian Government, at very senior levels, have expressed their satisfaction at the outcome of the June trial."

Notices of Motion

The Hon. Justice R O Blanch, Chief Judge of the District Court of NSW, has advised that effective 23 July 1999 all Notices of Motion returnable on Fridays will be listed at 9.30am. Practitioners are required to attend at 9.30am or the Notice of Motion may be struck out or dismissed. Two judges will be available to deal with the Notices of Motion. Members who need to review Practice Note No.49, Long Motions Procedure, can contact Reception for a copy.

Moser legal support

"Specialist Service for Specialists"

Over 20 years of experience working for Barristers

We understand that you cannot afford to make hiring mistakes which waste your time and affect your ability to deliver a highly professional service.

Let us work with you to find premium secretaries and support staff, both permanent and temporary.

Call Jackie Moser anytime on 9299 6727

Visit our Web Site: <http://www.moser.com.au> • Email: jackie@moser.com.au

Member of the RCSA

Bar Briefs

- Stephen Odgers has been appointed to represent the Bar Association on a committee established by the NSW Attorney General to review the laws covering pre-trial defence disclosure.
- R. Letherbarrow will replace T. Morahan as the Bar Association's representative on the NSW District Court's Rules Committee. H. Marshall will represent the Association in Letherbarrow's absence.
- The Bar Association wishes to thank Robertson S.C. and Kate Eastman for drafting a submission to the Department of Fair Trading regarding the Fair Trading Tribunal Regulation 1999 Regulatory Impact Statement.
- The NSW Legislative Council Standing Committee on Law & Justice is calling for submissions to its continuing inquiry into the relationship between crime and the types and levels of social support available to families and other members of the community. To receive a submission pack contact:
The Secretariat
ph: 9230 3311;
fax: 9230 3371;
email: lawandjustice@parliament.nsw.gov.au
or visit the Committee's web site at:
www.parliament.nsw.gov.au/lc/committs/lawjust.html. Members who have already made submissions are welcome to provide further material in the form of a supplementary submission.
- The Hon. J.J. Spigelman, Chief Justice of NSW, re-appointed McColl S.C. and J. Gormly to the Supreme Court Rule Committee effective 1 July 1999 until 30 June 2000.
- The Bar Association would like to thank to Jeff Kildea (5/Wentworth) for preparing a submission to the Land & Environment Court of NSW on two proposed practice directions.
- Walker S.C. and J. Gleeson will represent the Bar Association on a committee established by the Supreme Court concerning professional rules of conduct, in particular the duty of the Court to conduct cases with efficiency and expedition.
- The following members will represent the Bar Association on a committee established by the Chief Judge of the District Court to consider matters concerning circuit work: Murray QC, Wheelahan QC, C. Hickey, R Letherbarrow and P. Maiden.
- A copy of the Bar Association's submission in response to the Commonwealth Attorney-General's Department discussion paper, *Federal Property & Family Law - Options for Change* is now available from Reception.
- J. Gleeson has been appointed the Bar Association's liaison representative for this year's Bar charity, the Motor Neurone Disease Association of NSW.

Law Foundation
OF NEW SOUTH WALES
Independence and Innovation

The Law Foundation of New South Wales announces the

Inaugural Justice Awards

For more than 30 years the Law Foundation of New South Wales has promoted the community's access to justice through research, plain language information and grants.

To recognise the contributions individuals have made to promoting access to justice in NSW, the Governors of the Law Foundation have inaugurated the **Justice Awards**.

The **Justice Medal** will be presented to an individual whose commitment to promoting access to justice in NSW has been demonstrated in a range of activities over an extended period, or in a single activity of significance.

The **Justice Fellowship** will be awarded to a person whose position enables them to make a significant contribution to developing justice policy in NSW. The Fellowship will enable the winner to undertake a short overseas placement.

The **Justice Essay Prize** is open to tertiary students in NSW. The winner will receive \$500 and the opportunity to publish their essay in the *Alternative Law Journal*. Entries close on 16 August, 1999.

The Law Foundation is now calling for nominations for both the **Justice Medal** and the **Justice Fellow**.

Nominations close on 16 August, 1999

The **Justice Awards** will be presented at the Justice Awards luncheon in Strangers' Dining Room, Parliament House on Monday 27 September 1999.

For full details of how to nominate a person, how to enter the Essay prize, or to book for the lunch, visit
<http://www.lawfoundation.net.au/awards.html>
or call 02 9299 5621



Justice Awards

Letters

Extract from a letter to the President,

This letter is written primarily because I am a proud (overseas) member of the NSW Bar. I hold the position of Senior Crown Counsel, on contract, and supervise the work of some nine lawyers in the Crown Law Department of Tonga. A form of staffing assistance provided by the Australian Government.

Over the past two weeks we have been privileged to have with us in Tonga a team from the NSW Bar conducting an excellent course.

Steve Walmsley S.C., Phil Greenwood S.C., Leonie Flannery and Wendy Greenwood all made an excellent contribution to the Law Society here. The program was well planned and inventive.

The factor though which was determinative of the course's success was the personable approaches taken by the team. The team are a group of gifted presenters and hence my pride at being a member of the same Bar.

Thanks to (Bar) Council for the support you have given to the extension of the NSW Bar into the Pacific.

John Cauchi,
(*ex Trust Chambers*),
30 June 1999.

Ceremonial sitting to mark the 175th anniversary of the Supreme Court of NSW

In response to requests from members, below is an edited extract of the welcome address made by Aunty Ali Golding at the 175th Anniversary ceremonial sitting of the Supreme Court on 17 May 1999 on behalf of the Aboriginal people of Sydney.

In an email to the Executive Director one member described the address as a “symbol of reconciliation . . . hard to equal . . . The court was completely hushed as she delivered her words of welcome. [The address] transformed what might otherwise have been seen as a fairly traditional celebration of our traditional British legal heritage and the dominant culture into a significant

historic event.”

To read Aunty Ali Golding’s address in full or to view the other speeches made at the ceremonial sitting visit the Supreme Court web site at: www.lawlink.nsw.gov.au/sc/sc.nsf/pages/index.

Aunty Ali Golding’s welcome:

Thank you Your Honour. . . Justice Spigelman announced me as Aunty Ali Golding, I am from the north coast, Taree. When I came to Sydney and lived in the Aboriginal community they adopted me, took me under their wing. . . Just standing here thinking, 175 years, and what the day represents. . . before 175 years ago, before that time,

there was a great, strict discipline, law and order in practice then with our Aboriginal people . . . I grew up also in my time in a great discipline of law and order. . . wherever I do a welcome, it doesn’t matter how many . . . are in this room today, there are many more . . . which I call the unseen guests, . . . my ancestors. They are here today too. This is not new to them because, as I said, they practised law and order too.

. . . thank you for the invitation once again, and distinguished guests and the judges of the Supreme Court and ladies and gentlemen, I take this wonderful pleasure and wonderful time to welcome each and every one of you to the Eora homeland.’

Barrister briefed where earlier barrister remains unpaid

The Bar Council has received numerous enquiries as to the position of a barrister in respect of whom fees remain outstanding, when another barrister is later briefed in the same matter.

Rule 64 used to provide as follows:

Where a barrister is asked to accept a brief, or has accepted a brief and it appears likely that some other barrister has been briefed or he discovers that some other barrister has in fact been briefed in any capacity whatsoever in connection with the same matter or substantially the same matter, whether an appeal or in other proceedings, and whether briefed by the same solicitor or not on behalf of the same client, or one of more of the same clients, he shall not accept or continue to retain the brief until he is satisfied that the fees of that other barrister have been paid or that the other barrister is satisfied that any arrangements made with regard to his fees, or consents to his accepting or continuing to retain the brief.

The effect of that Rule was to preclude, at the behest of the unpaid barrister, the

acceptance of instructions by another barrister in the absence of the payment of the outstanding fees or appropriate arrangements for the payment of fees having been made.

No similar rule is to be found in the current Rules.

The New South Wales Barristers’ Rules made under Section 57A of the *Legal Profession Act 1987* by the New South Wales Bar Council are not permissive of either the counsel previously briefed or their instructing solicitor insisting on payment of outstanding fees prior to the new counsel briefed in the matter appearing.

The new counsel briefed may refuse the brief if the barrister has reasonable grounds to doubt that the fee will be paid reasonably promptly or in accordance with the costs agreement (Rule 91c). However, that doubt is directly referable to payment of their own fees. The fact that the client has failed to pay his or her former legal advisers may be a consideration in forming a belief as to whether the new counsel will be paid

reasonably promptly or in accordance with the costs agreement.

Wheelaham QC,
Jack Shand Chambers,
25 June 1999.

The Goods and Services Tax

The NSW Bar Association’s GST Working Party will examine the GST legislation and its implications for the Bar. The presentation will be supported by an accountant with expertise in this area.

Date: Monday, 16 August 1999.

Speaker: Gzell QC, Chair of the GST Working Party

Venue: NSW Bar Association, 174 Phillip Street, Sydney (Basement Level)

Time: 5.15 – 6.30 pm

Pre-seminar drinks will be served in the Common Room from 4.45pm.

Registration forms included in the August CLE Brochure.

Improving the Listing Process in the NSW District Criminal Court: We need your help!

A letter from the NSW Bureau of Crime Statistics and Research

Listing uncertainty in the District Criminal Court has been a matter of concern both to court administrators and the legal profession for some time. While some progress has been made in dealing with this problem more needs to be done. In order to help address the problem the Bureau of Crime Statistics and Research is conducting a study into the listing process.

Two State-wide surveys will be carried out in the NSW District Court as part of this study. The first will be completed by the court itself [page 7, June *Stop Press*] and seeks to obtain information on why cases listed for trial do not always proceed. The second seeks information on why many cases fixed for trial end in a change of plea. We seek your cooperation in conducting this second survey.

How can you help?

If you represent the accused in criminal matters, it is likely that you will receive a questionnaire from the court over the period August to September 1999 for any matters in which your client changes their plea. All we ask is that you complete the brief questionnaire and return it to the Bureau. *I emphasise that the survey is completely confidential. The information you supply will not and cannot be used to identify any matters, practitioners or defendants.*

The study has been developed by the Bureau in close consultation with representatives of the Legal Aid Commission, Public Defenders, State and Commonwealth Offices of Public Prosecution, and court administrators within the Attorney General's Department. The questionnaires have

been reviewed by the Chief Judge and the Criminal Listing Review Committee and the study has their full support.

Your cooperation is vital to the success of the study and ultimately will assist both the profession and the courts to improve the listing process. This will benefit not only those who administer the court but also the legal profession which depends heavily on the services of the court.

Further information about the study can be obtained from Ms Joanne Baker at the Bureau of Crime Statistics and Research (Ph: 9231 9190).

Dr Don Weatherburn,
NSW Bureau of Crime Statistics and Research,

23 June 1999.

Appointments

Commonwealth Director of Public Prosecutions

The Tasmanian Director of Public Prosecutions, Mr Damian Bugg QC, has been appointed Commonwealth Director of Public Prosecutions effective 2 August 1999.

Land & Environment Court of NSW

The Hon. Acting Justice Dennis Cowdroy OAM has been appointed to the bench of the Land and Environment Court effective 1 July 1999.

District Court of NSW

Ralph Coolahan and Kevin Coorey have been appointed to the bench of the District Court effective 19 July 1999.

The Governor-in-Council has appointed the following persons to the bench of the District Court as Acting Judges effective 1 July 1999 to 30 June 2000: His Honour Acting Judge H.H. Bell;

The Hon. Acting Judge Cripps QC; The Hon. Acting Judge Fisher AO QC; Acting Judge Ford QC; His Honour Acting Judge McLachlan; The Hon. Acting Judge Nader RFD QC; His Honour Acting Judge Nash; His Honour Acting Judge Sinclair QC; The Hon. Acting Judge Stewart; His Honour Acting Judge Wall QC; Ms Audrey Balla; Mr Ian Bowden; Mr Clifford Boyd-Boland; Professor Leroy Certoma; Professor Michael Chesterman; Mr Alexander Dalglish QC; Mr Leslie Downs QC; Professor Helen Gamble; Mr Alan Hogan; Mr Clement Mitchelmore and Mr Derek Price.

Local Court

Dr Elwyn Elms and Mr Vincent Kearney have been appointed Acting Magistrates and Mining Wardens effective 24 June 1999 to 30 June 2000.

Public Defender

John Nicholson S.C., Deputy Public Defender, has been appointed Senior Public Defender effective 24 June 1999 to 23 June 2006.

Queensland Supreme Court

Robert Douglas RFD QC was appointed to the bench of the Supreme Court of Queensland effective 22 June 1999. Justice Douglas was president of the Queensland Bar Association from 1992 to 1994 and of the Australian Bar Association from 1993 to 1994.

Family Court of Australia

David Collier has been appointed to the bench of the Family Court effective 19 July 1999.

Web Watch

The Commonwealth Law Association has launched its own web site at: www.commonwealthlawyers.com/. The Association welcomes comment from web site visitors. Contact the Association by writing c/- The Law Society, 113 Chancery Lane, London WC2A 1PL, United Kingdom or email cla@lawsociety.org.uk

Media Briefing

Letters to the Editor

Green Slips, the hidden story, published in the *Daily Telegraph* on 19 June 1999.

Press Releases

Green Slips - Injured to pay - Benefits to fall, 16 June 1999.

Motor Accidents Compensation Bill 1999 - response to the Government's amendments, 23 June 1999.

The above press releases were quoted widely in the *Daily Telegraph*; *Sydney Morning Herald*; *The Australian*; and *Sun-Herald*.

Advertisements detailing the reduction in victims' compensation under the *Motor Accidents Compensation Bill 1999* were prepared by the Bar Association and Law Society and published in the *Sydney Morning Herald* and *Daily Telegraph* on 22 June 1999.

Media interviews

The President was interviewed by Alex Mitchell of the *Sun-Herald* about the

Green Slips issue, resulting in a detailed feature on 20 June 1999.

The President gave lengthy interviews to 2UE broadcaster Alan Jones regarding the *Motor Accidents Compensation Bill 1999* on 22 June 1999 and again on 30 June.

Press releases issued by the Law Council of Australia

Law Council to Participate on Attorney's Legal Services Mission to China and Thailand, 2 July 1999.

Amend Tax Act to Allow Tax-Free Structured Compensation Urges Lobby Group, 25 June 1999. This press release was issued by the Structured Settlement Group of which the Law Council is a member.

Cross Vesting Decision: Parliaments Must Act Quickly to Pass Emergency Legislation, 17 June 1999.

Visit the Law Council of Australia web site at www.lawcouncil.asn.au for a full list of its press releases.

Brennan & Powell Pty Ltd

trading as

Barristers' Insurance Services

since 1979

We can arrange the following (Please tick)

Barristers' Sickness & Accident Extension Plan

Barristers' Term Life Insurance & Crisis Plan

Cover for Chambers and Professional Effects

Occupational Legal Liability

Superannuation (DIY)

Name _____

Phone No: _____

For further information, please complete this coupon and fax to (02) 9975 7732

or contact

Craig Brennan or Tony Powell
(02) 9975 7322 – Mobile 0414 246 766

Email: bandp@triode.net.au

DX 9104 Dee Why

Which stockbroker offers a full service without the full price?

At Commonwealth Securities we offer you much more than just stockmarket advice. Our Client Advisory team can provide you with a comprehensive service across a full range of Australian and international investments.

Drawing on our specialist knowledge of the stockmarket, and the extensive research capabilities and financial markets expertise of the Commonwealth Bank, we can provide you with timely and informed recommendations on:

- shares and other listed securities
- options and warrants
- money market investments
- foreign currencies
- fixed interest investments
- new investment opportunities.

What's more our brokerage rates are highly competitive compared with other brokers at just 1% with a minimum of \$100 for trading in shares or warrants. As a special offer to members of the NSW Bar Association we are offering a 25% discount on our regular Client Advisory brokerage rates.

To discuss how Commonwealth Securities can help you with your portfolio and investment needs contact **Warren Andrews** on **02 9312 4143** today.

Commonwealth Securities



Commonwealth Securities Limited ACN 067 254 399 is a wholly owned, but non-guaranteed, subsidiary of the Commonwealth Bank of Australia ACN 123 123 124 and a Member of the Australian Stock Exchange.

Walkabout

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

9 June - The President chaired the CLE Breakfast addressed by Jackson QC who spoke on recent High Court decisions.

10 June - The President met with Special Minister of State, The Hon. John Della Bosca MLC to discuss the motor accidents legislation.

10 June - The President and Senior Vice President attended the Common Law Section meeting regarding the motor accidents legislation.

11 June - The President spoke at the ceremony to welcome Justice Gyles on to the bench of the Federal Court.

15 June - The President met with The Hon. John Hatzistergos MLC to discuss the motor accidents legislation.

16 June - The President met with the President and Chief Executive Officer of the Law Society of NSW regarding the motor accidents legislation.

16 June - The President met with The Hon. Dr Peter Wong and The Hon. Peter Breen MLCs regarding the same issue.

17 June - Meeting with The Hon. Michael Gallagher MLC and Shadow Attorney General Chris Hartcher MP, regarding the same issue.

17 June - The President attended a dinner for the Bar Council hosted by the Law Society of NSW.

18 June - The President and Ms Margaret Hole, President of the Law Society of NSW, met with The Hon. John Della Bosca MLC to discuss the proposed motor accidents legislation.

18 June - The President attended an Australian Bar Association meeting in Melbourne.

21 June - The President met with The Hon. Richard Jones MLC regarding the motor accidents legislation.

22 June - The President met with the Crossbench members of the Legislative Council regarding the motor accidents legislation.

26 June - The President attended a Law Council meeting in Adelaide.

29 June - The President attended NSW Parliament House to hear the *Motor Accidents Compensation Bill 1999* debated.

CLASSIFIEDS

SPECIAL OFFER BAR HISTORY BOOK

JM Bennett (ed.) *A history of the New South Wales Bar*, Sydney, 1969. This book is now out of print. However, a small supply of this very useful text has recently become available to the Bar Association. The limited number of copies can be purchased from Reception for \$25 each (cash, cheque, Visa or MasterCard) on a first in first served basis.

LIBRARY FOR DISPOSAL List of Remaining Reports

- **Authorised Reports**
\$10,000
Rainbow Edition: up to 1999 with indexes including current index
- **Halsbury's Laws of England Fourth Edition**
\$2,000
Complete to 1996 with indexes
- **Australian Digest (Third Edition)**
\$500
With indexes (up to 1990)

Contact:

Bob Rymer
Clerk to 12th Floor Chambers
on ph: 9232 4016

LOST:

Would anyone knowing the whereabouts of the video tape on Cross Examination featuring Hughes QC please contact Roger Owens at the Bar Association on 92291722. The tape is required for a workshop activity.

STOP PRESS DEADLINES

Member contributions to Stop Press are welcomed. However, it would be greatly appreciated if contributions could be sent, via email or PC disc, to the Bar Association's Public Affairs Manager, Kate Southam, no later than the end of any given month. If you need a deadline extension, please contact Kate on ph: 9229 1732; fax: 9221 1149 or email: ksoutham@nswbar.asn.au

NSW ATTORNEY GENERAL'S DEPARTMENT

Deputy Senior Public Defender \$147,695 pa

Applications are invited for the position of Deputy Senior Public Defender for a period of five years. Applicants must be legal practitioners of at least five years' standing, and should have experience in appearing as an Advocate in appeals (including in the Court of Criminal Appeal and the High Court) and in a wide range of criminal trials (particularly murder trials), as well as managerial experience.

The Deputy Senior Public Defender appears in trials and appeals for legally aided persons charged with more serious criminal offences, and is also required to assist the Senior Public Defender in discharging managerial functions.

Appointment will be made under the *Public Defenders Act 1995*, and membership of a State public sector superannuation scheme may be available.

For more information contact Mr John Nicholson S.C. on ph: 9268 3111.

Magistrate \$144,055 pa

Expressions of interest are invited for appointment as a Magistrate under the *Local Courts Act 1982*. Interested persons should be conversant with the law and procedures applied in the Local Courts of NSW. Opportunities may arise from time to time to serve in specialist areas such as the Children's Court, Licensing Court and Victims Compensation Tribunal, as well as the industrial relations jurisdiction. Expressions of interest are particularly welcome from those persons wishing to work and reside in country areas of NSW.

For more information contact Mr David Landa, Chief Magistrate on ph: 9287 7615 or Mr Laurie Glanfield, Director General, Attorney General's Department on ph: 9228 7313.

Applications for the two positions listed above must be made in writing. A detailed curriculum vitae and the names of at least two referees should be included. Forward applications to the Statutory Appointments Officer, NSW Attorney General's Department, Box 6 GPO, Sydney NSW 2001 by 30 July 1999.

Obligation to disclose fees under Part 11 of the *Legal Profession Act 1987*

Members are again reminded of the necessity for fee disclosures under Part 11 of the *Legal Profession Act 1987*.

The Bar Council has recently had drawn to its attention that some members were failing to make fee disclosures as required. The consequences of failing to make disclosure may affect not only a member's ability to recover the fees charged but also their client's ability to recover costs in a party/party assessment and the instructing solicitor's ability to recover costs in a solicitor/client assessment. The consequences for each failure are discussed below:

1. Consequences for barrister who fails to disclose:

- (i) Section 182(1) of the *Legal Profession Act 1987* provides the client/solicitor need not pay the costs unless the costs have been assessed. Section 182(2) provides that a barrister may not maintain proceedings for recovery of fees unless they have first been assessed by a costs assessor. The costs of any such assessment are payable by the barrister [s182(3)], together with the filing fee [Regulation 26(2)]. Costs assessors are paid at the rate of \$175.00 per hour. The cost of undertaking an assessment of your fees may, in many cases, make its ultimate recovery uneconomic, particularly in the case of a dispute.
- (ii) The Bar Association will not render its assistance through its fee recovery service.
- (iii) Failure to provide a fee disclosure (including an estimate of the likely amount of your fees) is capable of being unsatisfactory professional conduct or professional misconduct.
- (iv) If a costs assessor considers that any conduct of the barrister involves the deliberate charging of grossly excessive amounts of costs or deliberate misrepresentations as to costs, the costs assessor is obliged to refer the matter to the Legal Services Commissioner (and each is declared by s208Q(2) to be professional misconduct).

2. Consequences for an instructing solicitor of a barrister's failure to disclose:

- (i) The effect of ss175(3) and 178(3) is that the solicitor is obliged to disclose to the client the costs of the barrister briefed. A barrister's failure to disclose to his/her instructing solicitor may cause the solicitor to

have difficulty in recovering costs from the client. That difficulty will no doubt be translated to the barrister if he/she is the cause of it.

- (ii) It places an unnecessary and onerous administrative burden on instructing solicitors to constantly ensure that counsels' costs disclosures have been received.
3. Consequences for successful client in party/party assessment:
- (i) The opposing party in the costs assessment may request a copy of the costs disclosure by the counsel for the successful party. If none exists, it raises a serious question concerning the ability of the client to recover all or even any part of counsel's fees in the costs assessment. It leaves both the solicitor and barrister in the position of explaining to the client why there is a question over the recovery of counsel's fees when counsel may already have been paid in full!

The Bar Council understands and appreciates that many members have a long standing relationship with their instructing solicitors and may, for well motivated reasons, believe that it is unnecessary in those circumstances to comply with the disclosure requirement. To make this assumption is however to misunderstand the requirements of the legislation and the obligation your instructing solicitor has to disclose to the client your fees. For the reasons outlined previously in this article, you will in fact be doing your solicitor a disservice if you don't make disclosure.

Members are reminded of the terms of Rule 114 (which commenced on 20 July 1997) which provides:

"(1) It would not be reasonable for a barrister to be required to make a disclosure under section 176 and sub-section 177(2) of the *Legal Profession Act 1987* when:

- (a) the barrister has, whether or not in relation to the legal services to be provided to the client by the barrister, given to the solicitor on whose instructions the barrister is acting in writing a statement which remains current and which indicates the basis upon which the barrister charges and his or her rate or rates;
- (b) the barrister proposes to charge and does charge for those services in accordance with that basis and rate or rates.

- (2) It would not be reasonable for a barrister to be required to make a disclosure under Section 176 and sub-section 177(2) of the *Legal Profession Act 1987* when the costs for the legal services to be provided to the client by the barrister have been fixed by statute or regulation."

Members wishing to rely on Rule 114 must ensure they make disclosure to each and every solicitor at a particular firm briefing them and that they revise their disclosure in the event that their fees increase.

Finally, there are three matters members are asked to note:

1. Members are sometimes requested to perform work on an urgent basis and in circumstances which do not enable disclosure to be made in advance of performing some or all of the work. Section 178(2) provides that, in such cases, disclosure is to be made as soon as practicable after the retainer commences.
2. Some members are apparently using cost disclosures/agreements which fall short of complying with the disclosure provisions. The matters which must be disclosed to an instructing solicitor are contained in ss176(2) and 177(2) and (3) of the *Legal Profession Act 1987*. The matters which must be disclosed to a client when the barrister is directly retained are contained in ss175(2) and 177(1) and (3). In the case of direct access, members must also comply with Rule 80 of the NSW Barristers' Rules.
3. Section 207 of the *Act* provides a costs assessor may, by notice in writing, require the barrister or solicitor concerned, *or any other barrister*, to produce any relevant documents or may require further particulars to be furnished as to instructions given, work done or the basis on which costs were ascertained.

A barrister who fails, without reasonable excuse, to comply with a s207 Notice is guilty of professional misconduct. In the recent case of *Legal Services Commissioner v Leon Nikolaidis* (No 40 of 1997) the Tribunal found the solicitor guilty of professional misconduct within the meaning of s207(6) of the *Act* and ordered that he be publicly reprimanded and that he pay the Commissioner's costs.

**Harrison S.C.,
Treasurer,
5 July 1999.**

The NSW Bar Association Sections

Terms of Reference for Sections approved by Bar Council on 17 June 1999:

1. Promote the discussion and further understanding of members in specific areas of law.
2. Hold regular meetings to facilitate this.
3. Encourage members to participate in the work of the Sections.
4. Provide advice to Bar Council as requested.
5. Advise practitioners in the relevant practice area of developments affecting their practice.
6. To provide a venue at which members of the Bar who wish to practice in an area can indicate their interest.

| Section | Convenor: Secretary: | Chambers | Phone |
|---|--------------------------------------|--------------------------------|----------------------|
| Administrative Law | Robertson S.C. N.Abadee | G/Wentworth 6/Wentworth | 92303230 92313864 |
| Common Law | Burbidge QC | State | 92231522 |
| Constitutional Law | Jackson QC M.Cohen | 7/Wentworth 9/Wentworth | 92324811 |
| Corporations, Securities and Insolvencies Law | Bathurst QC Smith S.C. | 6/Selborne 7/Selborne | 92331891 |
| Criminal Law | Game S.C. A. Francis | Forbes Forbes | 93907777 |
| Environment, Local Government and Valuation Law | McClellan QC J.Kelly | 11/St James Hall 2/Selborne | 92234798 |
| Family Law | Richardson S.C. G.Watkins | 8/Windeyer Edmund Barton | 92206100 |
| Intellectual Property Law | The Hon. R.Ellicott QC Yates S.C. | 16/Wardell Blackstone | 92209858 |
| Maritime, Air and Transport Law | Rayment QC G.Nell | 10/Selborne 3/St James Hall | 92213639 |
| Trade Practices and Consumer Protection Law | Heydon QC A.Ogborne | 8 Selborne 8/Selborne | 92326957 |

Supreme Court link-up

As a result of the High Court's cross-vesting decision last month, Supreme Courts around Australia have taken the opportunity to jointly establish an information web site.

The web site will enable members of the judiciary and the legal profession to check the latest cross-vesting cases quickly and easily, including cases which are yet to be reported.

The web site is the brainchild of The Hon. Justice Santow OAM of the

Supreme Court of NSW and The Hon. Mr Justice Byrne of the Supreme Court of Victoria.

By establishing the web site it is hoped trends across the board will be known to all those in the legal profession, promoting consistency in decisions ruling on Corporation Law matters.

The web site is expected to be available through www.law.unimelb.edu.au by the end of the month.

Please Note

Letter to Stop Press,

I note *Stop Press*, May 1999 page 11, *Vale, Ernest Frank Byron QC*. For the information of members, Byron QC did not serve with the airforce. He served with the 2/2nd Battalion at Bardia, Tobruk, Greece and New Guinea. At the conclusion of hostilities in 1945 he was serving as a Captain as the OC "C" Coy. In his later years Byron QC was President of the 2/2nd Battalion Association.

W. J. Tregilgas,
Church Street, Newcastle,
5 July 1999.

**The NSW Bar Association
Continuing Legal Education Program**

***Regional Conference
Byron Bay***

— NEW DATES —

Date Weekend of 31 July and
1 August 1999

Venue Lord Byron Resort, Byron Bay

Cost \$130

*(Includes all meals except the conference dinner which is
à la carte. Airfares and accommodation not included).*

The conference program focuses on the ***Evidence Act*** and
on working with expert witnesses.

The Evidence Act

presented by

Stephen Odgers

Advocacy Workshop - Working with Expert Witnesses

led by

Her Honour Judge Ann Ainslie-Wallace

with Dr Ian Coyle

Members and their partners are invited to participate in the
conference dinner on Saturday night.

To obtain an information package or further details please
contact:

Roger Owens at The NSW Bar Association

Ph: (02) 9232 4055 or Fax: (02) 9221 1149

DX 1204

Email: rowens@nswbar.asn.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

Advertising bookings and enquiries
to John Weaver.

Editorial Contributions to:

Kate Southam

Public Affairs Manager,

NSW Bar Association,

LG Floor

Selborne Chambers,

174 Phillip Street

Sydney 2000

DX 1204 Sydney

Email: mediainquiries@nswbar.asn.au

Fax: (02) 9221 1149

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

Association email Directory

Accounts Department

accounts@nswbar.asn.au

Sickness & Accidents Inquiries

sickacc@nswbar.asn.au

Membership Inquiries

membership@nswbar.asn.au

Executive Director

executivedirector@nswbar.asn.au

Education Department

education@nswbar.asn.au

Legal Assistance Scheme

legalassist@nswbar.asn.au

Library

library@nswbar.asn.au

Professional Affairs Department

pcd@nswbar.asn.au

Media Inquiries

mediainquiries@nswbar.asn.au