



STOP PRESS

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“Servants of all yet of none”

No. 66 September 1999

President's Column

For what small influence this column may have, and at the risk of offending some members, I express the Bar's horror at the slaughter in East Timor, its revulsion at the official savagery inflicted by the Javanese led Indonesian army and its utter contempt for the pusillanimous approach to the catastrophe by the Government of Australia.

Public international law is a happy subject for academic debate and dialogue between nations prepared to observe it. In crises it means whatever a country wants it to mean. To talk about Indonesian sovereignty in East Timor is as mindless as talking about German sovereignty in Poland in 1939 or Japanese sovereignty in Java in 1942. They do not belong there; they are brutal trespassers. The fact that Australia encouraged the process of invasion, and thereafter bent over backwards to be mates with a corrupt and ferocious regime, has exposed us to profound international embarrassment but does nothing to legitimise the annexation of East Timor



Ian Barker QC, President.

(or for that matter West New Guinea) as part of the Indonesian archipelago.

To put troops in East Timor to save the remaining lives cannot be equivalent to a declaration of war on Indonesia, because the country is not part of Indonesia. So far, Australia's response to events in East Timor has been less hostile and strident than its reaction to French nuclear testing in the Pacific.

Articulation of our foreign policy in such matters reminds me of a dog barking loudly behind a high fence: it can safely do so because it knows that nobody will call its bluff. Well, now there is no fence, and I am yet to hear a bark from Australia. Our friendly neighbours, who at great cost to them helped save us from the marauding Japanese, are dying by the minute. How long do we have to wait before at least trying to save them?

* Members should note that the President made the above comments on 9 September 1999.

POST SCRIPT, 14 September 1999

History has moved on from 9 September. I see no need to change anything I then wrote. While the Government of Indonesia strings out negotiations about who may enter a country it does not own, the killing continues, with the connivance of its own army. The dead are beyond help. I can only hope that the living, including the Government of Australia, relentlessly pursue the criminals in a tribunal constituted for that purpose.

The evil of barbaric multiple murders is not diminished because the principal perpetrators wear splendidly tailored uniforms with lots of ribbons.

Taxing Times

On 16 August 1999 the NSW Bar Association presented a seminar on the Goods and Services Tax legislation and its implications for the Bar. The speakers were the Chair of the Bar Association's GST Committee, Gzell QC and Committee members Slater QC, Durack S.C. and Mark Richmond. Following is a paper prepared for *Stop Press* by Gzell QC based on his seminar presentation and the full text of the paper delivered by Richmond.

The new tax system and barristers

Thirty seven Bills with the title *A New Tax System* have been introduced to the Parliament. Eleven of these have already been extensively amended. There are more Bills to come as a result of the

Ralph Report. What is said today, may well be changed tomorrow.

What follows is a summary of the legislation as it is currently proposed.

The two key pieces of legislation which may affect barristers are *A New Tax System (Taxation Laws Amendment) Bill (No 1) 1999* which introduces the Pay As You Go (PAYG) system and *A New Tax System (Goods and Services Tax) Act 1999* which introduces the Goods and Services Tax (GST) system.

The PAYG system has two main functions. Firstly it replaces provisional tax and company tax instalments with a new system, which Mark Richmond describes in his article *PAYG Instalment System and Barristers*. I think it is an improvement on what we now have. Secondly, it consolidates the various withholding systems that we currently have like the

PPS system and the withholding system for dividends, interest and royalties paid to non-residents.

As well as this consolidation, however, three new types of withholding are introduced – withholding under a voluntary subsection to the system, withholding for failure to quote an ABN and withholding under labour hire arrangements.

The obligation with respect to this last form of withholding is widely drawn at present. In its present form it will, in my view, require a solicitor to withhold from a barrister's fee. Interpolating, section 12-60 reads:

An entity [a solicitor's firm] that carries on an enterprise must withhold an amount from a payment that it makes to an individual [a barrister] in the course or furtherance of the enterprise if:

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Bar Council Business for July

Any member interested in a particular matter should contact either the relevant member of Council or the Executive Director for further information.

Executive Director's Report

Law Council of Australia CEOs meeting: The Executive Director advised that at the meeting of Chief Executive Officers, preceding the Law Council's meeting in Adelaide on 26 June 1999, it was agreed that member organisations work together to enhance membership services. The CEOs meeting also proposed the formation of an 'Education Working Party' to consider ways of addressing issues raised by the Priestley Committee. The Education Working Party will comprise the Executive Director of the NSW Bar Association and the Executive Director of the Law Society of South Australia.

Australian Law Reform Commission – Adversarial reference: The Executive Director advised that on 9 July 1999 he met with Dr Kathryn Cronin, the ALRC Commissioner responsible for the Adversarial reference. The ALRC is shortly to publish a discussion paper which includes proposals in respect of practice standards and legal costs. (Interested members should see page 9 re ALRC Discussion Paper 62, *Review of the federal civil justice system*).

Legal Aid Commission: The Executive Director advised that he met with the Managing Director of Legal Aid, Mr Bill Grant and its General Manager, Legal Services, Mr Trevor Murphy on 7 July 1999 to discuss a range of issues. The Executive Director reported that he had raised with the Commission its scales for fees paid to solicitor/advocates, which provide for a level of remuneration in excess of an instructed counsel. He had queried the rate paid to an uninstructed counsel, for he understood they were receiving less than that for solicitor/advocates. Mr Murphy had noted the Commission's practice had been to pay uninstructed counsel at the same rate as solicitor/advocates. However, the Commission policy documents needed to be amended to clearly indicate that this is the policy; these documents will now be so amended. The Executive Director had provided a detailed account of the meeting to the Chair of the Legal Aid Committee, Norrish QC.

Australian Bar Association review of sexual harassment policies: The Executive Director advised that at the ABA meeting of 19 June 1999 in Melbourne the President of the ACT Bar, Purnell S.C., proposed ABA members adopt a uniform policy on sexual harassment and complaints procedures. Each Bar is to send copies of current policies and procedures to the ACT Bar to facilitate preparation of a discussion paper. The Executive Director will brief the Chair of the EEO Committee, C Ronalds, on developments.

Items for Consideration

Legal Aid in family law matters: The President to write to the Managing Director of the Legal Aid Commission to express Bar Council's concerns about a proposal to reduce the basic level of remuneration in family law matters to the level applied to indictable crime matters.

Members please note: The Bar Council regularly considers requests by the Attorney General of NSW, courts and other agencies for advice on proposed legislation. The Bar Council usually receives a report on these proposals from the relevant

Bar Association committee. Because the advice is sought on a confidential basis, it is not noted in these summaries of the Bar Council business. However, copies of the written advice are made available to the committees, and distributed to other interested parties.

Similarly, because of the confidentiality provisions in the *Legal Profession Act 1987* (s.171P) the Bar Council's deliberations on professional conduct matters cannot be noted in these summaries.

Matters discussed by the Bar Council reported elsewhere in *Stop Press*, too, are omitted from these summaries.

Walkabout

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

10 August - The Senior Vice-President, acting for the President, chaired a Heads of Chambers meeting in the Boardroom of the Bar Association.

17 August - The Senior-Vice President, acting for the President, hosted a dinner in the Dining Room given by Bar Council for members of the High Court.

20 August - The President attended a function held for members of the District, Family and Industrial Relations Courts in the Common Room.

The NSW Bar Association and the Australian Institute of Judicial Administration Present

**Breakfast with His Excellency
Dr Bhadra Ranchod, South African
High Commissioner to Australia who
will speak on The Report of the Truth
and Reconciliation Commission**

Venue: The NSW Bar Association Dining Room
Date: Wednesday, 27 October 1999
Time: From 7am. Dr Ranchod will speak from 7.30am.
Cost: \$30 (includes a continental or full English breakfast)

A former government minister and Deputy Speaker in the South African Parliament, Dr Ranchod served as South African Ambassador to the European Union from 1987 to 1992. He has been High Commissioner to Australia since 1996.

Dr Ranchod holds a Doctor of Laws (LL.D) from the University of Leiden in the Netherlands. He was elected Dean of the Law Faculty at the University of Durban-Westville at the age of 32 and was actively involved in drafting the new South African Constitution. Dr Ranchod is a founding member of Lawyers for Human Rights.

Early registration is advised as places are limited.

For more information contact Stacey Hatch, Assistant Education Manager, on ph: 9229 1722; fax: 9221 1149 or email: shatch@nswbar.asn.au.

Taxing Times

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- a. The payment is made under an arrangement the performance of which, in whole or in part, involves the performance of work or services by the individual [the barrister] for a client of the entity [the solicitor's firm].

Submissions have been made on behalf of the NSW Bar Association to the Prime Minister, the Treasurer and the Attorney-General as well as to the Treasury Department and the Australian Taxation Office (ATO) and Slater QC and I met with the Commissioner of Taxation on 18 August 1999 to discuss this and other matters.

I also spoke with a Treasury official on 16 August 1999 who confirmed that it was not intended that the section apply to barristers and solicitors. I am confident that the Government will act accordingly. I am hopeful that we will be further consulted in the drafting process.

Under the GST system, you must pay the GST payable on any taxable supply that you make (section 9-40). A key provision defines a taxable supply (section 9-5). It provides as follows:

You make a taxable supply if:

- a. you make the supply for consideration; and
- b. the supply is made in the course or furtherance of an enterprise that you carry on; and
- c. the supply is connected with Australia; and
- d. you are registered or required to be registered.

However, the supply is not a taxable supply to the extent that it is GST-free or input taxed.

Each of the underlined words or phrases is a defined term. Some of the definitions are not helpful. For example, supply is defined as any form of supply whatsoever (section 9-10(1)) and the section then specifies a number of inclusions.

An enterprise is defined as an activity or series of activities in the form of a business or an adventure in the nature of trade (section 9-20(1)). Our activities as barristers will thus constitute an enterprise.

There are a number of exceptions in the definition, the key one relevant for our purposes being the activities of an employee (section 9-20(2)(a)). Thus our clerks and typists and receptionists are not subject to GST on their services.

If, contrary to my expectations, the PAYG system remains

unamended, to the extent that a solicitor is obliged to withhold from our fees, we will fall within another recently added exception to the definition of enterprise (section 9-20(3)).

One of the questions we have been asked is whether the provision of a practising certificate will be subject to GST and whether its price will rise? I think the answer to both questions is "yes". The NSW Bar Association is an enterprise and the certificate issued under section 32 of the *Legal Profession Act 1987* is a supply.

To return to the key section, our services will be connected with Australia as our enterprise is carried on in Australia (section 9-25(5)).

There is, however, another concept which impinges on this. Our key section excludes supplies which are GST-free or input taxed. In accordance with the concept that exports are as a rule GST-free, a supply, other than of goods or real estate, to a non-resident recipient who is not in Australia at the time and which is other than a supply directly connected with goods then in Australia or with real property in Australia is GST-free (Item 2 of the table to section 38-190(I)).

If, instead of taking a brief from an Australian solicitor or accountant to advise a Netherlands company with respect to personalty not then in Australia, I take a brief directly from a Dutch legal firm then, subject to the anti-avoidance provisions (section 165-5), my supply will not be subject to GST.

To return to our key section, the final requirement is that one is registered or required to be registered. The obligation arises if you are carrying on an enterprise and your annual turnover, ie the value of actual and projected supplies in a current month and the next succeeding 11 months (sections 188-10(1), 188(20)), meets the registration turnover threshold (section 23-5) currently set at \$50,000 (section 23-15).

As well as tax file numbers (TFNs) and Australian Company Numbers (ACNs) we are now to have a third numbering system in Australia – Australian Business Numbers (ABNs). A *New Tax System (Australian Business Number) Bill 1998* provides that a company registered under the Corporations Law and a person carrying on an enterprise in Australia are entitled to an ABN.

We will all need to apply for ABNs for our practices and for any service company or trust that we operate. If we do not, the new PAYG system will require the payer to withhold from any payment made to us in the course of conduct of our enterprise (section 12-190). The rate of withholding is to be specified in regulations (section 16-10(1)). I would not be at all surprised if the regulations specify the top marginal rate of tax.

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**BUTTERWORTHS HAS JUST
GIVEN THE LAW SOME
ORDER**



Taxing Times

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Registration under the GST legislation is in an approved form (section 186-1). I understand that the proposed form will require you to state an ABN, so registration for that number should be made first. The Commissioner has announced that kits will be available from November this year and he urges people to make early applications. If your turnover is \$50,000 or more you will have to register at the latest by 21 July 2000 (section 25-1).

The consequence of us falling within the key provision is that we are subject to GST on our taxable supplies (section 9-40) at 10% of their value, which is defined at 10/11 of the consideration. In other words, we are subject to GST at 1/11th of our gross fees.

We are entitled to off-setting input tax credits (section 11-20) for creditable acquisitions, which are determined in much the same way as our taxable supplies. The key definition of that term (section 11-5) is as follows:

You make a creditable acquisition if:

- a. you acquire anything solely or partly for a creditable purpose; and
- b. the supply of the thing to you is a taxable supply; and
- c. you provide, or are liable to provide, consideration for the supply; and
- d. you are registered or required to be registered.

A thing is acquired for a creditable purpose if it is acquired in carrying on your enterprise (section 11-15(1)).

Since the activities of employees are not taxable supplies, no input tax credit is available to us for wages and salaries. Since input-taxed supplies are not taxable supplies they will also not give rise to input tax credits. This includes supplies from financial institutions like interest and fees on bank accounts. (A Consultative Document released on 17 August proposes a different system for many other financial supplies).

You should note that if a person is entitled to an input tax credit for an insurance premium the settlement of a claim under the policy is a taxable supply by the insured (section 78-30(2)).

Input tax credits are equal to the GST payable on the supply (section 11-25) ie 1/11 of the cost.

The amount we are obliged to pay to the Commissioner is the net amount ie GST – input tax credits increased or decreased by adjustments (Section 17-5(1)).

Most of our inputs have not been subjected to the 22% ordinary rate of wholesale sales tax so there is no expectation of a drop in price of most of our inputs. Can we then put up our fees by 10% to accommodate the new tax? Must we take account of the lowering of income tax rates?

A New Tax System (Personal Income Tax Cuts) Bill 1998 was amended after the deal done by the Government with the Australian Democrats. Under our present rates scale the

top marginal rate of 47% cuts in at \$50,000. The Government proposed a reduction of the lower rates and a cut-in for the top marginal rate at \$75,000. It has now been reduced to \$60,000.

This means that, mathematically, once your taxable income is \$60,001 or more your saving on tax is the fixed amount of \$3,222. If your taxable income is, for example, \$80,000 this saving represents \$0.04 in the taxable dollar. If your taxable income is, say \$350,000, it represents a saving of \$0.009 in the taxable dollar. The reductions are, therefore, of limited significance to the established practitioner.

A New Tax System (Trade Practices Amendment) Bill 1998 will introduce a new Part VB. A corporation contravenes Part VB if it engages in price exploitation with respect to the new tax system changes (section 75 AU(1)). That means a price for a supply which is unreasonably high having regard alone to the new tax system changes and which is unreasonably high even if the supplier's costs, supply and demand conditions and other relevant matters are taken into account (section 75 AU(2)).

The Australian Competition and Consumer Commission is given a number of powers with respect to price exploitation and is required to formulate guidelines about when prices may be regarded as in contravention of Part VB (section 75 AV(1)).

In order to facilitate the adoption of Part VB by the States and Territories, a code applying to individuals is set out in a scheduled version of Part VB for enactment with or without amendment.

We can expect an amendment to the *Fair Trading Act 1987* as occurred with the introduction of the consumer protection provisions in Part 5. We can expect that the ACCC price guidelines will apply to us.

The ACCC published such guidelines on 14 July 1999. It is said that there is a simple rule that businesses should not increase net dollar margins on goods and services (para 47). An example follows which shows an increase in a retailer's price

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by 10% with a constant dollar markup (para 50). It is said (para 51):

This example may typically apply to the supply of services, where no indirect tax has applied in the past, although even here some reduction in operating and selling costs could be likely to occur through the elimination of wholesale sales tax on some purchases.

It is early days yet, but it does appear that we are not required to set off the advantages of decreased income tax. And provided we do no more than lift our fees for the effect of the GST and do not increase them beyond this, we would seem not to offend the guidelines.

There is a clear message in the ACCC guidelines that businesses should not adjust prices prior to the introduction of GST solely upon the expectation that the tax will be introduced (para 69).

While the guidelines point out that prices should be GST inclusive and a GST component is not to be added 'at the cash register' (para 85), this applies to price displays in retail establishments. It may be that we will be able to show our present fee plus 10% giving the total GST-inclusive fee upon which we pay the tax.

To return to the new GST system, as I have said, unless our fee notes quote an ABN, the recipient will be obliged to withhold an income tax component under the PAYG system. Our fee notes will also have to comply with an approved form as yet unknown (section 29-70(1)). We will ask for consultation on this process. If we may set out our

present fee plus 10% to give a GST-inclusive fee, that will be the easiest way for us to accommodate the new system.

We will also have to lodge a return within 21 days of the end of each tax period (section 31-10) and pay the net amount for that tax period (section 33-5(1)).

Since none of us has an annual turnover of \$20 million (section 27-15(3)) our tax periods will not be monthly (section 27-15(1) unless we elect for that to happen (section 27-10). They will be quarterly ending on 31 March, 30 June, 30 September and 31 December (section 27-5).

A problem for the Bar which was mentioned in *Stop Press* [March 1999 page 4] some time ago is that the ordinary method of accounting for GST is on an accruals basis on invoices issued during a tax period (section 29-5(1)) if your turnover exceeds \$500,000 (section 29-40(1)).

The Australian Bar Association made a submission on this issue which had not met with a response.

Following our meeting, the Commissioner issued a press release on 19 August indicating people who return for income tax purposes on a cash basis may elect to do so for GST purposes in the GST registration form.

The problem has been overcome. Barristers may simply tick a box to enable them to account on a cash basis. The Commissioner's press release is reproduced below.

*Gzell QC,
5/Selborne.*

Cash basis for GST

On 19 August 1999 the Australian Taxation Office announced that the new tax legislation would allow businesses with an annual turnover of less than \$500,000 to choose either the cash or accruals basis when accounting for GST.

Tax Commissioner Michael Carmody advised that businesses with an annual turnover greater than \$500,000 which had already lodged income tax returns on the cash basis would be able to continue with this basis of accounting for GST without seeking 'separate' permission.

Mr Carmody said that as part of the process for registering for GST, businesses could nominate their basis of accounting for GST by ticking a box on the relevant registration form. He said that provided businesses followed the guidelines detailed in Income Tax Ruling 98/1, they could continue the cash basis of accounting for GST without further application.

Members will be kept apprised of further advice from the Taxation Office as it comes to hand.

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Colour coding of the annotations for CaseBase

Butterworths have introduced a simple yet effective colour code for the key annotations in CaseBase. This speeds up your research by allowing you to see at a glance the relevance of each annotation.



Taxing Times

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PAYG instalment system and barristers

On 30 June 1999 the Government introduced into Parliament *A New Tax System (Taxation Laws Amendment) Bill (No 1) 1999* which contains the new Pay As You Go (PAYG) instalment provisions which are to replace provisional tax with effect from 1 July 2000. The PAYG provisions will be contained in a new Division 45 of the *Taxation Administration Act 1953* (CTH).

Under the new Division 45, a barrister who is registered for GST purposes will be required to make four quarterly payments of income tax at the same time as the barrister pays his or her GST for the relevant quarter. The due date will be 21 days after the end of the quarter.

A barrister will be entitled to elect to pay instalments annually rather than quarterly if the barrister is not registered or required to register for GST purposes and the barrister's most recent notional tax notified by the Commissioner is less than \$8,000. For example, a reader in his or her first year may fall into this category. Apart from that situation, the quarterly instalments system will apply and the key elements of this system are summarised below.

A barrister will only be liable to pay instalments under Division 45 if the Commissioner has given to the barrister an instalment rate. This can be expected to occur as a matter of course for taxpayers, such as barristers, who currently pay provisional tax.

Calculation of quarterly instalments

The amount of an instalment for each quarter will be worked out using the following formula:

Applicable instalment rate x instalment income for the quarter

The 'applicable instalment rate' is the most recent instalment rate notified by the Commissioner to the taxpayer or, if a taxpayer so elects, the rate chosen by the taxpayer for that quarter. The method of determination of the instalment rate is dealt with below.

The 'instalment income' is the ordinary income (ie income according to ordinary concepts) derived during the quarter plus certain additional amounts and less certain exclusions.

The provisions regarding additional amounts likely to be most relevant to barristers are those which apply to a taxpayer who is a partner in a partnership or a beneficiary of a trust in the relevant quarter. The taxpayer will be required to include in his or her instalment income a proportion of the partnership or trust instalment income calculated by reference to a formula or, in certain circumstances, an amount that is 'fair and reasonable' having regard to relevant circumstances. This provision will potentially apply to a barrister who is a beneficiary of a discretionary trust in the relevant quarter, even though no income distribution may in fact be received in that quarter.

Instalment income will include a barrister's fees, income and dividends but not capital gains. As barristers derive their fees on a cash basis, the instalment income for a quarter would include the fees actually received during that quarter rather than the fees rendered during the quarter.

Determination of instalment rate

The Commissioner will determine the instalment rate for each taxpayer by application of the following formula, worked out to two decimal places:

Your notional tax x 100
Base assessment instalment income

The 'base assessment instalment income' is so much of the assessable income, as worked out for the purposes of the 'base assessment', as the Commissioner determines is instalment income for the 'base year'. The 'base year' is the income year to which the base assessment relates.

The 'base assessment' is the latest assessment for the taxpayer's most recent income year for which an assessment has been made.

The 'notional tax' is generally the taxpayer's 'adjusted tax' on the 'adjusted taxable income' for the base year. The 'adjusted taxable income' for the base year will be essentially the total assessable income for the base assessment less:

- any net capital gain included in an assessable income
- any deductions for the base year (except tax losses), and
- the amount of any tax losses carried forward.

The 'adjusted tax' will, in broad terms, be the income tax payable on the taxpayer's 'adjusted taxable income' plus Medicare levy.

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It will be seen that the instalment rate approximates the taxpayer's effective rate of tax for the base year.

Variation of Instalments

Given that the instalment rate set by the Commissioner will be based on information which will be out of date and the fact that there is no provision for interest on any overpayment of instalments, it is quite likely that some taxpayers will want to vary their instalments. Once a rate is nominated for a particular quarter and notified to the Commissioner, it will apply to that quarter. It will also apply to each subsequent quarter in the relevant income year unless a new rate is chosen for a subsequent quarter.

The instalment rate must be advised to the Commissioner by the due date for the relevant instalment.

A changeover to a taxpayer nominated instalment rate that is lower than the rate notified by the Commissioner will result in a credit entitlement in respect of the previous instalments.

Where the nominated rate is less than 85% of the instalment rate that should have been used, the taxpayer will be liable to pay the general interest charge (currently 12.72%) within 14 days of being notified by the Commissioner.

GDP adjusted quarterly instalments

Once each year, a barrister can choose to pay quarterly instalments on the basis of his or her 'GDP adjusted notional tax'. This is broadly the barrister's notional tax adjusted by a factor which reflects annual movements in the gross domestic product.

A barrister can only make this election if:

- the barrister is neither registered nor required to be registered for GST purposes;
- the barrister is not a partner in partnership that is registered or required to be registered for GST purposes and;
- the barrister's most recent notional tax notified by the Commissioner is \$8,000 or more.

Under this system, the barrister will pay, for the first quarter,

25% of the barrister's GDP adjusted notional tax for the year. In the following three-quarters, the barrister will pay 50%, 75% and 100% of the GDP adjusted notional tax less any instalments already paid.

Some Practical Points

- Instalments will be paid quarterly by reference to current income derived during the quarter, not last year's income. However, the instalment rate is calculated by reference to the previous year's effective tax rate, unless you elect otherwise.
- The due date for payment is 21 days after the end of the relevant quarter. For the first quarter of the year commencing on 1 July 2000, this will give you a small cash flow advantage because the first instalment will be due later than the date when the provisional tax instalment would have been due.
- When finally assessed, you will get a credit for the quarterly instalments already paid.

Notification of the instalment income for the quarter and payment of the instalment will be made at the same time as you pay your GST, using a single return called a 'business activity statement'.

Conclusion

The key feature of the new system is that your quarterly PAYG instalments will be calculated by reference to current income rather than last year's income. This is an improvement on provisional tax, but it comes at the price of an administrative burden, being the notification of your instalment income on a quarterly basis. This burden is reduced by the fact that it links in with your GST obligations.

It may also be noted that if income derived by you in the current year is greater than for the previous year, you will most likely pay tax sooner under PAYG than under the provisional tax system. Conversely, where your income is less in the current year than the previous year, the quarterly instalments under PAYG will most likely be less than they would have been under the provisional tax system.

*Mark Richmond,
5/Selborne.*

Hypertext links between CaseBase and Unreported Judgments

Allows you to navigate directly between the two products. It means you can get the most comprehensive research available, since Unreported Judgments provides you with the full text of each judgment cited.



Legal lessons for the 2000 Olympics

The first international conference on human rights in sport was held in Sydney between 1-3 September 1999. The conference was opened by the Governor-General, His Excellency Sir William Deane AC KBE, and sponsored by the Sydney Organising Committee for the Olympic Games (SOCOG) and the Human Rights Council.

The panel of international speakers included Bar Association member R. Kaye. Kaye, who usually practices in equity, banking and professional negligence litigation, represented Australian victims of the Maccabi Bridge Disaster in Israel on a pro bono basis when he addressed a parliamentary inquiry earlier in the year.

The following is an extract from Kaye's conference address - *Equity and Justice: Sporting Disasters and Implications for the 2000 Olympics*.

'Sport in Australia, despite the funding problems for training athletes for major international competition, is obviously gaining increasing importance in the national psyche.

We have also witnessed some breaking down of the mystique which surrounds the law and its relationship with sport. It may be that it is the growth and expansion of professional sport that has brought about a heightened awareness of individual rights within the community.

One aspect of the law, which has assumed prominence in recent times, is the law of negligence. There are many examples of death and injury at international "mega" sporting events such as in Belgium, England, Scotland and USA.

The organisers of a sporting event owe a duty to the participants and the spectators. One of the areas where careful attention must be

given is in the area of sporting administration, and it is incumbent upon administrators in the current climate to make a realistic assessment of their potential liability. It is important to remember that players, individuals, officials and coaches [see *Watton v Haines*, unreported, Supreme Court, 10 April 1997], all have their respective rights and obligations. Whilst no-one for a moment would suggest that there was any intention on the part of those involved to bring about these overseas incidents, it is of paramount concern to ensure that the lessons properly available for our own Olympics are well learnt.

There are two phases we can examine. The first concerns the period prior to any such tragedy, the pre-emptive steps which may be taken and the need to ensure that sporting administrators are mindful of their obligations to athletes and other participants.

The second phase concerns the measures that ought to be taken, further to both ethical and legal standards, to ensure that any unanticipated breakdown of the system is governed by rules that are designed to assist those most affected. Obviously, first and foremost one ought to be entitled to expect a safe environment for both participants and spectators. There ought to be a very clear chain of authority between leaders of the governing sporting body and those entrusted with the nuts and bolts of implementing a safe sporting event.

Insurance coverage in sport is too infrequently reviewed. Quite aside from any strict legal requirements, there are also the twin requirements of responsibility and accountability. There are more than adequate legal procedures in place to enable those in authority to step aside from the governing body of a sporting organisation when faced with disasters of the kind which have been alluded to. This action constitutes one of the

tenets of the assumption of proper moral responsibility.

The handling of earlier sporting disasters is a stark reminder of the need for sporting bodies such as our own Olympic Committee to remain attuned to the requirements of their constituent members. By losing touch with members by displaying intransigence, there will follow an inevitable breakdown in confidence in the institution itself.

Finally, there is the question of the preparedness on the part of the institution itself to change direction and address any shortcomings. There can always be problems and unforeseen tragic events, and it is a test of the strength and flexibility of the relevant organisation as to how it responds in such extreme circumstances.

At a time when Sydney prepares for its hosting of the first Olympic Games in the new millennium, one can readily anticipate enormous expectations and challenges. One of the basic expectations of participants is that of safety of the participants and a confidence that the system can deal with unforeseen circumstances.

Ultimately, we are concerned not only with individual rights of athletes, but ensuring that the integrity of sporting bodies such as the Olympic movement is strictly maintained. There are serious and important lessons to be learnt for the Sydney Games. There has already been criticism voiced concerning secrecy and lack of transparency as to the decision-making process and expenditure. Unless these challenges are met, the flowering of international sport will be overpowered by disappointment, cynicism and the perception that sport is motivated solely by financial outcomes.'

**Robert Kaye,
G/Wentworth,
2 September 1999.**

Papers to Note

The Australian Law Reform Commission's civil justice review: The ALRC's Discussion Paper 62, *Review of the federal civil justice system*, is now available from the Bar Library. A copy of Discussion Paper 62 is also available from the Commission's web site at: www.alrc.gov.au

The Law Council of Australia's Senate inquiry submission on refugees: The Council's submission to the Senate Legal & Constitutional References Committee's Inquiry into Australia's refugee and humanitarian programme is now available from the Bar Library. The Council, International Commission of Jurists and Amnesty International called for an inquiry into Australia's refugee determination process last December. The Senate Committee's inquiry was announced in May 1999 and is to report by 18 October 1999.

The Law Council of Australia responds to Federal Magistracy proposal: The Law Council of Australia's *Position Paper on the Proposed Federal Magistrates Court* is now available from the Bar Library. A copy is also available from the Law Council's web site at: www.lawcouncil.asn.au.

CJ's address to the Women Lawyers Association: The speech, *Technology and Women in the Law*, made by The Hon J J Spigelman, Chief Justice of NSW, at the Association's National Bank Speaker Series Lunch on 25 August 1999 is now available from the Bar Library. A copy is also available from the Women Lawyers Association's web site at: www.wlansw.asn.au/Spigelman.htm.

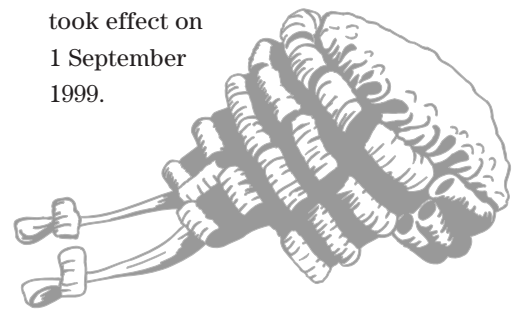
Legal Services Directions applicable to Commonwealth legal work: The Directions, approved by the Attorney-General, came into effect on 1 September 1999 and are based to a significant extent on the current policies and guidelines that apply to the conduct of the Commonwealth's legal affairs. Copies of the Legal Services Directions are available from the Bar Library along with a list of the sections of particular relevance to Bar Association members carrying out work for the Commonwealth. The Directions can also be viewed by visiting the Office of Legal Services Coordination (OLSC) web site at: www.law.gov.au/olsc. For more information contact the OLSC's Philippa Lynch on ph: 02 6250 6160 or Maia Ablett on ph: 02 6250 5587.

Reports available from the 9th Presidents of Bar Associations in Asia (POLA) conference: The business programme from the 9th

Annual POLA Conference is now available from the Bar Library. The conference was hosted by the Law Council of Australia and held in Canberra on 27-28 April 1998. The 10th POLA Annual Conference will be hosted by the Japan Federation of Bar Associations and held in Tokyo from 2-4 September 1999.

Report on family law cases: The Law Foundation of NSW has recently released *Profiles*, a report setting out detailed profiles of family law cases handled by Legal Aid Commissions, private solicitors, Community Legal Centres and the Family Court finalised during the 1997-98 financial year. *Profiles* has been compiled by Associate Professor Rosemary Hunter, Principal Researcher of the Justice Research Centre. A copy is available in the Bar Library.

Land and Environment Court Practice Directions: Copies of Pre-hearing Practice Direction 1999 concerning procedures in Classes 1, 2 and 4 and Expert Witness Practice Direction 1999 are now available in the Bar Library. Both practice directions took effect on 1 September 1999.



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Settlements – a note from the professional conduct committees

Advocating clear and effective communication with clients

Happily, the levels of complaints about settlements are not as high as they were in the past. However, it appears to the professional conduct committees that often the fundamental cause of problems, and not only in relation to settlements, is a communication failure between lawyer and client.

Early consideration of briefed materials and prospects of success

It is important to read and understand your brief soon after it is delivered. It is equally important to have early discussions with the client about the possibility of settlement and the process involved.

In particular, where small amounts of money are in dispute the client must be informed that it may be necessary to incur large sums in legal expenses in order to prepare the case to a desirable standard. Furthermore, the client should be told where these costs might render the running of the matter financially unrealistic.

Irrespective of the client's budget, the client is entitled to know what they will get for their money. It is important that the client understands both what can, and cannot, be achieved within the budget available.

Communication failure

Communication failure can be a failure to convey to the client a sufficient understanding of the options preceding settlement; the possible likely outcome of the case (absent settlement); and the process of settlement itself.

The expression 'failure' is used neutrally. The failure to convey information is sometimes a failure of the barrister and solicitor. Sometimes it springs from a barrier to comprehension on the part of the client that is not picked up by the lawyers involved in the case.

Barriers to a client's understanding of the court system, and the place the settlement process plays within it, are exacerbated in jurisdictions where there are frequent language and cultural obstacles.

Sometimes, the expectations of clients with respect to the outcome of their litigation do not match the reality. The onus is on the barrister and solicitor, jointly and separately, to ensure that this does not occur.

Often clients are emotional and feel intimidated by the power of the courts. Some also perceive the legal profession to be surrounded in mystery. This can result in misconceptions and a lack of understanding of procedures and achievable outcomes.

The use of plain English is very important to assist understanding by the client. Interpreters should not be dispensed with unless the client's level of English (both

written and oral) is more than adequate, even if the client agrees to, or wishes to, dispense with the interpreter.

Barristers can assess their client's comprehension of a particular settlement, and the settlement process generally, by asking their client to express their understanding of the information given to them. In this way, misapprehensions or misconceptions can be picked up quickly.

Raising levels of client understanding

The Bar can focus on a solution to communication problems by looking at it from both sides. The problem is not just one of improving barristers' communication skills and standards of practice but of generally raising levels of client understanding - particularly when it can be reasonably anticipated that the understanding is not adequate for whatever reason.

The best way to raise the Bar's standards in this area is to generate cooperative change from within. The Bar's system of discipline is not the ideal agent of change. Better settlement practices will not evolve without a clear commitment to the objective of improved communication from members of the Bar.

Clients must 'own' the settlement

The fundamental aim of the barrister should be to equip the client with all the information he or she needs to make a decision about settlement of their case.

The barrister must encourage the client to accept control of the settlement process, even where the barrister has a strong view about settlement.

Basic to this process is conveying information about the best and worst dollar value offered by each option; the possible outcomes of litigation; explaining the advantages and disadvantages of settlement versus running the case; and the barrister's assessment of the prospects of success.

Client's knowledge of the legal process

It is important to remind oneself that many clients are not knowledgeable about court and legal process and are intimidated by the unfamiliar surroundings and the language used by lawyers.

Clients are frequently confused about who is responsible for what activity in the conduct of the litigation and the role each lawyer will play in the legal process.

A significant source of communication failure is a barrister's expectation of what the solicitor has said to the client and visa versa.

Where these confusions, expectations and assumptions occur, a client can often end up with inadequate information leaving them ill equipped to make the informed decisions required by their lawyers and the courts.

Above all, clear and effective communication is the key to good relations with instructing solicitors and with clients.

Keith Edward Barney Walsh AM RFD ED

- 50 Years at the Bar

On 19 August 1999 members of 11/Garfield Barwick Chambers hosted a dinner to mark the 50th Anniversary of Keith Walsh AM RFD ED at the Bar. Speakers Coombs QC, Murray QC and S. Finnane paid tribute to the outstanding contribution Walsh has made to both rugby union and to the legal profession.

Walsh's rugby career includes playing for Sydney Boys High, the University of Sydney and the Australian Army and clubs Randwick, Easts and Gordon. His coaching credits range from university level up to State and Australian representative teams.

Walsh completed his law degree at the University of Sydney but in 1942 he studied by correspondence while serving as a troop commander with the Australian Imperial Forces stationed in what was then Dutch New Guinea.

In 1946 Walsh was admitted as a solicitor of NSW. He also became a full time member of the Australian Army Legal Corps.

Walsh was associate to Chief Justice Sir Frederick Jordan for two years before being called to the Bar on 19 August 1949. Walsh's distinguished legal career includes nine years as a District Court judge. He remains an active member of 11/Garfield Barwick.

At the dinner Walsh shared some of his many experiences including how he acquired his still lingering reputation as someone who can appear in more than one court simultaneously.

The following is an extract from Walsh's speech:

I should deal briefly with some of the incidents that gave rise to [my reputation] to put it in its true context.

Column 8, in the [Sydney Morning] Herald featured an article in about 1970 concerning an occasion when I was appearing one morning in the first matter in the Motions List, at which there was a visiting Japanese judge present.

I got an adjournment by consent and then later when the undefended divorce list was called over before Justice Neild I also appeared in the first matter in that list, prompting the visiting judge to observe when I announced my appearance the second time that all Australian barristers looked and sounded strikingly alike.

There was another occasion when I flew to Cooma for a hearing but the plane could not land and was turned back and when I got back to Sydney I learned that I could still take a brief in Bathurst so I left immediately by plane - leading to the persistent and erroneous rumour on the Floor that I was prepared to take briefs in both Cooma and Bathurst on the same day.

On another occasion, when I was dashing across the countryside to get from one hearing to another hearing at Cessnock, my wife Faith was with me and we decided to take a local's advice on a shortcut along a dirt road.

Unfortunately the petrol tank on our car was pierced by a rock or stick and started to leak. I was in my suit, looking dapper, and ready for court and Faith would not let me lie on the road to look under the car to see if I could stuff something in the hole in the tank so that it would last long enough to get us there. Some locals drove up and stopped to help. They found me standing there in my suit and Faith lying in the dirt reaching under the car and calling out to me: "Have you got any more chewing gum or Minties?"

Walsh also spoke of the great camaraderie and professional generosity of the Bar and described his years on the bench of the District Court as 'the most complaint free period of my life'.

A full copy of the speech given by Walsh is available in the Bar Library.



Keith Walsh AM RFD ED



B F Murray QC, His Hon Judge Moore, Mrs Faith Walsh, K. E. Walsh

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Short Takes

Fees owed to counsel by solicitor

Abdul Hamid Ayoubi: Members should be advised that the Council of the Law Society of NSW has appointed solicitor and notary Andrew Brown as manager of Mr Ayoubi's practice.

Mr Brown has asked that Bar Association members owed fees forward details of outstanding accounts to him as soon as possible.

He said while he could not guarantee outstanding fees would be paid in total, or recovery of any fee due from any source, he would do his best to assist counsel owed fees.

Mr Brown can be contacted on ph: 9926 0321; fax: 9231 5809 or email: asb@lawsocnsw.asn.au

Construction Law Section: The Bar Association has established a Construction Law Section under the chairmanship of Miller QC. Members interested in joining the Section are invited to contact either of the secretaries, G. Underwood (6/Wentworth) on ph: 9235 0140 or K. Leotta (8/Garfield Barwick) on ph: 9223 8442.

Human Rights Medals and Awards: A law category, sponsored by the Law Council of Australia, has been included in the Human Rights and Equal Opportunity Commission's 1999 Australian Human Rights Medals and Awards. The new category recognises an individual or organisation which has promoted human rights through the practice of law. Nominations close on 26 September 1999. Those selected for awards and medals will be honoured at a ceremony on 9 December 1999. For more information see the brochure available for perusal at Reception or contact the HREOC on ph: 9284 9675 or visit the HREOC's web site at: www.hreoc.gov.au/news_info/awards/

Wigs and gowns in the Land and Environment Court: Members are advised that when robing for the Land and Environment Court, the class of matter, not the nature of the hearing, should be considered.

In a letter to the President dated 25 August 1999 The Hon Justice M Pearlman AM, Chief Judge advised:

... robes are required for all matters falling within classes 4, 5 and 6, and for claims for compensation for resumption of land, claims of encroachment of buildings and objections to determinations of boundaries falling within class 3.

This means that, if in a particular duty list or in a particular motion before the list judge, the matter falls within one of those classes then robes are to be worn even though the particular application before the Court is a pre-trial application or an interlocutory application.

I would suggest that members of the Bar contact the associate to the judge if they are in doubt on any particular occasion.

Annual Bench & Bar v Solicitors

Hockey Match: The annual event will this year be played on Sunday, 10 October 1999 commencing at 12.30 pm at the Kuring-Gai Hockey Centre. The Centre is located behind Kuring-Gai High School, Bobbin Head Road, North Turramurra. A BBQ (BYO food and drink) will follow the match. All members are invited to attend. If you would like to play, please telephone Callaghan S.C. or Patrick Larkin (9/Nigel Bowen) on ph: 9930 7900.

Australian Bar Association

conference: Members planning to attend the Australian Bar Association conference in New York from 2-5 July 2000 but who have not received a registration/information form should contact Reception and a form will be posted to you.

Liquor Bar hours: Members are reminded that the Liquor Bar is staffed between 12 noon and 6pm, Monday to Friday. For assistance contact Liquor Bar Manager, Tony Mitchell on ph: 9229 1717 or the Bar Association's preferred supplier Porters Liquor on ph: 9235 2874.

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Supreme Court sittings during the Olympics

The Olympic Games will commence with the opening ceremony on Friday, 15 September 2000 and conclude with the closing ceremony on Sunday, 1 October 2000.

The Hon J J Spigelman, Chief Justice of NSW has advised the President of special arrangements being made for the Supreme Court with regard to the 2000 Olympic Games.

In a letter dated 20 August 1999 the Chief Justice advised that three weeks of the variable vacation for the year 2000 have been fixed for the period commencing Monday, 11 September 2000 and concluding on Friday, 29 September 2000.

Sittings of the Court will resume on Tuesday, 3 October 2000 following the Labour Day holiday, which, subject to proclamation, will take place on Monday, 2 October 2000.

The arrangements were made following consultations within the Supreme Court and with professional organisations and key agencies involved in the progress of

criminal trials. The arrangements take into consideration issues such as the availability of police for court work and the impact of traffic congestion on prisoner transport, court personnel, witnesses, jurors, the legal profession and court reporters as well as accommodation difficulties for witnesses and litigants.

The Chief Justice advised that during the vacation duty judges and registrars would be available to deal with urgent applications and registry services would be maintained. Call overs are to be scheduled early in 2000 to ascertain the extent of interest in listing civil non-jury trials involving few or no witnesses and both civil and criminal appeals.

The amount of hearing time available throughout the year will not be reduced.

The Chief Justice advised that the arrangements had been made possible by the cooperation of judicial officers in concentrating their leave during the Olympic period.

Appointments

Supreme Court Assessors

John Bartos; Peter Brewster; George Buckworth; Mark Campbell; John Harrington; Peter Kennedy-Smith; Raymond Moyle; Robert O'Neill; Michael Robinson; John Sharpe and Julian Trebeck have been re-appointed for a period of three years effective 19 September 1999.

Graham Ellis; Bruce Green and Robert Quickenden have been appointed for one year from 19 September 1999.

Victorian Bar Council

The election of the following office bearers were confirmed at a meeting of the Victorian Bar Council on 2 September 1999: Curtain QC (Chairman); Derham QC (Senior Vice-Chairman); Redlich QC (Junior Vice-Chairman); Ray QC (Honorary Treasurer); F.McLeod (Assistant Honorary Treasurer); G. Moloney (Honorary Secretary); S. Burchell (Assistant Honorary Secretary); and R Attiwill (Acting Assistant Honorary Secretary).

Contributions to *Stop Press*

Members are encouraged to make contributions to *Stop Press*. Features, short items and reports on sporting and other events should be sent to Public Affairs Manager Kate Southam via email or PC compatible disc along with photographs and any particular instructions.

Where possible, members are asked to keep features to 700 words and news items to between 200 and 400 words.

Contributions for *Stop Press* should reach the Bar Association by the 30th of the month prior to publication however, notice that a member wishes to make a contribution should be made as early as possible.

For more information contact Kate on ph: 9229 1732; fax: 9221 1149 or email: ksoutham@nswbar.asn.au

Olympic plans for CBD

Booklets outlining proposals for the Central Business District during the Olympics have been released by Sydney City Council and are now available for perusal from Reception. The booklets outline plans developed by the Olympic Coordination Authority (OCA) and the Olympic Roads and Transport Authority (ORTA) on critical issues such as

pedestrian management, road closures and parking restrictions during the Games. In a letter to the Bar Association, dated 29 July 1999, the Lord Mayor of Sydney, Councillor Frank Sartor, invited members to read through the plans outlined in the booklets and make submissions to a committee established to review the proposals.

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The Barristers, Sickness and Accident Extension Plan is specially worded to complement the Barristers, Sickness and Accident Fund. The two policies working together provide barristers with Income Continuation Insurance up to the age of 65 with conditions not otherwise available and at lower

premiums. Members with Barristers, Sickness and Accident Extension Plan cover pay premiums 22.5 percent lower than other lawyers taking out a comparable policy.

Barristers, Term Life Insurance and Crisis Plan offers a 10 percent premium reduction on Term Life and a 10 percent premium reduction on Disability Lump Sum. The latter defines disability as being totally and permanently unable to practise as a barrister rather than being unable to perform any work.

This premium reduction is achieved by providing new members and members who increase their cover with the full extent of the renewal discount. Crisis Cover is insurance that pays a benefit if the insured suffers from certain medical conditions, such as stroke, heart attack or cancer. It makes provisions specifically tailored to barristers such as deafness - cover for this condition is not otherwise available from this insurer. At the same time the policy excludes conditions that have little application to lawyers - conditions that account for only one percent of claims - but that are nonetheless covered by the Barristers, Sickness and Accident Plan. The net result is that barristers pay 35 percent lower premiums than other lawyers.

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Web Watch

New on-line barristers directory

The NSW Bar Association has developed an on-line directory of members for the use of solicitors and the public. This will replace the current hardcopy and electronic versions of Butterworth's *New South Wales Barristers Directory*.

The directory has been designed to offer the most up-to-date information available and will be published on the NSW Bar Association's web site in two stages.

The first stage will list the name of each practising member with accompanying details such as phone and fax number, email address, the name and address of chambers and the name of the relevant clerk. Each member's email address will appear in blue on the directory site. When the address is clicked on it will automatically 'hyperlink' and open up a barrister's email program.

Stage two will post details of the practice areas nominated by members.

To ensure details are accurate members are asked to forward any changes to their contact details or practice areas to the Bar Association Membership Officer Barrie Anthony on ph: 9229 1740; fx: 9221 1149 or email: membership@nswbar.asn.au.

Clerks listed on the web

The Bar Association web site now includes a directory of all clerks. Details include chambers name and address, phone number and DX address. Fax and email details are to follow. To ensure details are accurate, clerks are asked to please pass on any changes to Membership Officer Barrie Anthony using the above contact details.

1998 Silks Bar Association gift and dinner

My thanks to the 1998 Silks who presented the Bar Association with a \$5,600 donation to be used to assist in the production of a book chronicling the past 30 years of the Bar of NSW.

The Silks also donated \$12,300 to the Josephite Foundation to help fund an interest-free loan scheme run by the Foundation to benefit the disadvantaged in country communities.

The scheme is non-denominational and will benefit greatly from the 1998 Silks donation.

My thanks to Hennessy S.C. who organised a dinner, hosted by the 1998 Silks, on 3 September 1999 at the Royal Sydney Yacht Squadron where both donations were presented and where Sister Kathleen Luchetti of the Foundation, my wife Penny Barker and myself were guests of honour.

Barker QC,

9 September 1999.

Survey Series

This month the Legal Assistance 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, the Finance Department in the July edition and the Administration Department in the August edition.

According to the survey, Bar Association members regard responding to public criticism of the Bar as the Association's most important role. The work done by barristers through the Legal Assistance Scheme provides an excellent opportunity to counter the cliché of the money hungry lawyer. The Scheme also provides an opportunity to educate the public about the work done by barristers.

It is difficult to comment on the breakdown of the number of matters handled on a legally aided basis, reduced fee basis, and pro bono basis/speculative basis. The number of matters does not specify if matters were referred through the Scheme. However, the figures show that each member surveyed did five pro bono matters per year.

The only specific mention in relation to the importance of providing legal assistance to the public was: 'it is not the role of the Bar Association to cover up the inadequacy of funding provided by the Government.'

There was no mention of the Barristers' Referral Service.

Invaluable archives

On behalf of all members I would like to thank The Hon I F Sheppard AO QC for donating to the Bar Association the collection of opinions and memorabilia which once belonged to his father, Wilfred Sheppard who retired from practice in 1978.

Some of the papers include drafts of *A History of the New South Wales*

Bar (1969) edited by Dr J M Bennett, in particular a draft by Wilfred Sheppard of Chapter 3 – *The Influence of the Bar in the Twentieth Century*.

The collection will be of invaluable assistance to Dr Bennett in the preparation of the second volume of the history.

Barker QC,

9 September 1999.

Getting to Know



Barrie Anthony

Barrie Anthony has been appointed the Bar Association's Membership Officer.

Prior to his appointment, Barrie was an Agency Manager at Paton Lawyers. Barrie, originally from Melbourne, worked as an administrator at the Victorian Arts Centre from its opening in 1982 until taking up a position at the Federal Court between 1989 and 1996 as a Listing and Administrative Assistant.

Barrie replaces Stacey Hatch who has been appointed Assistant Education Manager following the departure of Roger Owens to finish a Master of Business Administration.

Survey seeks members' views on performance stress

The views of practising barristers, retired barristers and current and former members of the judiciary are being sought as part of a research project on stress and advocacy performance.

The first phase of the project involves a comprehensive voluntary survey designed by Association member H Selby and sports psychologist Gavin Freeman. Selby is a member of the Law Faculty of the Australian National University and an experienced advocacy teacher. Mr Freeman is a sports psychologist at the

Australian Institute of Advocacy (AIS) and the ACT Academy of Sport.

The AIS and the Bar Association support the survey and encourage members to complete the questionnaire as soon as possible. The Advocacy Committee has considered the survey.

Copies of the survey questionnaire are available from Reception. For more information contact Selby on ph: 026 249 5720 or email: Hugh.Selby@anu.edu.au

Federal Court Reserved Judgments

The Hon M E Black AC, Chief Justice of the Federal Court has asked that members be reminded of the *Federal Court Protocol for Inquiries about the Court's Reserved Judgments*.

The protocol, developed in 1994 after consultations with bar associations and law societies, is as follows:

If a practitioner is concerned about a delay in delivering a reserved judgment in a case in which he or she is acting, the practitioner should raise the matter with the President of the Bar Association or Law

Society of the State or Territory in which the case was heard, providing the names of the parties, the name of the judge or judges whose decision is reserved and the date on which the decision was reserved.

The President will refer the inquiry to the Chief Justice without disclosing the identity of the practitioner expressing concern. The Chief Justice will then take up the matter with the judge or judges whose decision is reserved.

New Members

Scott Barwick, 43/Edmund Barton

Eugene Gramelis, TBA

Timothy Hudson, TBA

Christos Mantziaris, Australian National University

Michael McHugh, 16/Wardell

Michael Scheib, 7/Wentworth

Jon Springthorpe, 16/Wardell

Iain Todd, 14/Wardell

James Trevallion, TBA

Manuel Varitimos, 11/Quay Central, Brisbane

Anthony Ventura, Sir James Martin

Ronald Williams QC, Blackburn Chambers (ACT)

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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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education@nswbar.asn.au

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legalassist@nswbar.asn.au

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