



## President's Column

The Olympic Games will not be the only forum this year in which watching the time assumes critical importance.

On the first day of term Chief Justice Spigelman announced amendments to the *Supreme Court Rules* intended to inaugurate a new standard for civil procedure. The basic principle is identified in a statement of overriding purpose in Part 1 rule 3(1) namely the 'just, quick and cheap resolution of the real issues' in civil proceedings. This standard is to be enforced by the application of rules requiring pleadings to put allegations of fact in issue only when it is reasonable to do so. Compliance will be enforced by costs orders, including orders against legal practitioners. The Court is also given express powers to limit in various ways the time permitted to aspects of a hearing, including the time taken in examining, cross-examining and re-examining witnesses.

The full text of the new rules will be circulated in a special issue of *Bar Brief* shortly. The same issue will include an Explanatory Memorandum and the amendments to the *New South Wales Barristers' Rules* to which I referred in my last column. The new rules complement the new *Supreme Court Rules* by emphasising the ethical obligations underpinning the efficient conduct of litigation.

The amendments to the *Supreme Court Rules* take effect on 1 March 2000. The amendments to the *New South Wales Barristers' Rules* take effect on 6 March 2000. A seminar will take place on 23 February 2000 where the purpose and intended operation of the *New South Wales Barristers' Rules* and the *NSW Supreme Court Rules* will be explained by Walker S.C. and Chief Justice Spigelman respectively. I encourage all members to attend this seminar and take advantage of the opportunity to clarify any concerns they have about the new rules.

The District Court is also concerned with time standards. From the opening of term, the District Court in Sydney West commenced listing each trial on a date three months from committal. Chief Judge Blanch intends introducing the same system in Sydney by June 2000. The Chief Judge is conscious that the new practice may cause problems with the



Ruth McColl S.C., President.

criminal Bar being booked up substantially more than three months in advance, but has advised that 'un-availability of counsel cannot normally be an acceptable reason for delaying a trial.' No doubt all will work hard to try to ensure the success of this new approach. Members should advise if the new system is causing any substantial difficulties which the Association may take up with Chief Judge Blanch.

### Legal Aid

As members will be aware, there has been no increase in counsel's Legal Aid fees since 1991. Moreover, in 1991 an earlier increase was partially clawed back by a unilateral reduction by the Legal Aid Commission of counsel's fees. We continue to press the issue of an increase both with the New South Wales Attorney General and the Managing Director of the Legal Aid Commission, Margaret Allison.

Ms. Allison has also circulated a paper *Managing Service Excellence - Future Directions for the Legal Aid Commission of New South Wales* in which she outlined a number of strategies she regards as essential to improving the Commission's functioning and efficiency. Of critical relevance to the Bar are:

- her objective of strengthening partnerships with the private profession by ensuring that work assigned to the private profession remains at a reasonable level;

- her proposal to review panels of counsel and possibly determine new criteria for entry to the various panels;
- her objective of promoting and expanding the use of alternative dispute resolution, particularly in family law cases.

Ms. Allison also intends restructuring the Commission. The review would include considering whether an external review mechanism should be established involving the private profession determining appeals from refusals of legal aid. The proposals are all in the melting pot. The Bar Association's Legal Aid Committee is reviewing a schedule of proposed amendments to the *Legal Aid Commission Act 1979*. We will keep members advised of progress.

### GST

This matter is constantly under review. I have had discussions with the President of the Law Society, John North, who chairs the Society's GST Committee. We have agreed that the Bar Association's GST Committee and the Law Society's GST Committee will co-operate closely to ensure appropriate consideration of GST issues, particularly as they affect the relationship between barrister, solicitor and client.

Last year the Association raised with the New South Wales Attorney General the question whether legal aid fees would be subject to GST. That matter has now been taken up by the Legal Aid Commission, which is expecting a ruling from the Commissioner for Taxation shortly.

### Bar Council

The changes I mentioned at the outset of this column are part of the process of the pressure to improve the delivery of justice to the community. The Bar Council is conscious of those pressures. It was critically involved in the amendments to the *Supreme Court Rules*. It is conscious of the constant pressures for reform to the justice system. This year it will undertake a strategic review of the Bar's position on a number of issues,

*Continued on page 2*

# Bar Council business

## November 1999

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

Members should note that due to the volume of business and the election of office bearers, Bar Council met on 18 and 25 November. The minutes below are extracted from those meetings.

### President's Report

The President advised that for much of the preceding month he was involved in a Federal Court case in Darwin. McColl S.C. had been acting as President.

### Annual General Meeting, 19 November 1999

The President noted that it had been necessary to obtain a Supreme Court order to allow the proposed new constitution to be considered at the AGM on 19 November 1999. He urged all Bar Councillors to attend the AGM and for them to encourage as many other members as possible to also attend.

### Items for Consideration

#### Education: Proposal to extend the Bar Practice Course from four weeks to five weeks

Bar Council resolved to approve the extension of the course from four to five weeks and that course fees not to be increased. The Executive Director was asked to consider ways in which the existing course fee might reasonably be reduced.

#### Drug policy

Bar Council resolved that a media release be issued, subject to minor amendments. (A copy may be obtained from the Bar Association web site at [www.nswbar.asn.au](http://www.nswbar.asn.au))

#### Non-proclamation of legislation - *Motor Accidents Compensation Act 1999*

Bar Council noted that s61(6) of the *Motor Accidents Compensation Act 1999* had not been proclaimed. It was resolved that Walker S.C. and Letherbarrow S.C. should consider the matter further and to recommend to the President such action as they thought appropriate.

### President Retires

McColl S.C. noted that it was Barker QC's last meeting as President. On behalf of the Bar Council she expressed its gratitude to Barker QC for all that he had done as President for the Bar Council, the Bar and individual members of the Bar. The Bar Association was indebted to Barker QC for his inspirational leadership both within the Bar and publicly.

The Bar Council endorsed McColl S.C.'s comments by acclamation.

**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 *Bar Brief*, too, are omitted from these summaries.

## December 1999

Members should note that due to the volume of business, Bar Council met on 16 and 21 December. The minutes below are extracted from those meetings.

### President's Report

#### Law Council of Australia

The President, McColl S.C., advised that she and the Executive Director attended a meeting of the Law Council in Canberra on 4 December. Matters discussed included:

- Drugs Policy
- *Astley v Austrust*
- *Human Rights (Mandatory Sentencing of Juvenile Offenders) Bill 1999 (C4th)*
- Task force to prepare an issues paper on national legal education
- Cross vesting legislation: the effect of *Wakim*

#### Australian Bar Association

The President advised that she and the Executive Director attended a meeting of the ABA in Melbourne on 11 December. Matters included:

- Preparation of an *Australian Charter of Judicial Independence*
- Drugs Policy
- Amendments to the *New South Wales Barristers' Rules*
- Legal training assistance to Bangladesh
- Incorporation of barristers' practices
- Multi-disciplinary practices
- Independence of the ACT Bar

### Items for Consideration

Outstanding debtors as at 21 December 1999

Bar Council noted with concern that a number of members (and floors) had accounts outstanding. It was resolved that no further credit be extended to debtors who are in arrears on accounts such as photocopying. The Executive Director will write to all debtors to inform them that there will be no further credit until the amounts outstanding are paid. A copy of any letter to a floor Clerk is to be provided to the relevant Head of Chambers.

### Bar Council meeting dates for 2000

Bar Council resolved to meet in the year 2000 at 4.30pm on the following dates, with the proviso that the President may convene additional meetings where the volume or nature of business may warrant:

27 January	18 May	7 September
17 February	15 June	12 October
16 March	20 July	9 November
13 April	17 August	

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## President's Column

*Continued from page 1*

including access to justice, the delivery of advocacy services, work practices and business structures and the role of the Bar in the community.

## Bar Brief

*Stop Press* has been re-christened *New South Wales Bar Brief* on the basis of advice it better reflects a barrister publication.

I wish all members of the Bar a happy and successful 2000.

# Short Takes

## New South Wales Bill of Rights

**Inquiry:** The Legislative Council Standing Committee on Law and Justice is calling for submissions to an inquiry on a New South Wales Bill of Rights. The Convenor of the Bar's Human Rights Committee, Cowdery QC, has asked members to assist in preparing a submission to the parliamentary inquiry. Those wishing to contribute may contact him via email at [ncowdery@odpp.nsw.gov.au](mailto:ncowdery@odpp.nsw.gov.au). Further information may be obtained from Parliament's web site at [www.parliament.nsw.gov.au/lc/committs/lawjust.html](http://www.parliament.nsw.gov.au/lc/committs/lawjust.html)

## Recognition of legal practitioners

**admitted in South Australia:** An Order made under s480 of the *Legal Profession Act 1987 (NSW)* was gazetted on 26 November 1999. The Order confers upon practitioners with a

current South Australian practising certificate an entitlement to practise law in New South Wales.

The travelling practising certificate scheme is now operating in the ACT, South Australia, New South Wales and Victoria.

## Senior Counsel in the Australian

**Capital Territory:** Appointment as Senior Counsel in New South Wales is recognised 'without formality' in the ACT. However, for administrative purposes, the Chief Justice of the Supreme Court of the ACT encourages Senior Counsel in NSW to write to the Registrar in Canberra and ask that their appointment be duly noted in the Court's records.

## Union Internationale des Avocats

**(UIA)** (International Association of Lawyers) will be holding its 46th Annual Congress, Sydney 2002. The proposed venue is the Sydney Convention and

Exhibition Centre, Darling Harbour from Tuesday 29 October to Saturday 2 November 2002. The likely President of the Congress, Downes QC, would like to encourage members to become involved. If you would like further information, you may contact him on Ph: 8224 3004, Fax: 9233 1849 or email: [DownesQC@sevenwentworth.com.au](mailto:DownesQC@sevenwentworth.com.au).

## Bar Briefs

- On 20 January 2000 the International Commission of Jurists announced that Justice J.R. Dowd AO had been elected to its governing body.
- The Academic Senate of Macquarie University has awarded the New South Wales Bar Association Prize for Remedies to Edward Cox of Wollstonecraft and Gillian Walker of Cheltenham.
- The Hon. Justice Keith Mason, President of the NSW Court of Appeal, has accepted an invitation to be the Guest of Honour at the 2000 Bench and Bar Dinner on Friday 12 May 2000.

## Western Australian Bar Association office holders

On 9 December 1999 the Western Australian Bar Association announced that the following members were elected to Bar Council:

### President

Philip Richard Eaton

### Vice President

John Gilmour QC

### Council Members

Michael John Buss QC  
Audrey Gillian Braddock  
Thomas Henry Offer  
Susan Peta Richardson  
Christopher Patrick Shanahan

### Junior Members

Christopher Blackett Edmonds

### under three years

Leo Anthony Tsaknis

### Practising at chambers

Malcolm Russell Hall

### other than Francis Burt Chambers

## Australian Bar Association office holders

As of 1 February 2000, the Australian Bar Association's office holders are:

<b>President</b>	David Porter QC (Tas)
<b>Vice President</b>	Malcolm Gray QC (SA)
<b>Treasurer</b>	David Curtain QC (Vic)
<b>Secretary</b>	Dan O'Connor (Qld)

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# Independent assessment of claims under the Motor Accidents Scheme

The Motor Accidents Authority seeks to appoint legal practitioners with personal injury experience to a panel of independent claims assessors for the Claims Assessment and Resolution Service. Assessors will be required to undertake the following:-

- Special assessment of claims where there have been breaches of various procedural sections of the *Motor Accidents Compensation Act 1999*.
- General assessment of the quantum of claims pursuant to the common law and taking into account statutory restrictions.
- General assessment of the liability for claims including the assessment of contributory negligence.

If you are interested, call Belinda Cassidy or Jane Dunn at the Motor Accidents Authority on 1300 137 131. An application kit will be sent on request. Applications close 1 March 2000.

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## Motor Accidents Compensation Regulation 1999 (No. 2) (NSW)

This regulation was published in Gazette No. 141 of 17 December 1999, p. 11930 and commenced on that date. Its purpose is to:

- Fix the maximum amounts payable by insurers for certain treatment covered under the *Motor Accidents Compensation Act 1999*.
- Fix the maximum costs for legal services provided in connection with claims relating to motor accidents covered by that scheme.
- Fix the maximum costs for the provision of medical practitioners of certain medico-legal services in connection with such claim.
- Limit the costs payable to a claimant in respect of expert witnesses giving evidence or providing reports on the claimant's behalf.
- Provide for the assessment of costs by a claims assessor under the Act.
- Repeal the *Motor Accidents Compensation Regulation 1999* and to remake a provision of that Regulation.

A copy of both the *Regulatory Impact Statement* and the Regulation may be obtained from Reception or the Bar Library.

## Media Briefing

### Media releases issued by the New South Wales Bar Association

New South Wales Bar Association congratulates Ms Bryant QC on her selection as Chief Federal Magistrate, 31 January 2000

### Media releases issued by the Law Council of Australia

*Council Welcomes Recommended Appointment of Diana Bryant QC as Chief Federal Magistrate of the Federal Magistrates Service, 31 January 2000*

*Law Council concern over arrest of prominent Lawyer in Malaysia, 18 January 2000*

*Law Council urges federal politicians to support Mandatory Sentencing Override Bill: Mandatory Sentencing of juveniles grossly unfair, says Council, 22 December 1999*

*Law Council Welcomes Establishment of Expensive Criminal Cases Fund, 21 December 1999*

*Legal Aid Funding Increase Welcomed, 15 December 1999*

*National privacy legislation, 14 December 1999*

*Council congratulates inaugural Human Rights Law Award winner: Winner exemplifies contribution lawyers make to the community and the disadvantaged, 10 December 1999*

*Increase legal aid for refugees and asylum-seekers, urges Law Council, 26 November 1999*

*Increase legal aid funding for war veterans, urges Law Council, 25 November 1999*

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

## Bar Practice Course Extended in 2000

Anyone coming to the Bar in 2000 should be aware of changes to be introduced for the second intake of the year.

Currently, the Bar Practice Course is a four-week, full time course, costing \$2000.00 and with add on costs amounting to about \$100.00.

As of August 2000 the course will be extended to a five week full time course, but will remain at the same cost of \$2000.00 and the add on costs will be absorbed by the Bar Association.

### Bar Examinations 2000

Information about the Bar examination enrolment procedure and scheduled dates for 2000 can be found on the Bar Association web site, [www.nswbar.asn.au](http://www.nswbar.asn.au) or by contacting the Assistant Education Manager, Stacey Hatch, on 9229 1712.

# District Court civil cases in Sydney West for the year 2000

The Chief Judge has rostered the one judge to sit at Parramatta, Penrith and Campbelltown in year 2000. This will provide an integrated system for hearing for Notices of Motion, Directions, and cases where expedition is required.

The traditional daily list has been replaced with a series of rolling lists at each venue. Details of the progress of each list are provided by notice at 2:00pm each day on the door of the courtroom and a daily telephone message on (02) 9377 5709.

Specific listing arrangements can be made (on application to the court) for witnesses who have special requirements. Arbitration will still be available where appropriate at Parramatta and Penrith to which Campbelltown practitioners will also have access.

The next lists are –

Parramatta:	7/2/2000	4 week rolling list (judge)
	6/3/2000	2 week rolling list (3 arbitrators)
Penrith:	28/2/2000	1 week list (2 arbitrators)
	15/5/2000	3 week rolling list (judge)
Campbelltown:	6/3/2000	2 week rolling list (judge)

Any enquiries about the lists can be faxed to attention of Judge Delaney at Parramatta Court (02) 9895 4100. The profession is asked to assist by advising as soon as any action is settled.

## Coming Up

*Criminal Trial Reform Conference*,  
Melbourne Business School, 24-25  
March 2000

The Standing Committee of Attorneys-General and the AIJA will convene a conference to examine last year's *Working Group on Criminal Trial Reform Report*. A copy of the report may be obtained from the Bar Library or from the Standing Committee's web site at <http://law.gov.au/publications/crimtrial/SCAG.html>. Information about the conference may be obtained from Conference Secretariat at the

AIJA on Ph: (03) 9347 6600, Fax:  
(03) 9347 2980 or email:  
[r.carlton@law.unimelb.edu.au](mailto:r.carlton@law.unimelb.edu.au)

*E-Commerce and online loans:*  
*A practical case study*

The Banking, Finance & Consumer Credit Committee, Business Law Section of the Law Council of Australia will conduct a seminar at the Sydney offices of Clayton Utz on Wednesday 5 April 2000. For more information, contact Carol O'Sullivan on Ph: (02) 6248 8317, Fax: (02) 6248 8317 or email [carol@lawcouncil.asn.au](mailto:carol@lawcouncil.asn.au)

## Find a Barrister

It was reported in the November 1999 edition of *Stop Press* that the Bar Association's *Find a Barrister* database had been upgraded to include a field for searching areas of practice. It was also noted that provision would be made for additional information.

Barristers who would now like to have their foreign language competency noted on *Find a Barrister* are asked to notify the Administrative Support Manager in writing on DX 1204, fax 9221 1149 or email [icolley@nswbar.asn.au](mailto:icolley@nswbar.asn.au)

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# Appointments

## NSW Court of Appeal

J.D. Heydon QC has been appointed as a Judge of Appeal, effective 14 February 2000.

## Acting Judge, NSW District Court

Neil Milson, Magistrate, has been re-appointed as an Acting Judge of the District Court of New South Wales and as a Judge of the Drug Court of New South Wales, effective 21 January 2000 to 20 January 2001.

## Magistrate

Hilary Hannam and Daniel Reiss have been appointed as Magistrates and Wardens, effective 7 February 2000.

## Acting Magistrates

Michael Doring, Gary O'Keeffe, Elizabeth Schreiner, James Smith and Ross Sterland have been appointed Acting Magistrates and as Wardens, effective 20 January 2000 to 30 June 2000.

Charles Gilmore has been appointed as an Acting Magistrate and as a Warden, effective 17 March 2000 to 30 June 2001.

## State Coroner

John Abernethy, Magistrate, has been appointed State Coroner, effective 29 January 2000 to 28 January 2005.

## Acting Deputy State Coroner

Dr Elwyn Elms, Acting Magistrate, has been appointed as an Acting Deputy State Coroner effective 29 January 2000 to 30 June 2000.

## Victims Compensation Tribunal

Charles Gilmore has been appointed as a part-time member of the Victims Compensation Tribunal effective 17 March 2000 to 30 June 2001.

## Acting Crown Prosecutor

Mark Sherring has been appointed as an Acting Crown Prosecutor effective 24 January 2000 to 23 January 2001.

## Acting Public Defender

Eric Wilson has been reappointed Acting Public Defender for the period 27 January 2000 to 26 January 2001.

The secondment of John Booth, Crown Prosecutor, as an Acting Public Defender, has been extended from 27 January 2000 to 26 January 2001.

## Council of Law Reporting

Garry Downes AM QC  
Francis Douglas QC  
Joseph Campbell QC  
Noel Hutley S.C.  
Christopher Birch S.C.

have been appointed acting members of the Council of Law Reporting effective 19 March 2000 to 15 April 2000.

## Administrative Decisions Tribunal

The following is a list of all Members and Associate Members of the Bar Association who currently occupy positions on the Administrative Decisions Tribunal.

## Equal Opportunities Division

### Divisional Head

Her Honour Judge Latham

### Judicial Members

(in alphabetical order)

Penelope Goode  
Peter King  
Chrissa Loukas

## General Division

### President

His Honour Judge Kevin O'Connor

### Judicial Members

(in alphabetical order)

Ronald Davidson  
Geraldine Hoeben

Mark Robinson  
Peter Skinner  
Matthew Smith

## Legal Services Division

### Barrister Members

Caroline Needham S.C.  
(Deputy President)

(in alphabetical order)

Thomas Bathurst QC  
Annabelle Bennett S.C.  
Jennifer Blackman  
John Coombs QC  
Robert Ellicott QC  
Michael Finnane QC  
Robert Macfarlan QC  
John McCarthy QC  
Linton Morris QC  
Henric Nicholas QC  
Sharron Norton QC  
David Officer QC  
Bruce Oslington QC  
Lionel Robberds QC  
Wendy Robinson QC  
John Stowe QC  
Barry Toomey QC  
John West QC

## Bar Association New Members

Adam Hatcher

## Email address: yourname@nswbar.asn.au

The Bar Association is considering allowing members to use the domain name @nswbar.asn.au.

- Members without existing emails would be provided with access to the domain name @nswbar.asn.au, either through the Association's server or an Internet Service Provider (depending on the demand).
- Members with existing emails may wish to have an alternative @nswbar.asn.au domain name email linked to their current account. This would entail no change to a member's existing arrangement with their ISP; the Bar Association's server would simply automatically redirect mail to the "@nswbar" address.

It is intended that this service would be available so long as a member is a financial member of the Association.

There will be a small annual fee for provision of the service in the order of \$60.00 per annum (to be advised).

Members who would like to take advantage of this service are invited to express interest by returning this form to:

Ms L Colley  
Administrative Support Manager  
New South Wales Bar Association  
DX1204 Sydney  
Or email lcolley@nswbar.asn.au or fax on 02 9221 1149

Name \_\_\_\_\_

Chambers \_\_\_\_\_

- I do not have a current email account but would like to have one with the domain name @nswbar.asn.au. Please send more information.
- I have a current email account and would like it linked to an alternate email address with the domain name @nswbar.asn.au. Please send more information.

# Papers to Note

*Sooner, later, never: The Olympic Games and the criminal justice process*, by Nicholas Cowdery QC, 1999 22(3) *UNSW Law Journal* 881.

*NSW Law Reform Commission Report 93: Review of section 316 of the Crimes Act 1900 (NSW)*: This report by the NSWLRC recommends that s316(1) be repealed and that s316(2) be amended. 'The policy behind its introduction was to encourage people to report information about serious offences to the police, but the Commission is not convinced that the section has in practice fulfilled that policy function. The Commission's view is that...its benefits are greatly outweighed by the difficulties in its application and by the abuses committed by the police in enforcing it.' (NSWLRCR93, p.40) A copy may be obtained from the Bar Library, or from the Commission's web site at <http://www.lawlink.nsw.gov.au/lrc.nsf/pages/r93toc>

*Proposed Australian Judicial College Discussion Paper*, by Christopher Roper. The Australian Institute of Judicial Administration and the Judicial Conference of Australia have established a working group to consider the issues raised in the discussion paper. Members of the Bar Association are invited to make submissions and comments. Copies of the Discussion Paper may be obtained from the Bar Library, or from the AJJA web site at [www.ajja.org.au](http://www.ajja.org.au) For further information about making a submission to the working group, contact the Executive Director of the AJJA on Ph: (03) 9347 6600 or Fax: (03) 9347 2980.

*NSW Supreme Court Practice Note 108: Cost orders against practitioners, Practice Note 106: Common Law Division Possession List & Practice Note 107: Photocopy access to documents produced under subpoena or admitted as exhibits*. Copies were distributed by the Bar Association to all clerks. Copies may be obtained from the Bar Library or from the Supreme Court web site at <http://www.lawlink.nsw.gov.au/sc/sc.nsf/pages/scpractice>

*Federal Court Amendment Rules 1999 (No.8)*: was gazetted on 22 December 1999 as Statutory Rule No. 360 of 1999 and commenced on 1 January 2000. It makes amendments to the *Federal Court Rules* resulting from the adoption of the *Corporations Law Rules 2000*, No.359 of 1999, which also came into effect on 1 January 2000.

*Family Court of Australia: Practice Direction No.1 & No.2 of 1999*, 10 December 1999. Copies are available from the Bar Library or from the Family Court web site at [www.familycourt.gov.au](http://www.familycourt.gov.au)

*The economic case for The Bar*: In November 1999 the President of the Law Society of England and Wales sparked considerable debate when he called for the creation of a fused legal profession and the end of an independent Bar. In response, the General Council of the Bar published a report showing that, in civil work, junior barristers are significantly cheaper than a solicitors' firm and afford clients greater choice. A copy may be obtained from the Bar Library.

*Independent scrutiny of the appointment processes of Judges and Queen's Counsel*: In December 1999, Sir Leonard Peach submitted his final report to Britain's Lord Chancellor. The General Council of the Bar has welcomed the report as 'thoughtful and searching.' Recommendations include the creation of a Commission which would audit the selection procedures and act as Ombudsman in the case of complaints by unsuccessful applicants. Copies of the report may be obtained from the Bar Library or from the Lord Chancellor's web site at [www.open.gov.uk/lcd/judicial/peach/report.htm](http://www.open.gov.uk/lcd/judicial/peach/report.htm)

*Transforming the Crown Court: The emerging proposals*: This recent UK report 'sets out important and radical new ways of working for the Crown Court.' It is hoped that the Court may 'deliver levels of service and support to our customers which rival the best of any modern organisation, whether in the public or private sector.' A copy of the report may

be obtained from the Bar Library or in PDF via the Lord Chancellor's web site at <http://www.courtservice.gov.uk/crwnctcc.pdf>

*Australian judicial perspectives on expert evidence: An empirical study*, by Dr Ian Freckelton, Dr Prasuna Reddy and Hugh Selby. This report was the basis for a series of articles in *The Australian* on 17-18 January 2000 about expert evidence provided by psychiatrists. A full report may be purchased from the Australian Institute of Judicial Administration for \$35 (inc. postage and handling). Alternatively a summary of key findings and outcomes may be obtained from the Bar Library or from the AJJA web site at <http://www.ajja.org.au/expsumm.doc>

*Technology and the Use of Transcript*: This discussion paper by the Attorney General's Department invites comment from legal practitioners. Written responses or comments should be sent by 17 March 2000 to the Reporting Services Branch, New South Wales Attorney General's Department, GPO Box 6 Sydney 2001 or by email [barbara\\_flett@agd.nsw.gov.au](mailto:barbara_flett@agd.nsw.gov.au)

*Review of the law on the age of criminal responsibility of children*: This discussion paper, published by the Criminal Law Review Division of the NSW Attorney General's Department, invites relevant individuals and organisations to make written submissions on *doli incapax*. A copy of the paper, together with particulars on where to send submissions, may be obtained from the Internet at [www.lawlink.nsw.gov.au/clrd1.nsf/pages/clrd\\_child](http://www.lawlink.nsw.gov.au/clrd1.nsf/pages/clrd_child) or from the Bar Library.

Responses must be received by Friday 10 March 2000.

*Managing service excellence: Future directions for the Legal Aid Commission of New South Wales*, January 2000. Copy available from the Bar Library.

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# Centre for Legal Education

Christopher Roper, Director of the Centre for Legal Education, recently wrote to the Executive Director of the Bar Association, Philip Selth, who is the Bar Association's member on the Centre's Board, regarding the Centre's relocation to Newcastle. Mr Roper said:

'As from 1 January 2000, the Centre will be transferred from the Law Foundation to the University of Newcastle.

Under the agreement between the Law Foundation and the University, much of the existing business of the Centre will continue, in particular –

- Our research program, at present comprising the national career destinations study
- Our collection of statistics and publication of them in the *Australasian Legal Education Yearbook*
- Our support for the Council of Australian Law Deans, the Legal Education Review and the LawAsia Legal Education Committee

- *The Legal Education Digest* and the *Lawyers' Admission Handbook*
- The biannual New South Wales Legal Education Conference

The Centre's existing library will be transferred to the University of Newcastle library and will be housed in a collection designated as the 'Law Foundation Legal Education Collection.'

We will still engage in consultancies but the intention is that there will be a greater focus on research and a more strategic and selective approach to consultancies.

I will continue as the Director of the Centre. Our other staff will not be coming with me to Newcastle. You will be pleased to know that mutually satisfactory arrangements have been made in regard to all of them.

The University intends that the Centre should continue to have an Advisory Board and all existing members of the Advisory Board will be invited to continue as members.

I feel, in all the circumstances, that this is

a good outcome for the Centre. It has enabled its work to continue and I believe that the Faculty of Law at the University of Newcastle will be a very good and supportive base for our work.'

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## Legal Robes for East Timor

In December last year, members received a circular informing them of an urgent request from the Northern Territory Law Society and Hans Stromheymer, head of the United Nations Legal Mission East Timor (UNLMEET).

East Timor's courts began operations in early January 2000, but the fledgling legal system lacked even the most basic of equipment. The NT Law Society put out an urgent request for legal robes from members of Bar Associations and Law Societies around Australia.

Paul Menzies QC of 8<sup>th</sup> Floor Wentworth Chambers, Philip Liney of 3<sup>rd</sup> Floor Selborne Chambers and Anthony Hewitt S.C. of Jack Shand Chambers responded to the call, and by the time this edition of *Stop Press* goes into circulation, the robes will be in Dili.

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## Legal Assistance Service achieves success for victim of torture

[*Name withheld*] is a Sinhalese citizen of Sri Lanka. In February 1995 he was arrested by police and subjected to five days of mental and physical abuse. For nearly a year following his release [*Name withheld*] and his family were harassed by the authorities.

Eventually, he and his family were able to come to Australia, where they applied for refugee status. The application was, however, rejected by a delegate of the Minister for Immigration and Multicultural Affairs. He subsequently applied to the Refugee Review Tribunal but a Tribunal member withdrew part way through the first hearing.

The RRT at second instance had accepted that the applicant had been severely maltreated whilst detained by Sri Lankan police. Yet it was decided that the security forces would not arrest him or his family if they returned to Colombo. The Tribunal placed some emphasis on the apparent failure of the Sri Lankan authorities to intervene in the

departure of the family at the airport, but did not address much of the applicant's evidence.

An Application for Review was made to the Federal Court of Australia. One week before the scheduled hearing date, the Minister's solicitors agreed to consent orders remitting the matter back to the RRT.

[*Name withheld*] and his family await a fifth hearing in the process of applying for refugee status. Meanwhile, he works and continues to receive treatment for the health disorders resulting from his torture. His son, a source of much pride, was recently made a prefect at his local primary school in Sydney.

[*Name withheld*] and his family were assisted by Bryce Wilson of the New South Wales Legal Aid Commission before the RRT. David Knoll, of 9th Floor Selborne Chambers, acted for the applicant in preparing the Federal Court pleadings, affidavit and submissions.

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## Goods and Services Tax (GST)

The Law Society of New South Wales has established a GST page on its web site. It includes Frequently Asked Questions, News, Announcements, GST Events, Resources and links to relevant Internet sites. It can be found at [www.lawsocnsw.asn.au/practice/gst](http://www.lawsocnsw.asn.au/practice/gst)

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## Reminder

The New South Wales Bar Association would like to remind members attending social functions in the Common Room, or enjoying a meal in the Dining Room, that registered clubs legislation and state licensing laws require all guests to sign the visitors book.

Smoking is prohibited.

# Letters

*A letter to the Returning Officer,*

The 1999 annual bar elections have passed and I remain perplexed by the process.

Of the seventeen Senior Counsel and fifty seven Juniors standing, I knew personally perhaps a dozen, of their policies not at all. I received one circular urging me to vote, but it contained no information as to policy.

My concerns relate to the information provided with respect to candidates and the method required for voting.

I assume there must be good reasons for certain protocols and would be grateful if a colleague enlighten me as to the following:

- i. Why I am required to vote for a minimum number of Senior Counsel, when to do so requires me to vote for candidates whose policies are unclear or invisible?
- ii. Why it is compulsory to vote for Senior Counsel, but not for Junior Counsel?
- iii. Why am I not provided with adequate, or indeed, any information?

Surely I should not be in the position where only if you have managed to network or to learn on the grapevine who these people are and/or coincidentally what they stand for, that you will be able to make an informed vote.

I have inquired why candidates do not campaign. The closest I have got to an answer was that it was somehow *improper* to take to the hustings. Apparently we are meant, as if by osmosis, to absorb what candidates stand for.

It occurs to me that a healthy, vibrant and politically active Bar is the first step to ensuring the Bar's continuing relevancy. The present process leaves something to be desired and for the writer acts as a real

barrier to involvement in the workings of the Bar.

There are many positive qualities to the group of professionals who collectively call themselves the Bar. I am proud to be part of that group and it can only be to our greater credit if we, of all people, conduct our civic processes properly. We ought to serve as an example to all.

I would be interested to receive your comments.

**Peter Hill**

*Oyster Bay*

13 December 1999

*Response from the Returning Officer*

The present composition of the Bar Council was determined a number of years ago. When comments were sought on the new Bar Association constitution, there was no suggestion that the composition or compulsory voting for Senior Counsel be changed. Accordingly, section 11.6 of the new constitution requires that, for a ballot to be valid, votes must be cast for no less than five and no more than nine senior counsel.

A set of address labels is provided on request, at a minimal charge, to any candidate (or other member) wishing to circulate material to voters. The election held last November was the first for some time where address labels were not requested.

Because of timing constraints, it was not practicable under the old Articles of Association for information about candidates to be sent out with the ballot paper. The new constitution (s. 11.4.3) states that: 'The Election Ballot Paper shall ... include the names of all duly nominated and eligible candidates and such other information as the Bar Council may determine.'

**P.A. Setth**

*Returning Officer*

# Security of documents tendered as exhibits

The Supreme Court has recently received correspondence regarding the security of documents which have been produced to the registry in response to a subpoena for production, and which are subsequently tendered as exhibits in proceedings. On occasions, tendered documents have been returned to the wrong person.

When documents are tendered in Court, the associate marks and records each exhibit. In so doing, it is noted whether that document is to be returned to one of the parties or, if the document was produced on subpoena by a non-party, that it is to be returned to the producer.

In the course of busy proceedings it will not always be obvious to the associate to whom certain exhibits belong. To assist the associate, practitioners should ensure that the exhibits are clearly identified when they are tendered. In particular, if exhibits have been extracted from a packet or bundle of documents, this should be noted. Special care should be taken to identify documents which do not belong to the party tendering them.

There will be occasions where exhibits are inadvertently returned to the wrong person. A legal practitioner who becomes aware of misdirected exhibits is obliged to maintain the confidentiality of those documents, and forward them to the owner as soon as practicable. The exhibits office should also be advised so that the relevant case can be checked to ensure that no other exhibits have been misdirected. If the identity of the owner of an exhibit is unclear it should be returned to the exhibits office. A practitioner who does not properly return misdirected exhibits may be found guilty of either unsatisfactory professional conduct or professional misconduct.

Thank you for your assistance.

**Steve Jupp**

*Registrar*

NSW Court of Appeal

## CHAMBERS FOR SALE

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# Bench and Bar v Solicitors Golf Day

In stark contrast to the same time in 1999 the skies over Manly Golf Club on 20 January 2000 were clear and blue and the sun was shining for the Annual Bench and Bar v Solicitors golf match.

The fine weather probably accounted for the 100 plus field contesting the event as well as the hot performance of the Bench and Bar team.

Yes, the Bench and Bar team was victorious over the solicitors, 11.5 games to 8.5 games in the 20 matches played. Justice Keith Mason, on behalf of the Bench and Bar team accepted the symbol of supremacy between the two teams, the Mace of the late Justice Leslie Herron from the President of the Solicitors Golfing Society, Roger Williams.

Individually, as well as collectively, members of the Bench and Bar team shone. Cummings and Jankowski won the best team event with 47 points on a

count back from the runners up Justice Mason and Flaherty. Anthony Hewitt S.C. with 41 points, won the individual competition and Justice John Steele (39 points) was runner up. Andrew Stone won nearest the pin on the 18<sup>th</sup>.



Roger Williams (left) presenting the Mace to Justice Keith Mason, on behalf of the Bench and Bar team.

A special mention must be made of the efforts of Justice Keith Mason. Off a handicap of 22 His Honour scored 36 points including three 4 pointers, one of which was a shot out of the bunker on a par 4 for a birdie. One wonders whether His Honour will appeal when the handicapper at his local club alters his handicap (downwards).

As the sun set, the now traditional post golf dinner was held and attended by about 60 players reminiscing and ruing those putts that just wouldn't drop.

**D.M. Flaherty**  
*Latham Chambers*

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## Walkabout

The following is a selection of meetings and events attended by the President, McColl S.C. on behalf of the Bar Association during December 1999

- |                |  |
|----------------|--|
| 3 - 4 December | The President and Executive Director attended the Law Council meeting in Canberra  |
| 10 December    | The President attended a social function hosted by Crown Prosecutors   |
| 11 December    | The President and the Executive Director attended the Australian Bar Association meeting in Melbourne                          |
| 16 December    | The President and Bar Council hosted a function to thank the staff of the Bar Association for their assistance during the year |

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## Speeches

*Current issues for the Australian Judiciary*, by Chief Justice Gleeson, Tokyo, 17 January 2000.

*A toast to the new Silks*, by the Hon. Justice IDF Callinan, High Court of Australia, 31 January 2000.

Copies of these speeches may be obtained from the Bar Library, or by visiting the High Court's web site at [www.hcourt.gov.au](http://www.hcourt.gov.au)

*Just, quick and cheap: A standard for civil service*, by The Hon. J.J. Spigelman,

Chief Justice of New South Wales, Opening of Law Term Dinner, 31 January 2000, Parliament House, Sydney.

A copy of this speech may be obtained from the Bar Library, or by visiting the Supreme Court's web site at <http://www.lawlink.nsw.gov.au/sc/>

*Speech given by AJ Bellanto QC on the retirement of Judge Flannery*, Wednesday 2 February 2000. A copy of this speech may be obtained from the Bar Library.

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## Part-time Magistrate

Expressions of interest are invited from persons admitted or qualified for admission as a Legal Practitioner, Barrister or Solicitor in an Australian jurisdiction for appointment as a part-time 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. Expressions of interest are particularly welcome from those persons wishing to work and reside in country areas of NSW.

**Inquiries:** Ms P.J. Staunton, AM, Chief Magistrate, (02) 9287 7615, or Mr L.G. Glanfield, Director General, Attorney General's Department, (02) 9228 7313.

**Expressions of interest** must be in writing, accompanied by a detailed curriculum vitae and the names of at least two referees, and forwarded to the Statutory Appointments Officer, NSW Attorney General's Department, Box 6 GPO, Sydney NSW 2001, by 25 February 2000.

The expressions of interest received in response to the advertisement for full-time Magistrates published in July 1999 will be carried forward, and it is unnecessary for those persons to apply again.

### CHAMBERS FOR SALE

13th Floor, Selborne Wentworth Chambers has a room and a half for sale.

The chambers are situated on the Macquarie Street side of the building. The floor consists of three Senior Counsel and 28 Juniors.

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All enquiries should be directed to: Mr Daniel Noll on **9377 5164**.

# Human Rights Proceedings in the Federal Court of Australia

By Philip Kellow, Deputy Registrar, Federal Court of Australia

In October 1999 the Federal Parliament enacted the *Human Rights Legislation Amendment Act (No 1) 1999*. This Act amends the *Human Rights and Equal Opportunity Commission Act 1986* to give the Federal Court jurisdiction to hear complaints of unlawful discrimination made under the *Sex Discrimination Act 1984*, *Racial Discrimination Act 1975* and *Disability Discrimination Act 1992*.

The legislation makes it unlawful to discriminate on the basis of race, sex and disability in various areas, including employment, education, access to premises, accommodation and the provision of goods, services and facilities etc. Unlawful discrimination is defined in the legislation as meaning any acts, omissions or practices that are unlawful under:

- (a) Part 2 of the *Disability Discrimination Act 1992*; or
- (b) Part II or IIA of the *Racial Discrimination Act 1975*; or
- (c) Part II of the *Sex Discrimination Act 1984*;  
and includes any conduct that is an offence under:
- (d) Division 4 of Part 2 of the *Disability Discrimination Act 1992*; or
- (e) subsection 27(2) of the *Racial Discrimination Act 1975*; or
- (f) section 94 of the *Sex Discrimination Act 1984*.

The Court's new jurisdiction is expected to commence on 13 April 2000.

## The Federal Court's jurisdiction

A person may only apply to the Federal Court to hear a complaint of unlawful discrimination if the Human Rights and Equal Opportunity Commission has terminated the complaint and issued a termination notice to each party.

This means a complaint must first be made to the Commission, which will conduct the initial investigation and conciliation. If the complaint can not be settled then the Commission must

terminate the complaint. The Commission may also terminate the complaint on other grounds.

An application to the Court must be made within 28 days after the date on which the Commission issued the termination notice. The Court has the power to extend this time limit if it is satisfied that there is good reason for doing so.

## Proceedings in the Federal Court

The Federal Court has amended its rules by inserting a new Order 81 that sets out particular rules in relation to a proceeding in the Court alleging unlawful discrimination. The other Orders of the Federal Court Rules will apply to such a proceeding, so far as they are relevant and not inconsistent with Order 81.

A proceeding alleging unlawful discrimination must be commenced by the applicant completing an Application in accordance with Form 167. The allegations of unlawful discrimination in the application must be substantially the same as those made in the terminated complaint. A copy of the original complaint to the Commission (if available), and the notice of termination given by the Commission, must be attached to the application. The applicant must also make an affidavit stating the facts in support of the application.

If the application is being made more than 28 days after the notice of termination was issued, the application must include a request for an extension of time and set out the reasons for the delay.

The original application and affidavit, plus a copy of the application and affidavit for each respondent and the Commission, must be delivered, posted or faxed to a Registry of the Court. The applicant must also pay the application fee, which is expected to be \$50. If the documents are accepted, the Registry will endorse the application with the time and date of the first directions hearing.

Once the application and affidavit have been filed in the Federal Court, the

applicant must arrange for a stamped copy of these documents to be given to each respondent and to the Commission.

The President of the Commission may provide the Federal Court with a written report on a complaint that has been terminated. It is also possible for the Aboriginal and Torres Strait Islander Social Justice Commissioner, Disability Discrimination Commissioner, Human Rights Commissioner, Race Discrimination Commissioner or Sex Discrimination Commissioner to apply to the Court for leave to appear as *amicus curiae*.

A respondent to an application must file a Notice of Appearance (Form 15) in the Registry prior to the directions hearing. A respondent or his or her representative must also attend the Court at that hearing. After the directions hearing each respondent who intends to defend the application must, unless the Court otherwise orders, file and serve a Defence in accordance with Form 168.

Subject to the obligation on the Court to act judicially, the amending legislation provides that the Court is not bound by technicalities or legal forms in proceedings alleging unlawful discrimination. This provision is subject to Chapter III of the Constitution.

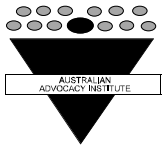
## Representation in human rights proceedings

Under the amending legislation, a party to a proceeding in the Court alleging unlawful discrimination may be represented by a solicitor or barrister, or by a person who is not a lawyer provided the Court thinks that person is an appropriate representative.

## For further information

The Court is preparing further information about its practices and procedures in the new human rights jurisdiction. In the meantime, a copy of Order 81 and the relevant forms can be obtained from the Court or found on its website at [www.fedcourt.gov.au](http://www.fedcourt.gov.au)

Further information can also be obtained by contacting Philip Kellow on 02 9230 8336 or by sending an email to [kellowp@fedcourt.gov.au](mailto:kellowp@fedcourt.gov.au)



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The NSW Bar Association

## Seminar



### Supreme Court Rules

(Amendment No.337) 1999, published in Gazette No. 9  
of 28 January 2000

### New South Wales Barristers' Rules

Amendments made under s57A of *The Legal Profession Act 1987* by the Council of the New South Wales Bar Association, published in *Gazette No. 7* of 21 January 2000.  
**NSW Supreme Court Practice Note No.108: Cost Orders Against Practitioners**

The New South Wales Bar Association would like to invite all members to attend a seminar at 5.00 pm on Wednesday 23 February 2000 in the Bar Association Common.

The President of the New South Wales Bar Association, Ruth McColl S.C. will chair the meeting, where the Chief Justice of NSW, The Hon. J.J. Spigelman and Bret Walker S.C. will provide detailed explanations on the rule changes and answer questions from the audience.

The proceedings will be videotaped for distribution to members in regional New South Wales.

For more information, contact Chris Winslow, Public Affairs Officer at the NSW Bar Association on Ph: (02) 9229 1732, Fax: (02) 9221 1149 or email: [mediainquiries@nswbar.asn.au](mailto:mediainquiries@nswbar.asn.au)

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

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## Editor's Note

*Stop Press* has been renamed *New South Wales Bar Brief*. A new ISSN has been registered with the National Library of Australia, where an issue will be sent in accordance with the legal deposit provisions of the *Copyright Act 1968*. For ease of reference, issue numbers will continue in the same sequence used by *Stop Press*.