



President's Column

Fundamental Rights

On 31 October 2000 the Honourable Justice Michael Kirby AC CMG opened the Castan Centre for Human Rights Law in Melbourne. As his Honour said, Ron Castan QC ‘turned the dreadful experiences of the Jewish people into a zeal for action to protect fundamental human rights wherever they were threatened.’ His Honour recalled that the world movement for the protection of human rights was the outcome of the settlement that involved the establishment of the United Nations after the Second World War, including the discovery of the ‘grim horrors of the Holocaust’.

Australians are, by and large, sensitive to the protection of those human rights, the breach of which led to those horrors. Regrettably, recent events in Sydney indicate that sensitivity is not shared by all members of our community.

The Premier, The Hon. Bob Carr MP, has disclosed a number of deplorable incidents have taken place recently, including a Rabbi's home being firebombed three times as well as attacks on a synagogue and harassment of members of the Jewish community.

Speaking in the Legislative Assembly on 14 November, the Premier said ‘attacking places of worship is a particularly offensive crime, not only against the 35,000 members of the Jewish community but against our Australian sense of a fairness’.

The attacks apparently coincide with the renewed violence between Israel and the Palestinians in the Middle East. Whether or not the events are linked, any attack upon a religious site or a representative of a religion conveys the strong inference that the attackers object to that particular religion. Such displays are not only offensive to the Australian sense of fairness to which the Premier referred, but also to the fundamental freedom to the exercise of religion in s. 116 of the *Constitution*. As Latham CJ made it clear in *Adelaide Company of Jehovah's*



Ruth McColl S.C., President.

Witnesses Inc. v. The Commonwealth (1943) 67 CLR 116, s. 116 ‘operates not only to protect the freedom of religion, but also to protect the right of a man to have no religion’. Justice Gibbs has described that part of s. 116 forbidding the making of a law prohibiting the free exercise of any religion as protecting a fundamental human right: *Attorney-General (Vict.) ex rel Black v. The Commonwealth* (1981) 146 CLR 559 at 603.

That fundamental human right must co-exist, of course, with other rights, including the right of free speech. Both the right to freedom of religion and the right to freedom of speech exist within the boundaries of civilised society. The right to free speech affords a sufficient and appropriate vehicle for the ventilation of disagreement with another's views: there is no room in this society for expressions of political or religious opinion to take the form of acts of violence.

When a Car is a Train

When the Motor Accidents Compensation Bill 1999 was read for the second time in the Legislative Council in June 1999, the

Special Minister of State, the Honourable John Della Bosca MLC, announced that it implemented ‘the Government's promise to deliver cheaper green slip prices to the families of New South Wales’. This promise was to be achieved ‘by a range of new measures to improve the position of people injured in motor accidents, promote a more competitive market for green slips and encourage safer driving’. At the time, the Bar Association pointed out that the saving of \$100 or thereabouts per motorist per annum on the average price of green slips was a high price to pay for those parts of the Bill which had the effect of excluding any claim for damages for pain and suffering unless the injured person had a greater than 10% disability. That level of disability was calculated under a table which had the effect that an estimated 90% of cases would fail to qualify for compensation.

The Minister's Second Reading Speech was redolent with references to road safety, motor vehicles, green slips and the like – in other words, matters related to motor vehicle drivers, passengers and pedestrians.

There was no mention of the fact that Schedule 4 of the Bill inserted s. 121 into the *Transport Administration Act 1988*. That provision, in substance, re-enacted s. 69(2) of the *Motor Accidents Act 1988*. Section 121 operates to ensure that those parts of the *Motor Accidents Compensation Act 1999* relating to awards of damages (Chapter 5) apply to any award of damages relating to the death of, or bodily injury to, a person caused by or arising out of a public transport accident.

It is difficult to discern how the objects of the *Motor Accidents Compensation Act 1999*, all of which in one way or the other related to motor vehicle accidents, compulsory third party insurance and the like, are fulfilled by limiting the damages which might be payable from an accident involving a train.

Continued on page 2

The effect of s. 121 of the *Transport Administration Act 1988* is that the harsh limitations on the recovery of damages in motor accidents may apply to all of those who, for example, wish to make claims in relation to the Glenbrook train disaster. Whether or not it does will be determined in proceedings which have been commenced on behalf of a number of victims of that tragedy.

There was little justification for sacrificing the rights of those injured in motor vehicle accidents for the dubious value of passing on a saving of \$100 per annum to the motorists of New South Wales. There is no justification for extending the miserable limitations in the scheme enacted by in the Motor Accidents Compensation Act to limit the rights of those injured in catastrophes such as the Glenbrook train disaster.

Bar Charity

Elsewhere in this issue, you will find a call to contribute to the Bar's Annual Charity, the Aboriginal Medical Service at Redfern. I encourage all members to remember this worthwhile cause throughout the year and, in particular, at Christmas when demands on such services often strain resources to the limit.

Australian Bar Association

Ruth McColl S.C., President of the New South Wales Bar Association, was elected Vice President of the Australian Bar Association on 22 October 2000. McColl S.C. replaces Malcolm Gray QC, who was recently appointed to the Supreme Court of the Australian Capital Territory.

Bar Council business for September 2000

President's Report

**Swearing in of Justice R A Conti,
Federal Court, Sydney, Tuesday
15 August 2000**

The President advised that she had represented the Bar at the swearing-in of Justice Conti.

**Meeting with Newcastle Bar, Friday
18 August 2000**

The President advised that she and Katzmann S.C. had attended a very successful social function hosted by the Newcastle Bar on 18 August 2000.

**Olympics pro bono scheme briefing
and launch, Wednesday 23 August
2000**

The President noted that the Bar Association's Olympic Games pro bono scheme was 'launched' on 23 August 2000. She expressed her thanks to Slattery QC, in particular, for his work in establishing the scheme.

**Continuing Legal Education
breakfast, 'Legal disputes in sport',
Thursday 24 August 2000**

The President had attended the breakfast address given by John Boulton AM, a former member of the Bar and now the Director of the Australian Institute of Sport.

**Meeting with Chief Justice of the
Family Court of Australia**

The President advised that she and the Executive Director had met with Chief Justice Nicholson on 23 August 2000.

**Heads of Chambers meeting,
Wednesday 23 August 2000**

The President advised that matters discussed at the Heads of Chambers meeting included solicitors asking that fee notes be addressed direct to clients, listing problems in the District Court, and the need for Tutors to encourage Readers to complete their Reading requirements.

The Heads of Chambers had strongly endorsed a suggestion that Clerks be asked to document problems with listing arrangements in the District Court, a 'Court watch' scheme. The President had asked the Executive Director to discuss this proposal with the President of the Clerks' Association.

**Meeting with the northern Bar, Byron
Bay, Friday 1 September 2000**

The President advised that she, Harrison S.C. and the Executive Director had attended a dinner with members of the 'northern Bar' at Byron Bay on 1 September 2000. The dinner had been very successful. The 'northern members' had expressed their appreciation that all the

problems raised at the dinner held in 1998 with Barker QC and the Executive Director had been resolved to their satisfaction. The few matters raised on this occasion were being followed-up by the President and Executive Director.

The President noted that the success of the Newcastle and Byron Bay functions showed the value of members of the Bar Council and regional members meeting on a regular basis.

**Crimes (Sentencing Procedure)
Amendment (Life Sentence
Confirmation) Bill 2000**

The President referred to the letter to the *Daily Telegraph*, which she wrote following public criticism of the Director of Public Prosecution's decision not to appeal the sentences given to those responsible for the death of truck driver Mark Evans, killed when rocks were thrown from an overpass on the M5 at Menangle Park. She had also been critical of the State Opposition, who had proposed legislation to make the DPP answerable to a parliamentary committee.

The President then outlined what the Association had done to persuade members of the Legislative Council to reject the Opposition's Crimes (Sentencing Procedure) Amendment (Life Sentence

Confirmation) Bill 2000. A media release, 'Respect the separation of powers', says the NSW Bar Association, had been issued on Wednesday 27 September. Game S.C., S. Odgers [as he then was] and the Executive Director had given several briefing sessions to Legislative Council Crossbenchers. The President had given a joint media press conference with the President of the Law Society of NSW. She had also participated in an interview conducted by Quentin Dempster of her and the Shadow Attorney General on 'Stateline' on Friday 1 September.

The Bar Association made it clear that it opposed passage of the Bill intended to retrospectively prevent Allan Baker having his application for early release considered by the Supreme Court at the very time Greg James J was preparing a reserved judgment because this was interference with the independent judicial process.

The Bill did not pass. There was some ill-informed and emotional criticism of the Bar Association, and of the President.

The President expressed her thanks for the work undertaken on this matter by Game S.C., S. Odgers and the Executive Director.

Ceremonial sitting, Land and Environment Court Twentieth Anniversary, Friday 1 September 2000

The President advised that she had represented the Bar Association at the Land and Environment Court's ceremonial sitting on the 20th anniversary of the Court's establishment.

Items for consideration

Minutes of Executive meeting on 29 August 2000

Bar Council endorsed generally the minutes of the Executive's meeting, and in particular:

Financial assistance for Mr Benevides Correia Barros

Executive noted that Mr Barros, a young East Timorese who completed his law studies in Indonesia, has recently been working for the UN Transitional Administration in East Timor in its legal affairs section.

It was resolved that the Bar Association donate \$500 towards the costs of Mr Barros attending an English for Academic Purposes course at UNSW as a prerequisite to him undertaking a Masters of Law at UNSW in 2001.

Bar Association membership categories

The Executive Director advised that he had received several informal requests from solicitors and others about membership of the Association.

Bar Council resolved that any application would be considered on its individual merits. The Executive Director need not draw up guidelines; the Association's Constitution provided for all applications to be considered by the Bar Council.

The Liquor Bar and functions in the Common Room

The Executive Director advised that noise from the liquor bar is a problem during the giving of lectures and seminars in the Common Room and Dining Room. Bar Council resolved that, subject to any relevant licensing law, the liquor bar not be open during functions in the Common Room and Dining Room where liquor was not being provided.

Selection criteria for mediators

The Bar Council discussed the current approved guidelines and the changes it asked be made to those guidelines in August 1999.

Bar Council noted the views of the Chairs of the Mediation and Arbitration Committees that the current selection criteria, if properly applied, should ensure that all those selected could be held out by the Association as qualified mediators, arbitrators and evaluators.

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.**

**Range of jurisdictions with
commercial, equity, probate,
professional liability, common
law and administrative
law emphasis.**

**All enquiries
should be directed to:
Mr Jeff Aldenhoven
on 9377 5164.**



Ermenegildo Zegna

60 Martin Place, Sydney

Telephone: (02) 9231 3622

Bar Council business for September 2000

(Continued from page 3)

Bar Council was of the view that the guidelines should allow the Bar Council an opportunity to;

- refer back to the Mediation and Arbitration Committees recommendations about which it had queries;
- provide for applicants to state whether they met the criteria set out in Supreme Court Practice Note 102, 'Mediators and Evaluators – Compiling Lists'; and
- provide for applicants to give their consent for the Committees and Bar Council to make relevant enquires where they declared there were adverse circumstances concerning their application, or it was known there were such circumstances.

Bar Council resolved that, in light of the Bar Council's discussion of this matter, the Executive Director settle with the Chairs of the Mediation and Arbitration Committees the wording of the application forms and accompanying documentation that were to be sent to all members.

Bar Council noted that some members who did not hold a practising certificate had in the past been recommended for appointment as a court-approved mediator, arbitrator or evaluator. Given that members not holding a practising certificate could apply direct to the courts for appointment, Bar Council resolved that the possession of a current practising certificate be a prerequisite for inclusion on any Bar Association Panel.

Barristers Rule 87(j) – Administrative Decisions Tribunal

Walker S.C. advised that several requests have been received from part-time members of the Administrative Decisions Tribunal for advice as to whether Rule 87(j) of the NSW Barristers' Rules applied to them.

Bar Council was of the view that the present rule, appropriately, prevents any member (other than a true 'acting' appointment) of the Tribunal from appearing before the Tribunal, including its internal appellate level, for the periods stipulated in the Rules. It does not prevent them from appearing in, or advising on, cases in the Supreme Court or the High Court in the nature of judicial review of Tribunal decisions. However, a brief could not be accepted which involved any review of the barrister's own conduct or decision as a member of the Tribunal; it may be that Rule 87(e) applies to such a brief.

Bar Council resolved to decline to alter Rule 87(j).

It was further resolved that plain advice be given to enquirers as to the Rule's application to part-time members of the Administrative Decisions Tribunal.

Voice and presentation workshop

Slattery QC, Chair of the Equal Opportunity Committee, noted that on 13 April 2000 Bar Council had agreed to workshops being conducted on using voice in the courtroom. Bar Council had also resolved that workshops of this nature also form part of the Bar Readers' Course.

The Equal Opportunity Committee made inquiries of the Education Committee in relation to presentations about voice conducted in previous Readers' courses. The Committee has also made its own inquiries about holding a suitable seminar in relation to voice in the courtroom, not excluding male barristers but focusing on aspects of the female voice in the courtroom. The Committee developed a seminar on 'Voice and Presentation' it wished to hold in early 2001.

Bar Council resolved that a seminar on Voice and Presentation of the type proposed by the Equal Opportunity Committee be conducted in early 2001.

Professional courtesy and politeness

Slattery QC, Chair of the Equal Opportunity Committee, advised that the Committee believes that a fresh approach needs to be taken to encouraging politeness and professional courtesy and discouraging sexist criticism at the Bar. The Committee proposed that a cartoonist be engaged to draw cartoons for publication in *Bar Brief* which dealt in a humorous way with professional courtesy, sexism at the Bar and other issues such as access for the physically impaired. The cartoons would be published in the context of articles about these issues in *Bar Brief*.

Bar Council resolved to engage a cartoonist to draw cartoons in relation to Equal Opportunity issues that are discussed in *Bar Brief*.

Draft Ballot Paper – elections for Bar Council 2001

The Executive Director advised that the primary difference between the draft ballot paper and that used in 1999 was that the explanatory notes referred to the Bar Association's Constitution that came into effect on 1 January 2000.

Bar Council noted that it was the Returning Officer's responsibility to determine the design of the ballot paper. Bar Council asked the Executive Director, the Returning Officer, to consider having the ballot paper show the names by which the candidates are known, rather than the traditional initials and family name.

Note: 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.

Family Court Notice: Matters listed for compliance mentions after 6 November 2000

The Sydney Registry of the Family Court has introduced changes to the listing procedure for defended matters with a view to improving the rate of compliance with directions of the Court.

In matters listed for a final hearing before the Court, affidavits may be relied upon only if filed and served in accordance with the directions made by the court, unless leave is granted by the Court to file affidavits out of time.

Such leave may only be granted at the compliance mention on the basis of substantial grounds contained in an affidavit of the legal representative of the defaulting party or the defaulting party, if unrepresented, setting out:

1. Reasons for non-compliance with directions made by the Court.
2. The relevance for the final hearing of the proposed affidavit of the party or witness.

New members of the Bar Association

Local Practising Practitioner

Farid Assaf	12 Selborne
Gabrielle Bashir	Forbes
Paul Bolster	6 Selborne
Grant Brady	11 Garfield Barwick
Timothy Chadwick	3 Wentworth
Vera Culkoff	10 Wentworth
Nicole Gilchrist	11 Garfield Barwick
Simon Glascott	Maurice Byers
John Heazlewood	Lachlan Macquarie
Richard Jankowski	Sir Owen Dixon
Juris Laucis	3 Wentworth
Robert Newton	Latham
Michael Northcott	Edmund Barton

Bar Councillors visit Orange

Bill Walsh

William Owen Chambers

On Sunday 15 October 2000 the President, McColl S.C., Senior Vice-President Bret Walker S.C. and Executive Director Philip Selth, travelled to Orange to join members of the Western Regional Bar for discussion and lunch.

But the day was not uneventful for the members of the Bar Council. Their plane was delayed for three hours in Sydney, which meant that they did not arrive in Orange until after 2.00pm for the 12.00pm – 1.00pm lunch. Lesser mortals would have cancelled the trip, but not those who are the ‘servants of all yet of none’.

The Western Bar waited obediently and hopeful at Orange, not knowing whether the Three Musketeers would ever arrive or, more importantly, whether we would be having any lunch. In the meantime, a crisis had arisen at the restaurant in Orange – the kitchen would close at 2.30pm. We don’t work on the Sabbath after 2.30pm in the country.

What would we do? We dispatched Tancred to the Orange Airport armed with a mobile phone and three copies of the restaurant’s menu. At 2.10pm, the President, Senior Vice-President and Executive Director of what the local paper was later to report as the ‘influential’ Bar Association of New South Wales, stepped onto Orange soil. It was a momentous occasion. Tancred thrust a menu into the hands of each of the three VIPs; they made their selections; their orders were transmitted to the restaurant by mobile phone at 2.20pm. Staff in the restaurant kitchen swung into action, fearful that they might incur any overtime.

In any event, we all had a good afternoon discussing and solving all the problems, which face Regional barristers, as well as a very nice lunch. We very much enjoyed each other’s company.

We at the Regional Bars are always grateful for the time taken and interest shown by the Bar Council. Sunday 15 October 2000 was no exception even though it proved a memorable day.

CHAMBERS FOR SALE

9th FLOOR
WENTWORTH
CHAMBERS

A single room has become available for purchase.

The floor consists of four senior counsel and eleven mostly senior juniors who practice in commercial, equity, professional liability, common law and land and environment.

The floor possesses an extensive library and has recently been cabled for high speed Internet access.

All inquiries to the Clerk, Mr. John Maunsell on 92324811. Written applications are to be sent to the Clerk at DX 373.

Appointments

Acting Judge of Appeal

The Hon. Justice Ipp, a Judge of the Supreme Court of Western Australia, has been appointed as an Acting Judge and Acting Judge of Appeal of the Supreme Court of New South Wales, effective 29 January 2001 to 28 January 2002.

Magistrates

Warwick Hunt and Paula Russell have been appointed as Magistrates and as Wardens, effective 23 October 2000.

Acting Magistrate

Langdon Could has been appointed as an Acting Magistrate and as a Warden, effective 2 November 2000 to 30 June 2001.

Acting Public Defender

Anthony Cook has been appointed as an Acting Public Defender, effective 21 October 2000 to 20 October 2001.

Moser legal support

“Specialist Service for Specialists”

Over 20 years of experience working for Barristers

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

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

\$29 per hour (we pay the temp, tax, workers comp and super)

Call Jackie Moser anytime on 9299 6727

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

Member of the RCSA

Senior Counsel 2000

Geoffrey Petty

Sir James Martin Chambers

Called to the NSW Bar on 8 March 1974. Petty has a degree from Sydney University. His main areas of practice include common law and common law appellate.

John Dailly

9 Windeyer Chambers

Called to the NSW Bar on 15 September 1978. Dailly has a Bachelor of Laws and Master of Commerce from the University of New South Wales, as well as a Diploma of Criminology from Sydney University. During the last 17 years he has practised mainly in the criminal law field. During 1995 and 1996 he appeared as principal counsel for the New South Wales Commissioned Police Officers' Association at the Wood Royal Commission. In 1998 he appeared in the inquest into the death of Roni Levi on Bondi Beach.

Michael Bozic

7 Selborne Chambers

Called to the NSW Bar on 6 November 1981. Bozic's main areas of practice are professional negligence and discipline, particularly in relation to medical practitioners.

Robert Goot AM

State Chambers

Commenced practice at the NSW Bar on 17 December 1981. Goot has practised mainly in the areas of industrial, employment and unfair contracts law.

Stephen Epstein

Nigel Bowen Chambers

Called to the NSW Bar on 12 February 1982. Epstein has a Bachelor of Arts and Bachelor of Laws from the University of Sydney. His major areas of practice are commercial law and equity, particularly in the field of corporate insolvency.

Graeme Little

Elizabeth Street Chambers

Called to the NSW Bar on 9 July 1982. Little has a Bachelor of Laws from the University of Canterbury, New Zealand. His main areas of practice include common law, personal injury and insurance law.

Jonathan Simpkins

7 Selborne Chambers

Called to the NSW Bar on 5 August 1983. Simpkins has a Bachelor of Arts and of Laws from the University of New South Wales and a Master of Laws from Sydney University. His principal areas of practice include building law, banking, trade practices, professional negligence, insurance law, trusts, commercial law and equity.

Robin Margo

11 St James Hall

Called to the NSW Bar on 4 November

1983. Margo has a Bachelor of Laws from the University of Witwatersrand and went to Oxford as a Rhodes Scholar, where he obtained a Master of Arts. He was admitted as an advocate of the Supreme Court of South Africa in 1975 and lectured in law at Witwatersrand and University of Queensland.

Francesco Corsaro

State Chambers

Called to the NSW Bar on 20 December 1985. Corsaro has a Bachelor of Laws and a Bachelor of Economics from the University of Sydney. His main areas of practice in recent years have been building, construction and engineering law.

Stephen Rushton

7 Selborne Chambers

Called to the NSW Bar on 26 September 1986. Rushton has a Bachelor of Arts and a Bachelor of Laws from Sydney University. His main areas of practice include criminal law, competition and trade practices law and commercial arbitration.

Stuart Donaldson

Ground Floor Wentworth Chambers

Called to the NSW Bar on 26 September 1986. Donaldson has a Bachelor of Arts and of Laws from the University of New South Wales. His principal areas of practice include insurance law, professional negligence and construction law.

Peter Berman

Crown Prosecutors' Chambers

Commenced practice at the NSW Bar on 1 February 1988. Berman has a Bachelor of Laws from Macquarie University and a Master of Laws from London University. His main area of practice is criminal appellate advocacy. He is co-editor of Butterworth's *Criminal Law News*, and is a member of the Bar Association's Advocacy and Criminal Law Committees. Since January 1998 he has been a Deputy Senior Crown Prosecutor.

Peter Zahra

Carl Shannon Chambers

Called to the NSW Bar on 8 April 1988. Zahra has a Bachelor of Laws and a Master of Laws from Sydney University. He is the author of *Drug Law in New South Wales* and *Drug Law in the Code States*. Since September 1999 he has been a Deputy Senior Public Defender.

Stephen Odgers

Forbes Chambers

Commenced practice at the NSW Bar on 1 February 1989. Odgers has a Bachelor of Laws from the Australian National University and a Master of Laws from Columbia University. He has specialised in criminal law and is the author of *Uniform Evidence Law* (1995 -), editor of *Criminal Law Journal*, and co-author of *Australian*

Criminal Justice (1994 -). In addition to numerous criminal trials, he has appeared in inquiries such as the Royal Commission into Aboriginal Deaths in Custody. Odgers has been a lecturer at Sydney University and has been a member of Bar Council since 1998.

Justin Gleeson

7 Wentworth Chambers

Called to the NSW Bar on 10 February 1989. Gleeson obtained First Class Honours and the University Medal in Law at Sydney University and a Bachelor of Civil Law at Oxford. His main areas of practice include corporations law, insurance, professional negligence and intellectual property. He is a member of Bar Council and the current editor of *Bar News*.

Stephen Gageler

11 Selborne Chambers

Commenced practice at the NSW Bar on 5 February 1990. Gageler has a Bachelor of Economics from the Australian National University and a Master of Laws from Harvard University. He was admitted as a barrister and solicitor in the Australian Capital Territory in 1982 and prior to coming to the New South Wales Bar, he worked as assistant to the Commonwealth Solicitor-General.

David Hammerschlag

11 St James Hall

Called to the NSW Bar on 2 August 1991. Hammerschlag has a Bachelor of Arts and Bachelor of Laws from the University of Witwatersrand, South Africa. He was admitted to the South African Bar in March 1983.

Harry Dixon

Frederick Jordan Chambers

Called to the NSW Bar on 31 May 1996. Dixon has a Bachelor of Arts and of Laws from the University of Cape Town and a Master of Laws from University of Melbourne. He was admitted to the Independent Bar of Western Australia in 1988, before moving to Sydney. Dixon's main areas of practice include industrial law, employment law, discrimination law and occupational health and safety.

Roderick Cordara

Essex Court Chambers (UK) and 7 Wentworth Chambers

Called to the NSW Bar on 24 September 1999. Cordara has a first class Master of Arts degree in law from Cambridge University (Trinity Hall: 1974). He has been a member of the English Bar since 1975 and took Silk in the UK in 1994. His main areas of practice are tax and commercial law.

District Court sittings for 2001

By The Hon. Justice R O Blanch, Chief Judge of the New South Wales District Court.

The criminal business of the District Court is now showing signs of significant improvement, both in a reduction in the number of matters awaiting trial and in the timeliness of getting matters to trial. At the end of September, during which month few courts were sitting, the number of trials on hand in Sydney was only 317 and in Sydney West 274. I expect those numbers to be reduced by the end of the year. As a direct result of these improvements, the number of courts sitting in Sydney West has been reduced and at the beginning of next year only three courts will sit in crime at Parramatta, instead of four. This will mean that all grounds appeals will no longer be dealt with only at Parramatta, but will be heard also at Campbelltown and Penrith.

The reduction in the number of pending trials in Sydney West and Sydney has enabled the Court to concentrate on having old cases heard and providing an opportunity for new cases to be heard quickly. The latest information I have from the Bureau of Crime Statistics indicates that by the middle of this year, the median trial delay in Sydney had fallen from 14 months to eight months. Such an improvement will allow us to lose the title of the slowest District or County Court in Australia in dealing with criminal trials. I expect that from the beginning of the year 2001 there will be a strong presumption that all criminal trials in Sydney will be listed for hearing within four months of committal. As practitioners would be aware, this presumption has applied in Sydney West since the beginning of the year 2000. An extra 11 weeks have been allocated for civil sittings in the same circuits.

The judge time saved is largely being used in country circuits during 2001. The calendar for next year makes provision for the Court to sit for 412 weeks in crime in the circuit courts (which does not include Gosford, Newcastle or Wollongong) as opposed to 322 weeks allocated in the calendar for 2000. In addition I have kept in reserve twelve further weeks which will be allocated during the year where the greatest need arises. This may be at smaller centres where no sittings are allocated or it may be at larger centres where the sittings allocated are not sufficient to dispose of the work.

Of course, the sittings allocated to the country circuits in the year 2001 represent by far the largest number of sittings the Court has ever allocated to the country areas of the State. I have been able to do this not only by saving judge time in Sydney West but also by an increased

funding allocation from the Government to meet the costs of circuit work. From the Court's point of view circuit sittings are expensive and it is therefore important to ensure they are as productive as possible.

It is to this end that I have published *Practice note 55*, which sets out a presumptive listing pattern for trials in two or three week criminal circuit sittings. Before publishing that practice note, I consulted with the Legal Aid Commission and the Director of Public Prosecutions, who are the chief fund providers in the criminal justice system. The practice note was issued on the basis that both the Office of the Director of Public Prosecutions and the Legal Aid Commission were able to cope with such a regime.

There is a familiar tension between practitioners and the Court in relation to listing cases. Practitioners want to know their cases have a definite date to commence. The Court wishes to ensure the considerable investment of public funds in running the court system is not wasted by having courts idle. In the country, if an accused pleads on the day of trial or if the matter is unexpectedly adjourned, there is nothing for the judge to do generally, except wait for the next trial to be ready. Our experience is that frequently an accused does plead guilty unexpectedly and on other occasions there is a last minute application for an adjournment. The result often is wasted court time and a resulting waste of public funds.

In Brief

The Board of Counsel's Chambers has resolved to install a wheelchair ramp from Phillip Street. Work will commence during the 2000/2001 summer break. A disabled toilet has been installed on the Wentworth ground floor, in the corridor leading to the Law Courts.

Correction

The October edition of *Bar Brief* included a tribute to Francis De Saxe OAM. It referred to '...international rugby league footballer Joe Pearce'. This should have read 'Sid 'Joe' Pearce'. The Editor of *Bar Brief* regrets any confusion this may have caused.

The solution is really in the hands of practitioners. If cases are prepared well in advance of circuit sittings and there is appropriate communication between the prosecution and the defence and if the Court is notified precisely what is going to happen during the sittings, then there can be a greater certainty of the commencement of a particular trial on a particular day.

I believe it is important that people in the country are served by a criminal justice system which is just as efficient as people in the cities. It is necessary for those who practise in the country to understand that the dynamics of the criminal justice system in this Court have changed significantly. Much greater efficiency is required of practitioners and I have no reason to believe country practitioners are any less able to achieve those efficiencies than practitioners in the cities. I look forward in the year 2001 to the co-operation of the whole legal profession in the country in reducing significantly the criminal caseload which presently stands at 850 trials.

Brennan & Powell Pty Ltd

trading as

Barristers' Insurance Services

since 1979

We can arrange the following (Please tick)

- | | |
|--|--------------------------|
| Barristers' Sickness & Accident Extension Plan | <input type="checkbox"/> |
| Barristers' Term Life Insurance & Crisis Plan | <input type="checkbox"/> |
| Cover for Chambers and Professional Effects | <input type="checkbox"/> |
| Occupational Legal Liability | <input type="checkbox"/> |
| Superannuation (DIY) | <input type="checkbox"/> |

Name _____

Phone No: _____

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

or contact

Craig Brennan or Tony Powell
(02) 9975 7322 – Mobile 0409 246 766

Email: bandp@triode.net.au
DX 9104 Dee Why

The New South Wales Bar Association's Olympic Pro Bono Scheme

By Michael Slattery QC

The Bar Association's Sydney 2000 Olympic Pro Bono scheme, which ran between 2 September 2000 (the athletes' entry into the village) and 1 October 2000 (the closing ceremony), was a great success.

A letter from the President, McColl S.C., to the *Chef de Mission* of each visiting National Olympic Committee delegation notified all athletes and officials about the scheme. It offered the pro bono legal services of members of the Bar Association, both in respect of criminal matters and appearances in the Court of Arbitration for Sport ('CAS').

Before the scheme officially commenced, its announcement led to a request by Mr John Boulton AM, the Director of the Australian Institute of Sport, for volunteer panel members to appear in a series of hearings related to the selection of members of the Australian Olympic Team. Bruce Collins QC, Duncan Miller, Paul Webb QC, Peter Bodor QC, Ian Harrison S.C., Mark Dempsey, Hugh Marshall, Mark Walsh, John Hennessey and Mark Williams S.C. were involved in a hearing regarding the selection of the Australian women's K4 crew.

Once the Games were under way, Malcolm Holmes QC, Duncan Miller and myself administered the scheme. If not for the dedicated involvement of Holmes QC and Miller, the scheme would not have functioned effectively. Numerous phone calls were required to discuss with various national Olympic committees the kind of representation each required and then to find appropriate counsel for each case.

Of the more than 70 local and interstate barristers who volunteered for service with the Court of Arbitration for Sport, just over half were contacted seeking their involvement and approximately one-quarter were actually involved in cases before CAS, or advised athletes or officials. Volunteers were involved in 12 of the 15 cases before CAS during the Games.

CAS officials expressed thanks to the Bar Association for the service that was provided. The contribution of the volunteers was acknowledged in the press release issued by CAS at the time of each of its decisions. The CAS also informed potential litigants of the existence of the scheme.

Mr John Ruger, the Athlete's Ombudsman of the United States Olympic Committee ('USOC'), was so impressed with the scheme that he has undertaken to seek through his role in the USOC to ensure that a similar scheme is instituted at the Winter Olympic Games at Salt Lake City in 2002.

Many of the Bar's volunteers also made their services available for the Paralympic Games, through a scheme which was arranged by the Australian & New Zealand Sports Law Association.

The following is a brief summary of the work done by volunteers, first in the criminal cases, and secondly before the CAS.

Criminal Matters

Sergei Voynov

Mr Voynov, a coach with the Uzbekistan Olympic delegation, was charged under the *Customs Act 1901* with the importation in to Australia of human growth hormone, a prohibited substance. Panel volunteers Clive Steirn S.C. and Diana Black appeared for him at an initial mention and on a summary hearing during the second week of the Games. He was able to live in the Olympic Village and act as a coach whilst on bail for these charges. He ultimately pleaded guilty, was fined and then left Australia.

Joe Athuarie

Mr Athuarie, a member of the Ugandan National Olympic Committee Delegation, was accused of committing a sexual assault in Sydney. He took a commercial airline flight to Adelaide and was arrested there by South Australian police and then charged. An interstate member of the scheme, Ian White, of the Adelaide Bar, appeared on his extradition application in the Adelaide Magistrate's Court on Monday, 25 September 2000. He was extradited to NSW where a bail application was made the same evening in Sydney by Clive Steirn S.C. and Elizabeth Ollson. He was granted bail into the custody of the Ugandan consul, and continues to be represented in the New South Wales criminal justice system by Kate Traill and Elizabeth Olsson as an extended part of the pro bono scheme.

Court of Arbitration for Sport

Arturo Miranda

Henric Nicholas QC and Trish McDonald represented Mr Arturo Miranda, a citizen of Canada, and formerly a citizen of Cuba, but who did not qualify to represent Canada under the Olympic Charter because he had not been a citizen of that country for at least three years. Cuba refused to consent to a reduction in the three year qualifying period. This case involved multiple hearings. Mr Miranda was unsuccessful.

Jesus Kibunde

Robert Kaye and Nicole Gilchrist appeared under the scheme for a boxer from the Republic of Congo, Mr Jesus Kibunde, who arrived in Sydney late and after the boxing weigh in. He appealed to CAS to seek admission to the Games. Unfortunately, the boxing draw had already been done and other athletes competing in the sport had gained positions in favourable draw pools. Had Mr Kibunde succeeded, the draws of the other athletes would have had to be disturbed, thus setting off a rash of counter appeals. CAS found against him. Kaye and Gilchrist were selected to represent Mr Kibunde, partly because they are both fluent in French. Congo is a French speaking republic and the whole case was conducted in French.

Mr Angel Perez

Mr Angel Perez was represented by Mark Williams S.C. and Trish McDonald in a similar case to Miranda. Mr Perez was formerly a Cuban citizen but he had defected to the United States. Cuba stripped him of his Cuban citizenship. He was seeking to compete in the United States team as a kayaker. He, too, had not been a citizen of the his new country for the three years required under the Olympic Charter. Cuba declined to consent to a reduction in the qualifying period. He was ultimately successful before CAS because he proved that he was in law a 'stateless' person and Cuba therefore had no right to be consulted about him competing. He went on to compete for the US. Mark Williams was briefed by Spark Helmore. Trish McDonald had experience in the Miranda case, so she volunteered to act for Mr Perez in this matter.

Dieter Baumann

Mr Dieter Baumann was an accomplished track athlete with the German Olympic Team who planned to compete in the 5000 metres event. He was a medallist from previous Olympics. He was the subject of a hearing by the International Amateur Athletic Federation ('IAAF') immediately before these Games. He was banned from competing by the IAAF because of his alleged use of a prohibited substance in 1999. He appealed to CAS and was represented there by Bruce Collins QC, Tony McNerney and Elizabeth Beilby. He was unsuccessful.

Matt Lindland and Keith Sieracki

Before the Sydney 2000 Olympics, there was a long standing legal dispute in the United States between Matt Lindland and Keith Sieracki in the 76 kg class Greco-Roman Wrestling and which had reached the level of a special leave application to the US Supreme Court. This led during the Games to an urgent application by Sieracki before the CAS. Before the Games a US court-ordered 'wrestle off' had resulted in Lindland gaining USOC accreditation in the 76kg class.

A little over one hour's notice of the impending CAS hearing was given to our scheme. I was the only counsel in chambers. I did the case myself, representing Lindland in an attempt to uphold his representative position. Just before the CAS convened, Lindland's American lawyers obtained an injunction from a US Federal Court Appeals judge preventing Sieracki and his lawyers from presenting the case. The Federal Appeals judge was summoned from his bed in Chicago to give the injunction at 2.00am, Chicago time. Sieracki's application was therefore withdrawn. Had the application not been withdrawn, Sieracki and his lawyers may have committed a contempt of the US Court. Lindland went on to win the silver medal in the 76 kg class.

Alan Tzagaev

Mr Tzagaev was a weightlifter with the Bulgarian Olympic Team. Although he was found free of any involvement with prohibited substances, he was banned (along with the whole of the Bulgarian weightlifting team) from competing by the International Weightlifting Federation, on the basis that some other team members had tested positive to prohibited drugs. He was represented by Paul Webb QC, Dennis Flaherty and a volunteer solicitor who assisted our scheme, Melinda Griffiths.

Counsel were engaged on Sunday, 24 September 2000. If he was to be allowed back into the competition, Mr Tzagaev was due to compete on the evening of Monday, 25 September. CAS convened an urgent hearing at 9.30am on the 25th to hear the case. It sat until just after 4pm and gave its decision at about 6pm. Mr Tzagaev was successful and was reinstated to the weight lifting competition. Although only ranked 7th in the World before the Sydney Games, that night he won the silver medal in his division, only just missing out on the gold.

Andreea Raducan

Ms Raducan was the gold medallist in the Gymnastics (Artistic) Women's Individual All-Around Competition representing Romania. In this event, Romania was awarded the gold, silver and bronze medals at the Games. She tested positive to pseudoephedrine. In a well-publicised decision, the IOC took away her gold medal. She appealed to CAS and was represented there by Malcolm Holmes QC, Peter Dwyer and Robyn Druitt. The silver medallist was represented by Chrissa Loukas and Louise McManus. The bronze medallist was represented by Hugh Marshall. Our services were also offered to China. A Chinese athlete gained 4th place in the event. China decided not to appear as its interests were sufficiently protected by the case being put to CAS by the IOC.

Ms Raducan was ultimately unsuccessful in her appeal despite the efforts of her counsel before CAS. Another Romanian team member was also advised by John Graves S.C. and John de Meyrick in relation to this matter.

Mihaela Melinte

Mihaela Melinte was a Romanian hammer thrower who was removed from the Olympic Stadium just as she was about to commence competition during the heats of the women's hammer throw event at the Games. A possible medallist, she was alleged by the IAAF to have tested positive to prohibited substances some time before the Games. She was represented by Malcolm Holmes QC, Peter Dwyer and Robyn Druitt. She was unsuccessful.

Rumyana Neykova

Ms Neykova was a Romanian silver medallist in the Women's Singles Scull event. She challenged the decision of a rowing jury awarding the gold medal in the event to Ms E. Karsten from Belarus. The challenge was on the basis that television video evidence showed that the

Romanian scull to be ahead of the Belarus scull at the finish. She was represented by Peter Bodor QC and Christopher Hodgekiss. She was unsuccessful, as the official course camera was regarded by CAS as presenting a more accurate picture than the television cameras which were just slightly off the finish line.

Anonymous athlete

Advice was given to a female athlete in one Olympic Committee delegation which did not result in a hearing in CAS. However, the intervention of scheme members allowed her to compete when she would not otherwise have done so. Panel volunteers Glen Miller QC, Phillip Mahony and Duncan Miller were able to advance the results of a random drug test taken from her at the Olympic Village to demonstrate that she was clear of any suspicion of taking substances prohibited by the Olympic Anti-Doping Code. She was then free to compete in her team sport. The athlete's team took ultimately part in the semi finals to her competition. She would not have competed but for the intervention of counsel because the team took the view that it would be too risky for the team, which was in medal contention, to risk competing with one member who might return a positive drug test.

Two other anonymous athletes

Peter Bodor QC, Linda McSpedden and Peter Gwozdecky advised two other athletes in the same sport who had tested positive to drugs and who were then disqualified from competing at the Games. Considerable effort was put in by counsel in finding experts and gaining access to the primary test and test-protocol compliance information. Further tests were also arranged for these two athletes. The matter ultimately did not go to CAS. The athletes decided to pursue their legal remedies after the Games in their home country.

The Bar's thanks go to all those members who volunteered for the scheme, which helped protect the rights of athletes competing at the Sydney 2000 Games and the Paralympics. All of the counsel who appeared or advised put in many hours of work at very short notice. In keeping with its finest traditions, the Australian Bar fought strenuously for the interests of its athlete clients.

Special thanks also go to CAS and its Australian members, The Hon. Robert Ellicott QC and Justice Trish Kavanagh, who encouraged and facilitated the operation of the scheme, which was the first of its type at an Olympics.

Election for the 2001 Bar Council

Declaration of 2001 Ballot pursuant to Rule 11.8.1 of the Constitution of the New South Wales Bar Association

On 7 November 2000 the Executive Director, as Returning Officer, declared the following to be elected to Bar Council:

Bret Walker S.C.
 Ruth McColl S.C.
 Ian Harrison S.C.
 Anna Katzmann S.C.
 Michael Slattery QC
 Jeremy Gormly
 Philip Greenwood S.C.
 Peter Maiden
 Bernard Coles QC
 Stephen Odgers S.C. †
 Kate Traill
 Rena Sofroniou
 Justin Gleeson S.C. †
 Steven Rares S.C.
 Alexander Street S.C.
 John Fernon
 Hugh Marshall
 Alison Stenmark
 James Renwick
 Rachel Pepper
 Ingmar Taylor



Back row (L to R): Rena Sofroniou, Jeremy Gormly, Steven Rares S.C., Hugh Marshall, James Renwick, Justin Gleeson S.C., Bernard Coles QC, Ingmar Taylor.

Front row (L to R): Kate Traill, Philip Selth (Executive Director), Michael Slattery QC, Bret Walker S.C., Ruth McColl S.C. (President), Ian Harrison S.C., Philip Greenwood S.C., Alexander Street S.C., Rachel Pepper.

Absent: Anna Katzmann S.C., Stephen Odgers S.C., Alison Stenmark, John Fernon.

Votes cast for candidates

Walker S.C., Bret	697	Lydiard, Virginia	193	Black, Diana	113
McColl S.C., Ruth	658	*Pepper, Rachel	193	Robinson, Mark	110
Harrison S.C., Ian	599	Ronzani, Dennis	178	Cattini, Paul	107
Katzmann S.C., Anna	570	Rewell, Keith	172	O'Gorman, Gary	102
Slattery QC, Michael	533	Dawe QC, William	170	*Odgers, Kendall	100
Gormly, Jeremy	464	Alexis, Todd	169	Leotta, Kerrie	92
Greenwood S.C., Philip	413	Cusack QC, Greg	163	Rasmussen, Roger	81
Maiden, Peter	391	Campbell, Steve	157	Sansom, Paul	71
Coles QC, Bernard	390	*Taylor, Ingmar	157	Hill, Alun	67
†Odgers S.C., Stephen	381	*Thode, Sabine	154	Webb, Bob	53
Traill, Kate	370	*Hogan-Doran, Dominique	152		
Sofroniou, Rena	339	Hodgekiss, Christopher	148		
†Gleeson S.C., Justin	315	Poole, Greg	147		
Rares S.C., Steven	297	Barry QC, Christopher	144		
Street S.C., Alexander	277	Timmins, Doug	136		
Letherbarrow S.C., Ross	273	Moses, Arthur	131		
Littlemore S.C., Stuart	263	Kintominas, Peter	122		
Fernon, John	261	McGrath, Garry	119		
Marshall, Hugh	250	Olsson, Liz	114		
Stenmark, Alison	240				
Torrington, Stuart	238				
Bell, Andrew	234				
McEwen S.C., Peter	232				
Babb, Lloyd	224				
Kearns S.C., Bill	217				
Quickenden, Robert	206				
McSpedden, Linda	204				
*Renwick, James	201				

Office Bearers

Bar Council met on 8 November 2000 and elected the following members of the Executive:

President Ruth McColl S.C.

Senior Vice President Bret Walker S.C.

Junior Vice President Ian Harrison S.C.

Secretary Michael Slattery QC

Treasurer Anna Katzmann S.C.

* Denotes members who have been practising as Local Practising Barristers for less than five years (the Constitution provides for the election to Bar Council of three members from this class of candidate).

† Rule 10.3 of the Constitution of the New South Wales Bar Association provides (in part): 'If after the date prescribed under this Constitution for receipt by the Returning Officer of nominations for election of the Bar Council [in this instance, 16 October] and before or after the election, a candidate for election ... is appointed a Senior Counsel [in this instance, 26 October] ... the candidate ... does not cease to qualify as a candidate for office in the capacity in which he or she was nominated ... by reason of his or her appointment'

Disciplinary hearings and PII

By James Sinclair

Manager for NSW

AON Professional Services*

The number of matters notified to insurers that relate to disciplinary proceedings within the New South Wales Bar is increasing. Over fifty complaints were notified in the 1999 period to HIH, plus around twenty complaints received in relation to unpaid fees. What do members need to know?

The policy coverage includes the 'investigation of the insured by a person or body which has the responsibility for the supervision of barristers'. The coverage extends to 'any proceedings of a disciplinary nature'.

Perhaps the most important point is that barristers need to take these matters seriously. Regardless of how frivolous the complaint may appear to be, the professional indemnity insurer must be notified as soon as is practicable after the potential for a complaint becomes apparent. Once that is done, the Bar Association must be notified that the member is taking the advice of the insurer, in case an extension of time is required.

The professional indemnity policy is based on a 'claims made and notified' contract. This means that barristers *must* notify the insurer during the period of insurance when they first become aware of the claim, or complaint.

Often barristers correspond directly with the Bar Association, or appoint his or her own legal advisers. If a barrister does so, without the insurer's consent, he or she may breach the policy terms, meaning that the insurer will not cover those costs.

In some instances, matters that are communicated to insurers and addressed at an early stage have led to detailed submissions to the Bar Association and the Bar Council has determined not to proceed.

There have been instances where barristers appear to have determined that a complaint is spurious and, therefore, have not taken the matter seriously. In the words of Suzanne Wallace of solicitors Moray and Agnew:

...the test for determining whether a circumstance might lead to a claim is an objective test based on subjective facts. Accordingly, the fact that the barrister him or herself does not believe that the circumstance would result in a claim, but concedes that objectively speaking, this is a possibility, should provide notification.

In summary, members should:

- take any complaint seriously;
- notify their broker to put their insurer on notice as soon as is practicable of the potential investigation;
- inform the Bar Association that legal advice is being sought through the insurer and seek an extension of time, if necessary; and
- seek their insurer's consent to appoint representation before costs are incurred.

If members are at all unsure of what should be done in relation to a disciplinary inquiry, their broker will be pleased to assist.

** With thanks to Ariella Brosan of HIH Insurance and Suzanne Wallace of Moray and Agnew Solicitors*

Media Briefing

Media releases and letters to the Editor issued by the New South Wales Bar Association

New Council for Bar Association, 8 November 2000.

In defence of legal standards, letter to the Editor, *Australian Financial Review*, 3 November 2000, p.79.

Female Senior Counsel, letter to the Editor, *Daily Telegraph*, 30 October 2000, p.20.

2000 Senior Counsel Appointments, 26 October 2000.

Media releases and letters to the Editor issued by the Law Council of Australia

Law Council Critical of Government's Proposed Administrative Review Tribunal, 27 October 2000.

Law Council Welcomes New President, 23 October 2000.

Make www.nswbar.asn.au your home page.

On CD & Internet

TimeBase™

**Present, Past
and Future Law
at the click
of a button**



allows you to type in
a date - present, past
or future and see the
law on that date

**Get a Free Trial
to a TimeBase
MALT Service...**

**Corporations
GST
Income Tax**

call (02) 9261 4288
or
service@timebase.com.au

www.timebase.com.au

Coming up

Criminal Lawyers Association of the Northern Territory, 8th Biennial Conference, Bali, 22 – 30 June 2001. This year's conference has been organised in conjunction with the Criminal Law Section of the Law Institute of Victoria. For more information, contact the organisers, Convention Catalysts, on ph: (08) 89 811875, fax: (08) 8941 1639 or via email: convention.catalysts@norgate.com.au

Australasian Christian Legal Convention, Ormond College, Melbourne, 1-4 February 2001. Sir Gerard Brennan will open the Convention on Friday 2 February. The Chief Justice of Queensland, The Hon. Justice Paul de Jersey AC will address 'Some thoughts on the place of law and lawyers in the new millennium' on Saturday 3 February.

Elective Seminars will deal with diverse topics, including: 'What does the Lord require of a Criminal Barrister?' (Justice Ken Crispin), 'Life in the Profession – Personal Reflections' (with a contribution from Justice Keith Mason), 'Christians in Conflict' (Professor John Wade and Judge McElrea from New Zealand), 'Christian Ethics in and for a Secular Society' and 'What does the Lord require? – Law

Reform' (Justice Michael Adams). There will be opportunity for participants from a variety of legal and denominational backgrounds to interact over meals and seminars.

The Convention is priced at \$750 (including GST, meals and three nights accommodation at Ormond College: other options are available for members of the Bar who may prefer to stay in nearby accommodation or cannot attend full time).

A registration brochure with full details of the Convention Programme was sent to all Heads of Chambers in early November. Numbers are limited. For further information, or to obtain a brochure, contact Ian Davidson at ian_davidson@selbornechambers.com.au or ph: (02) 9235 1141. A copy of the registration brochure is held at Bar Association reception.

American Bar Association: 2001 Annual Meeting, Chicago, 2 – 8 August 2001. The 2001 Annual Meeting will include more than 2,500 CLE programmes, seminars and special events, including the ABA Expo, featuring exhibits from more than 150 providers of legal

products and services. A conference information and registration brochure is held at the Bar Association Reception. Alternatively, it is possible to register online at www.abanet.org.

A 15 Bobber to celebrate the appointment of The Hon. Justice Whealy to the NSW Supreme Court and The Hon. Justice Richard Conti to the Federal Court of Australia, will be held on at 5.00 pm on 24 November 2000 in the Bar Association Common Room. For more information, visit the Bar Association's web site at www.nswbar.asn.au or contact Claudia Munoz at the Bar Association on ph: (02) 9229 1720 or via email: cmunoz@nswbar.asn.au

Christmas Carols in the Common Room. Members and their families are invited to celebrate the Christmas season with music, wine and mince pies on Thursday, 7 December at 6.00pm. Entry is by donation at the door. Children's gifts (to the value of \$20.00) may be left beneath the Bar Christmas tree, from where they will be passed to needy children. Gifts should be clearly and firmly labelled for gender and age. Inquiries to Kelly Wright on ph: (02) 92291722, email: kwright@nswbar.asn.au

Papers to Note

New South Wales Law Reform Commission Issues Paper No. 18 - Complaints Against Lawyers: Review of Part 10. The Commission invites submissions and comments from members on the 44 issues raised in this paper. The closing date for submissions is 15 December 2000. A copy of the paper may be obtained by visiting the NSWLRC web site at www.lawlink.nsw.gov.au. A copy is held in the Bar Library.

Review of the Legal Practice Act 1996 (Vic): Issue Paper. In June 2000, the Attorney General of Victoria, The Hon. Rob Hulls MP, announced a review of the Legal Practice Act, citing 'significant public and professional disquiet about the operation of the existing regulatory system'. The review has called for comments and submissions, which must be received by 30 November 2000. They should be sent to Legal Practice Act Review, GPO Box 4356QQ, Melbourne, Victoria, 3001. Alternatively, submissions may be sent by email to: legal.practice@justice.vic.gov.au. A copy of the issues paper may be obtained from the Department of Justice web site

at www.justice.vic.gov.au. A copy is held in the Bar Library.

Children's Court of New South Wales – Practice Direction No.17. This practice direction deals with both magisterial responsibilities under the *Young Offenders Act 1997* and the consequential administrative tasks of Registrars. A copy is held in the Bar Library.

New South Wales Supreme Court, Equity Division: Practice Note No. 116. This practice note was made on 16 October 2000, and is intended to ensure that all proceedings receive at least preliminary attention to avoid delays and progress them towards a hearing. The practice note may be obtained from the Supreme Court's web site at www.lawlink.nsw.gov.au/sc. A copy is held in the Bar Library.

New South Wales Supreme Court, Equity Division: Practice Note No. 115. In response to submissions made by legal and insolvency practitioners, the Court will no longer require the Australian Taxation Office to be notified of an application for approval of a scheme of arrangement

involving a reduction of capital. A copy of this practice note may be obtained from the Supreme Court's web site at www.lawlink.nsw.gov.au/sc. A copy is held in the Bar Library.

High Court Amendment Rules 2000 (No.1). This amendment to the Schedule Two of the High Court Rules adjusts the scale of solicitors' costs by 9.5 per cent to take into account the impact of the Goods and Services Tax. It commenced on 5 October 2000. A copy is held in the Bar Library.

Senior Counsel

A Full Court of the Federal Court of Australia will sit in Court No.21A, Law Courts Building, Queen's Square at 4.30pm on Wednesday 6 December 2000 to receive announcements of the appointment of Senior Counsel for the State of New South Wales.

The families and friends of the newly appointed Senior Counsel are welcome to attend.

Speeches

'Administrative Law in Transition – The Proposed Administrative Review Tribunal', delivered by Anne Trimmer, President of the Law Council of Australia, on 25 October 2000. A copy may be obtained from the Law Council's web site at www.lawcouncil.asn.au. A copy is held in the Bar Library.

'Launch of the Castan Centre for Human Rights Law', by The Hon. Justice Michael Kirby AC CMG, 31 October 2000. A copy of this speech may be obtained from the High Court web site at www.hcourt.gov.au. A copy is held in the Bar Library.

'Global Economic Crime – Acting Resolutely; Thinking Laterally', by The Hon. Justice Michael Kirby AC CMG. This address was delivered at the Cambridge International Symposium on Economic Crime, held at Jesus College Cambridge, on 11 September 2000. A copy may be obtained from the High Court web site at www.hcourt.gov.au. A copy is held in the Bar Library.

'The 14th Lionel Murphy Memorial Lecture – Economic Rationalism and the Law', by The Hon. J J Spigelman AC, Chief Justice of New South Wales. This speech, delivered on 26 October 2000, examines the limits to which neo-classical economic theory should determine the operations of the courts and the resources made available to them. He argues that the influence of 'economic rationalism' risks undermining the foundations of the market system itself. A copy of the speech may be obtained

from the Supreme Court web site at www.lawlink.nsw.gov.au/sc. A copy is held in the Bar Library.

'College of Law Graduation Address', by The Hon. J J Spigelman AC, Chief Justice of New South Wales. This speech, delivered at the College of Law on 8 November 2000, is centred on the same theme as the Lionel Murphy Memorial Lecture, noted above. A copy of the speech may be obtained from the Supreme Court web site at www.lawlink.nsw.gov.au/sc. A copy is held in the Bar Library.

'The Expert Witness in the New Millennium', by The Hon. Justice A R Abadee RFD. This paper was delivered at the General Surgeons of Australia - 2nd Annual Scientific Meeting, on 2 September 2000. A copy of the speech may be obtained from the Supreme Court web site at www.lawlink.nsw.gov.au/sc. A copy is held in the Bar Library.

'Privacy and Electronic Commerce – Getting a Competitive Edge', by the Commonwealth Attorney-General, The Hon. Daryl Williams AM QC MP. This speech was delivered on 26 October 2000 at the launch of the Andersen Legal survey on Internet privacy. A copy of the speech may be obtained from the Attorney-General's web site at www.law.gov.au/ministers/attorney-general. A copy is held in the Bar Library.

The Australian Human Rights Medal Awards 2000

The Human Rights Medal and Awards Ceremony 2000

will be held on

Human Rights Day, Sunday 10 December 2000

Commencing at 2 pm

Keynote speaker: Rev Nyameko Barney Pityana,

Chairman of the South African Human Rights Commission

Venue: Star Court, Darling Park

201 Sussex St. Sydney

Tickets to the ceremony are \$28.00 per person, inclusive of GST

Ticket price includes afternoon tea and drinks.

For further information, contact Ronan McHugh on ph: (02) 9284 9618. Further information, together with a ticket order form, may be obtained from the HREOC web site at <http://www.hreoc.gov.au/hrwards/index.html>

Local Courts: Christmas – New Year period 2000-2001

The Chief Magistrate of the Local Court, Patricia Staunton AM, recently wrote to the President of the Bar Association, McColl S.C., providing details of rostered sittings over the Christmas – New Year Period. The Chief Magistrate said:

As a result of the new fixed leave determination by the Attorney General, normal rostered sittings of the Local Court will cease on Friday 22 December 2000 and recommence on Monday 8 January 2001.

On week days that are not public holidays during this period, a Magistrate will be rostered at Central Local Court for state-wide apprehended violence order applications and any other urgent matters. Persons in custody from the CBD, Newtown, Balmain and Redfern court districts **only** will be dealt with at Central.

In addition, a Magistrate will preside at Lidcombe Children's Court to hear bail applications for juveniles in custody in the metropolitan area.

Bail hearings will be conducted at all other metropolitan courts on these days, with the exception of North Sydney, where persons in custody are to be dealt with at Manly Local Court. Country courts will also conduct bail hearings as required.

On weekends and public holidays during this period, bail courts will operate in accordance with normal arrangements.

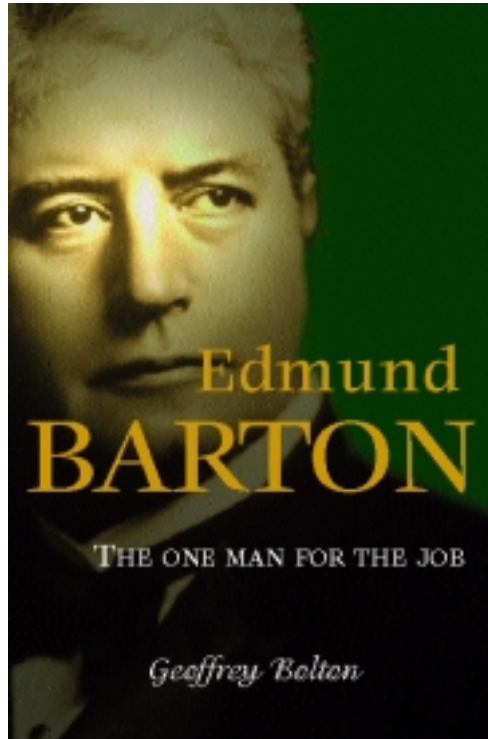
Mental health inquiries will not be conducted during the period of 25 – 29 December 2000. Regular mental health inquiries in the metropolitan area will recommence on Tuesday 2 January 2001.

In country areas mental health hearings for the week commencing 2 January 2001 are at this stage anticipated to be conducted via video-conferencing from the metropolitan area. Parties involved in the conduct of mental health inquiries in country areas will be advised of arrangements once finalised.

Edmund Barton

'THE ONE MAN FOR THE JOB'

by Geoffrey Bolton AO



The Bar Association, in co-operation with Allen & Unwin, will host the Sydney launch of the first biography of Edmund Barton in 50 years.

The Guest of Honour will be The Chief Justice of Australia, The Hon. Justice A M Gleeson AC.

The launch will be held in the Bar Association Common Room, 174 Phillip Street, at 5.30pm on Friday 1 December 2000.

All members are invited to attend. Copies of the book will be available for purchase on site.

For more information contact the Public Affairs Officer, Chris Winslow, on ph: (02) 9229 1732 or via email: cwinslow@nswbar.asn.au

Christmas at Redfern

Aboriginal Medical Service Redfern

In June 2000 it was announced that the Aboriginal Medical Service Co-Operative Ltd would be the official Bar Charity for 2000-2001. So far members of the Bar have contributed \$18,200 to its work. The benefits of this sort of primary health care programme are such that it deserves more assistance from members of the Bar. As Christmas approaches, no doubt the demands on the Service will increase. Members of the Bar are encouraged to dig deep into their pockets and make a Christmas donation to the Service.

The need for Aboriginal community health care centres

The 1991 *National Report of the Royal Commission into Aboriginal Deaths in Custody* examined the underlying social and economic disadvantage that contributes to the incarceration of Indigenous Australians. Volume Four outlined many issues affecting the health of Australia's Indigenous people, particularly the complex relationship between the resources of State and Federal medical services and the poor health of Aboriginals.

The Commission found from submissions and evidence that Aboriginal people are 'not well served by the existing mainstream services'. Specific problems include a lack of information about Aboriginal health issues and a poor understanding of cultural concerns and socio-economic circumstances. Consequently, there is a discernible reluctance on the part of many Aboriginal people to use the health care system and to comply with professional advice.¹

The report argued that medical services controlled by the local Aboriginal community, such as the AMS Redfern, overcome many of the deficiencies of the mainstream health care system. They ensure that services 'are attuned to local health care needs' and that they recognise 'specific social and cultural aspects of health and illness'. Consequently, many Aboriginal people are prepared to travel long distances to use the AMS rather than a mainstream doctor or hospital.²

The History and role of the AMS

In the late 1960s there was an exodus of Aboriginal people to Sydney from rural and regional areas. The Indigenous population of Sydney rose from 4000 in 1966 to approximately 35,000 in 1968. They were concentrated in the suburbs of Redfern and Waterloo, frequently in poor quality, overcrowded housing. In 1973 the Scott Report on *Programs and Needs of Aboriginals in Sydney Today* found that 25 per cent of Aborigines lived in dwellings without a bathroom and 15 per cent lived without kitchens or cooking facilities. For many, it was a choice between eating takeaway food or not eating at all. Not surprisingly

under these conditions, the diet and general health of Indigenous people deteriorated.

A meeting was held in June 1971 to discuss ways to address the imminent health care crisis among the growing urban Aboriginal community. Among those who attended were Paul Coe, Shirley Smith ('Mum Shirl', later Shirley Smith MBE), Gordon Briscoe, Dulcie Flowers, Professor Fred Hollows, Ross McKenna, John Russell and Eddie Neumann. The outcome was the foundation of the Aboriginal Medical Service the following month.

A small group of volunteers began operating out of a 'shop front' in Regent Street. The first government grant was in 1972, which was used to fund a doctor, a field officer (Shirley Smith), a nursing sister and a receptionist. The current Chief Executive of the AMS Redfern, Naomi Mayers, joined in 1972.

The AMS describes the 1970s as a 'struggle for survival' and a battle to secure government funding. In 1978 Thomas Keneally, writing in the *National Times*, provided a bleak description of life for Sydney's Aboriginal community. The previous year the AMS applied to the Federal Government for \$120,000 to run a three-year nutrition programme. Around that time, an AMS survey of 160 children attending the clinic showed that 25 per cent were in the lowest 3 per cent of the population in terms of height and weight. However, the Commonwealth granted only \$60,000. Fortunately, the deficit was met by a \$60,000 donation from the Freedom from Hunger Campaign. The short-sightedness of the Government's decision becomes apparent when the data shows that out of those 40 children, one third were subsequently admitted to hospital for preventable illnesses, for a combined total of 75 days.³ Government funding in 2000 remains similarly inadequate.

Despite the difficulties, the AMS at Redfern has survived and continued to develop programmes to aid Aboriginal residents of inner Sydney. By 1973, the Scott Report found that 40 per cent of inner-city Aborigines were using the AMS. Dr Andrew Refshauge, a medical officer at the Aboriginal Medical Service for four years,

described it as 'the only time when I prescribed fresh produce for my patients'. In a separate initiative, the AMS co-operated with Sol Bellear, Shirley Smith and Paul Coe to set up 'Breakfast for Kids' in a caravan borrowed from the Wayside Chapel.

As well, the Redfern AMS provided material support for Indigenous communities in Broome, Geraldton, Port Augusta, Kempsey and Wilcannia, Campbelltown and Cairns to set up and run their own health services.

During the 1980s, the AMS broadened its activities through increased involvement in formulation of Aboriginal health policy, along with the production and distribution of educational materials on HIV / AIDS, Hepatitis B, immunisation and breast feeding. In 1987 the AMS produced a video on AIDS, which won an international health education award in Spain.

One of the emerging roles of the AMS Redfern is to provide referrals to local hospitals and specialists. As the Royal Commission noted nine years ago, it is trusted by members of the Aboriginal community, which enables patients to make better use of mainstream health institutions. The high cost of prescription medicines, particularly for diabetes and asthma, together with recent cutbacks in rural dental programmes have placed an additional burden on the resources of the AMS.

The AMS Redfern has grown to the point where it now provides approximately 58,000 patient services every year. Curiously, it receives less in Commonwealth Government funding, per patient, than any other Aboriginal Medical Service in the country. The need for generous support from members of the Bar and all other concerned Australians, remains as great as ever.

Once again, remember Christmas is coming.

Please send your cheques to the address on the cover slip below.

¹ National Report, Volume 4, paras 31.3.9 – 31.3.10

² Ibid., para 31.3.50

³ Thomas Keneally, 'Black Sydney', *National Times*, 3-8 April 1978, p.6

**Aboriginal Medical Service Co-operative Ltd
PO Box 1174, STRAWBERRY HILLS NSW 2012**

Please find attached a donation for the AMS. I am a member of the New South Wales Bar Association.

Please send a receipt to:

Name: _____

Address: _____

_____ Postcode _____

Donations of \$2 or over are tax deductible.

The St James' Director of Ministry to the Legal Profession,
Dr James McPherson,
will host an evening service of readings, carols and music
for legal practitioners,

including music by the Bar Choir under the baton of
The Hon Justice Peter Hidden AM,

Wednesday 29 November
6.00pm

in St James' Church,
to be followed by wine and savouries.

Occasional address by

The Hon Chief Justice Murray Gleeson AC
Chief Justice of the High Court of Australia

'The Relevance of Religion'



St James' Church is opposite the Supreme Court, in Queens Square, at the corner of King and Phillip Streets. Designed by Francis Greenway and opened 1824, it is Sydney's oldest surviving church building.

For catering purposes, your intention to attend would be appreciated:

rsvp the Parish Office 9232 3022 Monday 27 November.

www.stjameschurchsydney.org.au/legal.html

SALE

Crime Appeal Reports (Complete Set – Mint Condition)

Contact W. Hrouda – **9285 8839**

Bar Brief is produced monthly for the New South Wales Bar Association by:

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

Advertising bookings and enquiries to John Weaver.

Editorial Contributions to:

Public Affairs Officer,
New South Wales Bar Association,
LG Floor
Selborne Chambers,
174 Phillip Street
Sydney 2000
DX 1204 Sydney

Email: mediainquiries@nswbar.asn.au

Fax: (02) 9221 1149

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

Association email Directory

Administration

administration@nswbar.asn.au

Accounts Department

accounts@nswbar.asn.au

Education Department

education@nswbar.asn.au

Executive Director

executivedirector@nswbar.asn.au

Legal Assistance Scheme

legalassist@nswbar.asn.au

Library

library@nswbar.asn.au

Media Inquiries

mediainquiries@nswbar.asn.au

Membership Inquiries

membership@nswbar.asn.au

Professional Affairs Department

pcd@nswbar.asn.au

Sickness & Accidents Inquiries

sickacc@nswbar.asn.au