



## President's Column

### Workers Compensation

Moving with the speed of the light, the Special Minister of State, The Hon. John Della Bosca MLC, distributed a 'Discussion' Paper concerning proposed amendments to workers compensation in New South Wales on 27 March 2001 and then introduced the Workers Compensation Legislation Amendment Bill into the Legislative Council on 29 March 2001. The Bill had its Second Reading in the Council on the same day.

The Bill was introduced with the laudable objective of providing a fairer and faster system of workers compensation benefits.

As has been apparent from the widespread criticism which followed, there had been no real consultation about the Bill's terms with any of the relevant stakeholders: Injuries Australia, the unions, the employers, the medical or legal professions prior to the Bill's introduction. This has already led to stop work meetings and threats of further industrial action on the part of those the Scheme was claimed to benefit. The reaction of the unions, in particular the Labor Council, and their strong opposition to the proposed amendments gives strength to the proposition that far from producing a fairer and faster system of workers compensation, the proposed amendments will, in fact, not only not maintain benefits but reduce them as well as constituting a further grave assault on common law rights.

The Bill was announced publicly with a flurry of figures said to demonstrate the parlous state of the current Scheme and the necessity for urgent action. The figure which naturally attracted most media attention was the Minister's assertion that as at 31 December 2000 legal costs accounted for \$422 million of the Scheme's liabilities compared with \$438 million paid as weekly benefits. The attraction of the proposal was said to be that it would divert monies paid to lawyers into the pockets of workers.

What the Government's statistics conveniently failed to communicate to the ordinary reader was that, of course,



*Ruth McColl S.C., President.*

weekly benefits represented less than 20 per cent of the overall compensation scheme. Even on the Minister's figures, the break up as at December 2000, (taking into account not only weekly benefits but commutations, sums paid for permanent impairment, death and common law claims) meant that workers were paid 56 per cent of monies paid out by the Scheme, with rehabilitation constituting an additional 2 per cent and monies paid to the medical profession, 11 per cent. On these figures lawyers received 17 per cent of payments made under the Scheme. Of these figures, of course, barrister's fees are fixed by government regulation. In 1996 barrister's fees were reduced by 10 per cent and there has been no increase since that reduction, not even to allow for CPI increases. This means they are well below market.

Moreover, in the latest report from the Scheme's actuaries, legal costs were shown in a table as \$344 million as opposed to the \$422 million in the same period shown in the Government's pie chart released with its 'Discussion' Paper. In the Scheme's table, common law costs were shown as \$488 million but in the pie

chart they were shown as \$410 million. It appeared that \$78 million were arbitrarily removed from the common law figures and added to legal costs. Further, in the figures which appeared in the latest published figures for the Scheme (the 1999/2000 WorkCover Authority Annual Report) in respect of the 1998/1999 year, legal costs were shown as 11.2 per cent of total payments under the Scheme.

The focus on the legal costs of the current Scheme was, no doubt, intended to deflect attention from the core features of the new amendments, the reduction in real benefits and the sidelining of the judiciary.

Under the proposal the Compensation Court will lose power to make decisions about who should recover compensation and how much compensation should be paid. The Compensation Court's principal functions, under the proposed amendments, are to be placed in the hands of Commissioners who will be public servants or clerks on fixed term contracts removable at will and answerable to WorkCover. Their decisions will be final and cannot be appealed in any Court. The Compensation Court's functions would be reduced to providing rulings on the meaning of provisions of the legislation before the factual dispute is determined.

Further, only the Director of the new Workers Compensation Claims Assessment Service or a Commissioner, with the approval of the Director, may refer a question to the Court. A question may only be referred if it involves a novel or complex question of law.

Rights of appeal are severely circumscribed. Insurers have no right to appeal on the merits from any decision on the amount of the claim. Although workers will be able to appeal, the appeal lies only to a Senior Commissioner in the event of the Commissioner having made a 'material error'. There is no appeal from the Senior Commissioner on the merits.

## President's Column *(Continued from page 1)*

Statutory lump sum benefits will be tied to the Fourth Edition of the American Guides to Permanent Impairment and access to common law damages will be restricted to those few who can overcome a threshold of greater than 25 per cent whole person impairment. In view of the experience with the Motor Accident Compensation Act where only 3 of 42 disputed cases in the 17 months since it was passed could overcome a threshold (for non-economic loss only) of 10 per cent whole person impairment one could be forgiven for thinking that this is really a backdoor attempt to wipe out common law damages for industrial accidents for all but a tiny minority.

The Association has worked hard to provide accurate information about both the operation of the current scheme and the effect of the Bill. Working from the American Medical Association Guidelines (which the Bill provides will be used as the basis to determine payout levels), the Association published a media release which demonstrated how much lower lump sum benefits would be under the new scheme. (All media releases are on the Association's web site). The Minister's immediate response was to issue another set of figures said to disprove the Association's calculations. The figures he produced could not have been based on the American Medical Association Guidelines. Their source remains a mystery, but they conveniently diffused that particular issue – the media was by then so confused by figures it did not want to deal with the issue any more.

The Labor Council has not been distracted however and is pursuing its opposition to the Bill through discussions with the Minister. At least it has been able to obtain an audience!

The Association has at all times made it clear to Mr Della Bosca that it is prepared to participate in constructive discussions concerning the workers compensation scheme. Last year we made available the services of six experienced workers compensation barristers as a consultation group. The lack of consultation and the Government's desire to rush the Bill through Parliament, make it clear the Government was anxious not to permit free and thorough debate about its proposals. Only the immediate reaction of the excluded stakeholders has led to the Bill's passage being delayed and the Government indicating that it is prepared to consider amendments to the Bill.

Such amendments should preserve workers rights to benefits, and to the right, which should be available to all members of the community to full and free access to the courts.

The sidelining of the Compensation Court and its substantial replacement by faceless public servants raises the Kafkaesque image of injured workers groping for their rights through bureaucratic mazes. Decisions will be made behind closed doors. There will be no transparency, virtually no representation and no reasons for decisions.

The position stands in stark contrast to the rights the Government will accord to people who come within the ambit of new drug house legislation proposed by the Government. In defending that legislation, the Premier made the point that part of the drug house legislation process will include a court hearing at which all of the evidence will be presented, both the prosecution and the defence heard and a judgment duly delivered. As he said

The most important point in this process begins and ends in the courtroom. Not influenced by politicians, not influenced by Governments.

It is difficult to reconcile this acknowledgment of the importance of the fundamental principle of access to an independent judiciary in the drug house legislation with the Government's apparent determination to deny that right to injured workers.

### HIH

The collapse of HIH has had, and will for a long time have, a profound effect on all levels of Australian society. Its impact on Australia's economy will be substantial. As the *Financial Review* said (AFR, 18 April 2001):

...[T]he impact of the company's demise has been snaking its way through the economy... this can be a financial nightmare that has come from the financial sector's equivalent of left field.

## H.G. Wells imagined the time machine... TimeBase made it. You can fly it.



**MALT point in time searching - exclusive to TimeBase**  
MALT allows you to type in a date (present, past or future) and see the consolidated text of the legislation as at that date.

### TimeBase MALT products on web and CD

Corporations Service • GST Service • Income Tax Service

Includes point in time searching, legislative material, commentary, case law and annotations.

TimeBase products are used by all of the top 10 law firms.

**For a free trial (flight) or to find out more,  
please phone us or visit our website!**

TimeBase - Legal, Commercial and Tax Publisher  [www.timebase.com.au](http://www.timebase.com.au) 

The President of the Law Society and I are writing a joint letter to both the Prime Minister and the New South Wales Premier urging that Federal and State governments work co-operatively to ensure economic relief is provided to members of the community who have been affected by the collapse. Such relief is provided in the case of natural disasters because of the profound consequences such catastrophes have on the innocent. There seems no reason in principle why such relief should not be afforded to the equally innocent victims of an insurance company's collapse. The widespread economic implications of both sorts of catastrophe are such that the loss should be spread across the wider community for its long-term benefit.

The Association's members represent only a microcosm of the economic picture but the effect the collapse has had on its members is some indication of the impact the collapse will have on the community at large.

As at 10 April 2001, members were owed approximately \$4 million by way of fees in respect of HIH/CIC/FAI work. The fees did not, most probably, include fees owing to plaintiff's barristers in cases where, unbeknown to the barrister, the defendant's insurer was part of the HIH group. Claims against HIH insured barristers were close to \$2.8 million. In addition, members of the Bar insured by HIH have taken out replacement cover for the last three or so months of the current insurance period.

Although it may be of small comfort to those involved, members of this Association were fortunate in that there has always been a competitive market for professional indemnity insurance available to its members. This meant that while approximately 50 per cent of members were insured with AON, substantial numbers were not. This might be contrasted with the position in Victoria where approximately 90 per cent of Victorian barristers were insured through HIH. Further, the fact that Willis had entered the market for barristers' professional indemnity insurance meant New South Wales barristers had 3 brokers through whom replacement policies could be arranged.

I have already issued a number of circulars concerning the effect of the collapse, all of which can be viewed on the Association's web site.

The most recent development is that on 15 March 2001 the NSW Treasurer, Michael Egan announced a stamp duty exemption for people who have been

forced to take out insurance policies following the HIH collapse. The Commissioner of State Revenue has announced that the Treasurer's announcement will be administered by way of ex gratia relief rather than statutory exemption. The Association is clarifying through the various brokers who have been issuing replacement policies how any stamp duty paid to date will be refunded.

The Association is also negotiating with a firm of accountants with a view to providing members with a service to assist in any negotiations with creditors where financial constraints arising from the HIH collapse have led to (hopefully) short-term liquidity problems.

For those members who are experiencing liquidity problems now, I would urge you not to panic but to take positive action. Consult your accountant or financial advisor and if you do not have a competent accountant or financial adviser, I encourage you to seek such advice as quickly as possible.

While some may feel that doing nothing is the best course of action in the hope that the problem will go away, this is a common trait in a situation of financial stress such as the current circumstances. Doing nothing will only compound matters, whereas early advice to creditors as to the problem and its cause may encourage a more sympathetic response.

The ATO has nominated Barbara Acland as the contact officer for barristers with HIH tax related problems. She can be contacted on ph: 4923 1874 or via e-mail at [barbara.acland@ato.gov.au](mailto:barbara.acland@ato.gov.au).

In addition, I would be interested in members' views about the following proposals:

- A donation being made by all members amounting to, say, one refresher to establish a fund to assist those adversely affected by the HIH collapse.
- Members giving proxies to an appropriate nominee to represent them at any creditors' meetings of HIH to ensure their position are as well protected as possible.

---

## Media Briefing

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

*The Carr Government's workers compensation changes: more haste, less justice*, Media Release, 9 March 2001

*Bar Association will assist Indigenous Australians to become barristers*, 21 March 2001

'A system that is anything but fair', article in the *Daily Telegraph*, 3 April 2001, p.19

*The facts about proposed changes to workers compensation legislation*, Media Release, 4 April 2001

*The hard facts about workers compensation figures*, Media Release, 10 April 2001

Visit the Bar Association's web site at [www.nswbar.asn.au](http://www.nswbar.asn.au) for the full text of all media releases.

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

*Koowarta Reconciliation Scholarship Winners*, 15 March 2001

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

---

## 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](mailto:jackie@moser.com.au)

Member of the RCSA

# Bar Council business for February 2001

## President's Report

### Bench and Bar Dinner, 18 May 2001

The President advised that the Hon. R J Debus MP, Attorney General of New South Wales, had accepted an invitation to be the Guest of Honour at the 2001 Bench and Bar Dinner on 18 May 2001 at the Westin Sydney. John West QC will be the Senior Speaker and Lee Aitken Junior Speaker.

### Bankrupt barristers and compliance with the taxation law

The President advised that she had received a letter from the Commissioner of Taxation expressing interest in meeting with the Bar Association in order to address issues in relation to bankrupt barristers and compliance with taxation obligations.

The President noted that she and the Executive Director had briefed the Attorney General and the Director General of the Attorney General's Department on the likely appearance of a newspaper article(s) on bankrupt barristers and their compliance with taxation laws.

### Meeting with the Attorney General of NSW, 7 February 2001

The President advised that she and the Executive Director met with the Attorney General of NSW on 7 February 2001. Matters discussed included problems with the District Court's country sittings lists and the publication of District Court practice notes. Other matters discussed included the low level of scale fees in workers compensation matters and the provision of additional transcripts in the District Court.

### Parliamentary Joint Committee on the Independent Commission Against Corruption

The President advised that she had appeared before the Joint Committee on the Independent Commission Against Corruption on 20 February 2001. She had expressed support for ICAC making findings and suggested changes in the definition of 'correct conduct'.

## Executive Director's Report

### Joint Appointments in consultation with the Law Society

The Executive Director advised Bar Council of an arrangement whereby the Bar Association and Law Society would

take 'turn and turn about' in nominating a member for a government committee or appointment where the Government required a joint nomination.

The Executive Director had offered to provide the Law Society, for publication in its annual diary, the contact details of all members. Currently, the Law Society obtained this information other than from the Association, with the result that some members are not listed and the listing contains errors.

### Survey of District Court listing arrangements

Bar Council noted the results of the survey conducted by the Clerks' Association at the end of 2000 which showed that the majority of matters listed at the District Court either got a start or settled on the day of hearing. The Clerks' Association had advised that it would be conducting a more extensive survey, commencing on the first day of the 2001 term, over a three month period.

### Bar Association submission on defamation law reform

Bar Council resolved to forward a submission on defamation law reform to the Attorney General of NSW.

### List of arbitrators for approval; 2001 NSW Bar Association list of Arbitrators and Evaluators

Bar Council resolved to approve a number of members' applications for appointment as arbitrators and evaluators. A complete list is available from the Bar Association web site at [www.nswbar.asn.au](http://www.nswbar.asn.au) Click on 'Appointments'.

### Bar Association criteria for nominating members as arbitrators

Bar Council noted that the Association's current criteria for appointment as an arbitrator includes ten years experience as a legal practitioner. It was resolved that the ten years experience for appointment of arbitrators be amended to seven years experience (similar to the statutory requirement for appointment as a judge).

### International Association of Prosecutors Conference, September 2001 – proposed social function hosted by Bar Association

The Executive Director advised that he had had a number of discussions with the

conference organisers, Cowdery QC and Tedeschi QC. It was suggested that the Bar Association co-host a function in Sydney. Members of the Bar Association would be invited to attend the function at no charge.

Bar Council resolved that the Association co-host a function for the conference.

### Refund of practising certificate fee

Bar Council resolved that the current practice of refunding the balance of a practising certificate fee to the estate of a deceased member or to a member appointed to the bench continue.

Bar Council noted that a refund is not made where the practising certificate has been suspended for disciplinary reasons.

### Working party set up to examine the way development applications are reviewed by the Land and Environment court

The President advised that she had asked some members with experience in the Court to prepare a submission to the Attorney General's Department on the proposals of the Land and Environment Court Working Party.

### Quarterly income and expenditure statement for the three months ended 31 December 2000

The Executive Director advised that the quarterly income statement was a requirement under the *Registered Clubs Act 1976*.

Bar Council resolved to approve the statement and that it be posted in the Common Room.

### Practising certificate fees for 2001/2002

Bar Council discussed at length the proposed budget for 2001/2002. It was resolved that there should not be an increase in practising certificate fees.

### 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.

# GST on settlements and court orders

The Australian Taxation Office ('ATO') has issued a *Draft Goods and Services Tax Ruling GSTR 2000/D23* ('Draft Ruling') setting out its view of when GST is payable on settlements and court orders. The Draft Ruling was the subject of further discussion with representatives of the professional bodies on 27 March 2001 and there is likely to be some minor amendment in the final version.

The final ruling will be a public ruling for the purposes of the *Taxation Administration Act 1953*. This means that if the ruling is subsequently altered and a taxpayer in reliance upon the ruling underpays GST, the underpayment is not payable (section 37). Beyond this the ruling has no effect being merely the opinion of the ATO. A taxpayer is free to challenge the ruling and a court or tribunal may take a different view of the matter.

However, the ruling accords with the position in the United Kingdom, Canada and New Zealand and adopts an in-substance approach to the issue. It focuses on that for which the payment under the settlement or court order is really made. Taxpayers may be content to accept this approach without challenge.

GST is payable on a 'taxable supply' as defined in *A New Tax System (Goods and Services Tax) Act 1999* ('GST Act'). That is a supply made for consideration in the course or furtherance of an enterprise, which is connected with Australia and is made by an entity which is registered or required to be registered (section 9-5). The Draft Ruling concentrates on the supply for consideration requirement and states that a sufficient nexus must exist between the payment under the settlement or court order and a supply for a GST liability to arise (paragraph 89).

The term 'supply' is widely defined in the GST Act such that it extends to the surrender of any right, the release from an obligation to do anything and the entry into an obligation to refrain from an act (section 9-10(2)). The Draft Ruling points out that a settlement will normally involve such a supply which it terms a 'discontinuance supply' (paragraphs 51-52).

However, the Draft Ruling takes the view that in most instances a discontinuance supply will merely be an inherent part of the legal machinery to add finality to a dispute which does not give rise to an additional payment in its own right (paragraph 93). No sufficient nexus will be taken to exist between a payment under a settlement and a discontinuance supply where the subject of the dispute clearly relates to an earlier supply or to a claim which does not have the character of a supply (paragraph 92). Thus, where a payment made under a settlement or in compliance with a court order has a sufficient nexus with an earlier supply, the ATO would not attribute any separate amount to the discontinuance supply.

In determining whether a sufficient nexus exists between a supply and payment under a settlement or court order, the ATO takes the view that regard needs to be had to the true character of the transaction including all the transactions entered into and the circumstances in which the transactions were made (paragraph 85).

If there is a sufficient nexus with an earlier supply and it was a taxable supply, the payment under the settlement or court order will be subject to GST. If the earlier supply was not a taxable supply the payment will not be subject to GST.

Similar considerations apply to a current supply. If a payment is to be made under a settlement or court order for a supply to be made, GST will be payable if that supply is a taxable supply.

Where the subject of the dispute is a claim for damages for negligence, loss of profits, breach of copyright, personal injury

and the like a payment made in compliance with a settlement or court order will not be subject to GST because the underlying dispute did not relate to a supply as defined in the GST Act (paragraph 96).

If an amount payable under a court order or settlement has a sufficient nexus with a past or current taxable supply and a sufficient nexus with another matter, the Draft Ruling requires an apportionment in order that GST is payable on some appropriate part of the payment (paragraphs 97-102).

In relation to costs of litigation the ATO takes the view that GST is not payable because there is no supply for consideration from the successful party to the unsuccessful party. What is paid is essentially compensation for costs or losses incurred in the dispute which will be treated in the same way as damages (paragraphs 127-128).

As a result of the recent meeting, the final ruling is likely to include reference to non-resident supplies, to the recent decision of *Shaw v Director of Housing and State of Tasmania (No 2)* [2001] TASSC 2 and amend the discussion with respect to *Interchase Corporation Ltd v ACN 010 087 573 Pty Ltd* 2000 ATC 4552.

**Ian Gzell QC**  
Chairman  
Taxation Committee

17 April 2001

**Is Minding Your Business  
not as quick as you  
thought?**

**Small  
Business  
Bookkeepers  
Pty Ltd**

We can provide a speedy reliable service to help you with GST compliance.

All work is overseen by qualified accountants using the latest accounting packages such as MYOB and Quicken.

**Call now for immediate  
assistance?**

**Ph: 9955 2388 • Fax: 9955 2208**

# Possible recovery of barristers' fees by HHH liquidator

By George Palmer QC

Members who have recently received payments of fees in matters in which HHH was the client's insurer need to consider whether they may have to repay those fees to a liquidator of HHH if the company is ultimately wound up.

The purpose of this note is to alert members to the nature of the problems which may arise so that they may take them into account in planning their cash flow and other commitments. The note is not intended to deal in detail with all legal issues which could arise. If a barrister recognises that he or she could have a problem, an insolvency expert should be consulted.

HHH was placed in provisional liquidation on 15 March 2001. Presumably, the application to the court for winding-up was filed on or shortly before that day. If a winding-up order is ultimately made, the liquidator will be looking to recover any substantial payments made to creditors of HHH within the period of six months prior to 15 March 2001, which fall within the definition of 'unfair preference' in *Corporations Law* s588FA(1).

A payment by HHH to a barrister in respect of fees will be recoverable by the liquidator as an 'unfair preference' if:

- the barrister was a creditor of HHH in respect of those fees;
- the payment of fees was received by the barrister between 15 September 2000 and 15 March 2001;
- at the time of the payment to the barrister, HHH was insolvent; and
- the barrister does not have a defence under *Corporations Law* s588FG(2).

Payment of a barrister's fees by HHH cannot be attacked as a preference if the barrister was not a creditor of HHH in respect of those fees. A barrister will not be a creditor of HHH if the barrister had a fee agreement which makes clear that the barrister's contract for services was solely with the barrister's instructing solicitor, not with HHH directly nor with the instructing solicitor as agent for HHH. Where the barrister's fee agreement was solely with the solicitor, the barrister is the solicitor's creditor because the solicitor may now be sued for the fees upon the fee agreement: *Legal Profession Act, 1987* s38I(3). In such a case, if HHH pays the barrister's fees to the solicitor, the solicitor banks the payment into the firm's trust account and draws a cheque in favour of the barrister, the barrister will not have received the payment as a creditor of HHH, but as a creditor of the solicitor. Similarly, if HHH provides the solicitor with a cheque in favour of the barrister directly, and the solicitor simply transmits the cheque to the barrister, the barrister will have received the payment as a creditor of the solicitor since what has happened is that the solicitor has discharged his or her debt to the barrister by agreeing with a third party that the third party will make the payment on the solicitor's behalf.

The barrister's position is more difficult where the barrister does not have a fee agreement with the solicitor, or where the agreement is not in writing so that the identity of the other party to the contract is open to dispute. A solicitor, or the HHH liquidator, may assert that at the time the barrister accepted the brief it was understood by the barrister, the solicitor, the lay client and HHH that the barrister was to look for payment for his or her fees only to HHH, not the solicitor or the client, and that the barrister is accordingly the creditor of HHH. In such a dispute, it would be very material whether the barrister rendered fee notes to the solicitor or to HHH directly, and whether HHH drew cheques for those fees in favour of the solicitor or directly in favour of the barrister.

If a claim for recovery of fees is made by the HHH liquidator against a barrister as an unfair preference, it may be assumed that the liquidator will have at least some evidence of the insolvency of HHH at the relevant time.

The barrister who received payment as a creditor of HHH will be able to defeat the liquidator's claim if the barrister can prove that he or she:

- became a creditor of HHH in respect of the fee, and received payment of the fee in good faith, and
- at the time of receiving payment, had no reasonable ground for suspecting that HHH was insolvent or would become insolvent by reason of making the payment, and
- provided valuable consideration to HHH for the fee.

## Chambers For Sale

14th Floor Wardell Chambers  
39 Martin Place, Sydney

A large room overlooking Martin Place to be sold with existing cupboards and shelving. The room is an attractive one and of size suitable for either a Silk or Junior with established practice.

The floor is constituted by 23 mainly Senior Juniors and two readers.

In 1999, the floor exercised its option to renew its lease for a term of a further 12 years. Since then, the floor has been renovated and refurbished.

The floor boasts a very extensive library including computer research facilities.

*Price:* On application

*Contact:* Steve Campbell, or  
Trish Hoff  
on phone 9231 0077

The barrister must also prove that a reasonable person in the barrister's circumstances at the time of the payment would not have had grounds for suspecting HIH's insolvency.

The barrister will prove good faith by demonstrating that there was no impropriety or dishonesty on the barrister's part, in the sense that the barrister did not believe that receipt of the payment would occur in circumstances which would or might advantage the barrister over other creditors of HIH. Valuable consideration will be proved by the fact that the barrister carried out the work required by the brief.

Proof that a barrister had no reasonable grounds for suspecting HIH's insolvency involves both a subjective and an objective test: the court will consider what knowledge the barrister actually had and whether that knowledge would reasonably have afforded grounds for suspicion.

Ultimately, the test is whether a reasonable person in the barrister's position at the time of payment would have had an actual apprehension or fear about HIH's ability to pay its debts as they became due, and would have appreciated that acceptance of payment would have the effect of preferring the barrister over HIH's other creditors.

The factors to be looked at in considering whether the barrister would have had reasonable grounds for suspecting HIH's insolvency would include the barrister's knowledge as to:

- the apparent ability of HIH to continue trading up until 15 March 2001;

- whether any other creditors had taken action to recover their debts or to wind up the company; and
- whether HIH was apparently complying with the ASX listing requirements and the requirements of the insurance regulator, APRA.

Delay by HIH in payment of fees would not in itself provide reasonable grounds for suspicion of insolvency if this was HIH's usual practice.

Barristers who have received fee payments directly or indirectly from HIH since about 15 September 2000 should take the following precautions:

- identify all such fee payments received;
- ascertain whether the payments were made pursuant to a fee agreement and, if so, with whom the fee agreement was made;
- if the fee agreement is not in writing or does not clearly show that the agreement is with the instructing solicitor on his or her own behalf, seek confirmation from the instructing solicitor as to whether the agreement was understood to be with the solicitor or with HIH;
- if the fee agreement was actually or arguably with HIH, give consideration to available defences to a preference claim, in consultation with an insolvency expert; and
- make prudent provision for the costs of defending a claim by the liquidator, and for the repayment of amounts which may be found due to the liquidator.

## Amendment to the New South Wales Barristers Rules

At its meeting on 22 February, Bar Council resolved to amend Barristers' Rule 87(j). This was in response to what was perceived to be an undue restriction on the ability of part-time barrister members of the Administrative Decisions Tribunal to practice before the Tribunal once they ceased being members of the Tribunal.

It was resolved to amend the scope and application of the rule by inserting after the words 'or more' (where last occurring), the following:

- (iv) within 3 months after the barrister ceased to be a part-time member of the Administrative Decisions Tribunal of New South Wales; or

Rule 87(j) now reads:

- (j) the brief is to appear before a court of which the barrister was formerly a member, or before a court from which appeals lay to a court of which the barrister was formerly a member (except the Federal Court of Australia in case of appeals from the Supreme Court of any State or Territory), and the appearance would occur:

- (i) within 2 years after the barrister ceased to be a member of the court in question, if the barrister was a member of the court for less than 2 years;
- (ii) within a period after the barrister ceased to be a member of the court in question equivalent to the period for which the barrister was a member of the court, if the barrister was a member of the court for 2 years or more but less than 5 years; or
- (iii) within 5 years after the barrister ceased to be a member of the court in question, if the barrister was a member of the court for 5 years or more; or
- (iv) within 3 months after the barrister ceased to be a part-time member of the Administrative Decisions Tribunal of New South Wales; or ...

The amendment took effect upon gazettal on Thursday, 12 April 2001 (*New South Wales Government Gazette*, No.67, p.1880).

*The last room with a view to the eastern suburbs*

**Now for sale**

**13 Wentworth Chambers**

3000 shares

Busy commercial / admin / defamation / common law members

**New floor renovations**

**Inspect now**

Ring vendor on

ph: **(02) 9232 3736**

# Speeches

'Opening ceremony: Judicial Conference of Australia Colloquium 2001', by the Commonwealth Attorney-General, The Hon. Darryl Williams AM QC MP, 7 April 2001. This speech, delivered at Ayers Rock Resort, Uluru, the Attorney-General reiterated his views on the role of the Attorney-General in defending the judiciary. He emphasised the differences between the office of attorney-general in the UK and Australia, and asserted that the separation of powers meant the judiciary should defend itself from criticism and not 'transgress into the field of politics'. A copy of the speech may be obtained from the Attorney-General's web site at [www.law.gov.au/ministers/attorney-general](http://www.law.gov.au/ministers/attorney-general). A copy is held in the Bar Library.

'Tort Law Reform', by the NSW Attorney General, The Hon. Bob Debus MP, 17 March 2001. This paper, delivered before the Australian Plaintiff Lawyers Association, outlines the State Government's initiatives designed to create a 'balance between the level of compensation paid to people injured and the level of insurance premiums which must be paid'. A copy of the speech is held in the Bar Library.

---

## New members of the Bar Association

The persons listed below were accepted as members of the NSW Bar Association at a meeting of Bar Council on 7 March 2001:

### Local practising practitioner

Anna Beardow	Jack Shand
Elizabeth Boyle	Frederick Jordan
Luke Brasch	11 Garfield Barwick
Narelle Butler	Chalfont
David Wai Mun Chin	5 Wentworth
Louise Clegg	State
Maureen De Vere	Lachlan Macquarie
Melissa Gillies	4 Wentworth
Robert Glasson	Blackstone
Scott Goodman	7 Selbome
Peter Gow	Jack Shand
Michael Graham	Newcastle
Brian Hancock	Frederick Jordan
Brent Haverfield	Trust
Alexander Ivanstoffs	12 Wentworth
Jeremy Kinross	13 Wentworth
Thea Kripner	Commonwealth DPP
Sarah Lovett	3 St James Hall
Terese Messner	Frederick Jordan
Luke Morgan	Arthur Phillip
John Mrsic	4 Selborne
Peter Namatella	Lachlan Macquarie
Natalie Obrart	5 St James Hall
Gary Smith	Newcastle
George Williams	University of NSW
Justin Young	State Chambers

### Legal practitioner other than local practising practitioner

Wayne Arthur	Silk Chambers (ACT)
Joana Fuller	Bar Chambers S.A.

## WANTED ALL LEGAL BOOKS

### LEGAL BOOKS ONLINE

L dl L g l p id pl tf f th  
i -h i  
a y l gu g n j r s rl  
W i i W  
L dl L l ill l li t t th t  
y p p  
f u

Please phone or write to Andrew Tolley

t c b t i a y i t e ith th  
disposal or acquisition of your libraries or books,  
r i t i n w b- i t t

[www.ludlow-legal.com](http://www.ludlow-legal.com)

## LUDLOW LEGAL

146 King Street, Melbourne

Telephone: (03) 9621 1521

F m :

E-Mail: [info@ludlow-legal.com](mailto:info@ludlow-legal.com)

U L www. d w- g . m

# NSW - ACT Combined Regional Conference

The New South Wales and ACT Bar Associations will be holding a combined regional conference on the weekend of 14 - 15 July.

The Bar Conference in 2000 was at Milton Park, Bowral. All who attended last year enjoyed themselves immensely. We have attempted to respond to their suggestions for improvement.

Justice Sackville of the Federal Court has agreed to be the keynote speaker and there will be other papers of relevance in both a practice and intellectual application including practical workshops for which preparation is not a pre-requisite. There will even be an 'open' session - partners are encouraged to attend - relating to stress management and financial planning.

The 'Best of Asia' dinner on the Saturday evening will provide authentic Thai,

Chinese, Malay and Indian specialities and will include a trivia competition. Last year the President showed unappreciated resources in being a member of the winning team and no doubt will be wanting to rise to the occasion again.

In an attempt to reduce costs but still have it in an appropriate setting, this conference will be held at SeasCape Manor at Gerringong, only 1.5 hours drive from Sydney down the South Coast.

SeasCape Manor offers a variety of entertainments for young families, in addition to being very close to Jamberoo Amusement Park, Minnamurra Rainforest and the quaint pubs and shops of Jamberoo and Berry.

Information and Registration forms will be issued to all members as soon as final arrangements have been completed.

---

## Land and Environment Court Electronic Callovers

From 3 April 2001 the Land and Environment Court will be operating a form of electronic callover (known as *e-Callover*) whereby parties may elect to mention matters using the Internet rather than by personal appearance in Court. Full details of the system are available at the Land and Environment Court's web site: <http://www.lawlink.nsw.gov.au/lec>. Just click on the *e-Callover* link.

Initially, *e-Callovers* will be confined to consent applications such as adjournments, directions and obtaining hearing dates. In addition, the service may be used for filing certain types of documents such as notices of appearance, statements of issues, hearing information forms, lists of witnesses. Where the Rules of Court require a document to be signed, it will be necessary also to file and serve an original signed copy in the usual way. The Court has established a protocol for using the system, which is accessible from the *e-Callover* welcome page.

Access to the system will be by a user name and password that will be issued to practitioners on request. The allocation of user names and passwords is being administered by the Law Society of NSW and application may be made electronically by clicking on the Law Society's link on the *e-Callover* welcome page. The Court will, on request, register a practitioner's user name with each matter with which that practitioner is associated, permitting the practitioner to make applications and file documents in those matters. It is envisaged that the system will be used primarily by solicitors. However, barristers will be able to obtain access to their matters and, if so instructed, may 'mention' a matter or 'hand up' a document as they would at an actual callover. Furthermore, they will be able to keep track of a matter, as each application and order is recorded and can be viewed at any time.

The Land and Environment Court is interested in receiving feed-back on the *e-Callover* system from practitioners.

If you have any comments on the new system direct them either to the Court itself ([lecourt@agd.nsw.gov.au](mailto:lecourt@agd.nsw.gov.au)) or to Jeff Kildea (5 Wentworth Chambers: [jfkildea@ozemail.com.au](mailto:jfkildea@ozemail.com.au)), the Bar Association's representative on the Land and Environment Court Technology Implementation Team.

Make [www.nswbar.asn.au](http://www.nswbar.asn.au) your home page.

## Notification of change in particulars

Bar Association staff have often experienced difficulty contacting members who have moved to new chambers or have otherwise changed their phone number, postal, DX or e-mail address.

The Bar Association would like to draw the attention of members to clause 12 of the Legal Profession Regulation 1994, 'Notification of change in particulars', which states that:

- (1) A legal practitioner must notify the appropriate Council, in writing, of any change in the particulars relating to the practitioner as disclosed in the practitioner's last application for a practising certificate within 21 days after the change occurs.

### Brennan & Powell Pty Ltd

trading as

### Barristers' Insurance Services

since 1979

*We can arrange the following (Please tick)*

- Barristers' Sickness & Accident Extension Plan
- Barristers' Term Life Insurance & Crisis Plan
- Cover for Chambers and Professional Effects
- Occupational Legal Liability
- Superannuation (DIY)

Name: \_\_\_\_\_

Phone No: \_\_\_\_\_

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

or contact

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

Email: [bandp@triode.net.au](mailto:bandp@triode.net.au)  
DX 9104 Dee Why

# Assistance to East Timor: A gift from the senior counsel of 1999

On Friday, 23 March the senior counsel of 1999 presented their gift to the Bar Association at a small ceremony in the Common Room.

The gift took the form of a cheque for \$28,000, which was immediately donated by Ruth McColl S.C to the East Timorese Jurists Association. Accepting the donation on behalf of the ETJA was its President, Mr Adorito Soares.



*Bill Kearns S.C. pictured with Mr Adorito Soares, President of the East Timorese Jurists Association.*

Bill Kearns S.C. spoke on behalf of the silks of 1999. He informed the gathering that the Jurists Association comprised roughly 90 judges and legal practitioners and proceeded to outline the enormous task which lies before it in establishing a new legal system in the shattered former province of Indonesia. The funds would be used to acquire basic office equipment and premises for the ETJA.

On hand to witness the ceremony was The Hon. Justice John Dowd, President of the Australian section of the International Commission of Jurists who was instrumental in organising the gift by the silks of 1999. Justice Dowd briefly addressed the gathering, recounting impressions gained during a recent visit to East Timor.

Mr Soares, a human rights lawyer with experience in Jakarta, thanked the Bar Association and praised the role played by the Australian legal profession in being an outspoken critic of Indonesian rule in East Timor.

Mr Soares, a human rights lawyer with experience in Jakarta, thanked the Bar Association and praised the role played by the Australian legal profession in being an outspoken critic of Indonesian rule in East Timor.



*Ruth McColl S.C., presenting the cheque to Mr Adorito Soares, President of the East Timorese Jurists Association.*

---

## In Brief

### HIH and Tax

The Australian Taxation Office has nominated Barbara Acland as the contact officer for barristers with HIH-related tax problems. She may be contacted on ph: (02) 4923 1874 or via e-mail: barbara.acland@ato.gov.au

### Bar News

*Bar News* will be appearing three times per financial year. Contributions are warmly welcomed.

### Bar Association charity 2000-2001

The Aboriginal Medical Service Co-operative Limited, Redfern, is the official Bar Association charity for the year 2000-2001. The cumulative total of donations received from members of the Bar Association stands at \$28,327.

### Listing procedures for committal hearings in the Local Court

Beginning 23 April 2001, matters listed for committal hearings will be dealt with to finality on a running list basis. Subject to unforeseen circumstances, committal hearings will no longer be adjourned part-heard as has been the case to date in the Local Court, once the day/s allocated for such a hearing have been utilised. This change will take effect in relation to fresh matters listed for committal hearing after 23 April.

### ODPP web site

The Office of the Director of Public Prosecutions has launched their web site at [www.odpp.nsw.gov.au](http://www.odpp.nsw.gov.au). In addition to media releases, speeches and employment opportunities, it contains DPP Prosecution Policy and Guidelines and information for prosecution witnesses.

### Bar Association prizes

The 2000 Bar Association prizes in Remedies and Practice & Procedure at Wollongong University, have been awarded to Ms Kirstie Richards.

The 2000 Bar Association prizes at the University of New South Wales have been awarded to the following:

Advocacy – Mr Reuven Abeshouse

Evidence – Ms Trudi Aickin, Mr Brian Costello and Mr Christopher Cruikshank (shared)

Law, lawyers and society – Mr Benedict Golder.

The President of the Bar Association presented the awards at a Prize Night on 29 March.

# Hearing loops in courtrooms

Federal courts are responsible for their own administration. Commonwealth buildings are required to comply with the Building Code of Australia and the *Disability Discrimination Act 1992* (Cth) ('DDA'). Recent amendments to the DDA provide for the development of standards in relation to the access or use of any premises by persons with a disability that the public is entitled or allowed to enter or use. All new courtrooms built must include hearing loops. The High Court has plans to upgrade existing hearing loops in its courtrooms.

As a result of a push by the court administrations of the Commonwealth, hearing loops have been installed in most courtrooms in the Federal and Family Courts in the capital cities. Loops create an electro-magnetic field, which enable people with some types of hearing aids to tune in to the court's monitor equipment so that they can hear, loud and clear. The internationally recognised symbol designating the courtroom as having the facility will appear at the entrance to the court room.

Things happen a bit more slowly in regional areas. The Family Court buildings in Lismore and Coffs Harbour have been equipped, thanks in no small part to the tireless and well directed efforts of the Bar Association. The Executive Director, Philip Selth, recently told administrators of a certain court that they had a moral and statutory obligation to install the equipment.

The next front is the State courts. Apparently, there are no loops in court houses outside Sydney. In the vast majority of these court houses there are no facilities at all for the hearing impaired. In Lismore there is a portable infra-red system which

involves having in the particular courtroom a transmitting device plugged into the monitor's tape recorder, and another device worn on the chest of the hearing impaired person, which links to their hearing aid. This is not a very good system, even if counsel have looked ahead and made the necessary arrangements to have the equipment where and when required, as most court staff are not trained in their use. Also there is nothing to tell the hearing impaired in these courthouses that the equipment exists. Mr Nasser in the NSW Attorney General's office is the contact to arrange for the equipment to be made available, and he is a very informed and helpful gentleman. But the system is far too ad hoc, and something needs to be done to introduce loops across the board.

It has been said by court administration officers in the NSW courts that there are problems with loops because they enable a person outside a loop equipped court room wearing a hearing aid to pick up sounds that may be emanating from inside the court room. However, the engineer who installs the loops for the Commonwealth claims that that can be overcome by creating another field in the area outside the court room cancelling out the effects of the field operating inside the court. That increases cost, but it overcomes the problem.

It is to be hoped that the state courts will act promptly to redress this problem, which is a serious for some litigants, legal practitioners and witnesses trying to access the courts, in no way less serious than a courthouse without a ramp for someone in a wheel chair.

*By Peter McGuinness*

---

## At the Lecturn

**30 April:** 'Class actions'. The speakers will be Steven Finch S.C. and Bret Walker S.C.

**14 May:** 'Negotiations'. The speakers will be Paul Donohoe QC and Mary Walker

**21 May:** 'Law reporting'. The speaker will be Naida Haxton

The CLE timetable may be subject to change. For further information and a complete list of seminars, visit the Bar Association web site at [www.nswbar.asn.au](http://www.nswbar.asn.au) or contact the Assistant Education Manager at the Bar Association, Emma Wright on ph: (02) 9229 1712

---

## Chambers For Sale

The Trust Chambers has two rooms available for sale.

The chambers are situated at Liverpool Street.

The floor consists of 24 members.

Range of jurisdictions with commercial, common law, equity and criminal emphasis.

All enquiries should be directed to Emma-Kate Bos  
on **9264 9444**



**Commercial Law Association Seminar**  
**Matthew Stutsel of Freehills, Sydney discusses**  
**National Co-ordination and the Credit Code**

Friday, May 11, 12.30 to 2.00pm, State Library, NSW

**Business card draw:**

**Win a JAGUAR S-TYPE for the weekend**

Register by phone 9231 3520, fax 9221 9821

or email [maxwilson@cla.org.au](mailto:maxwilson@cla.org.au)

Members \$44, non-members \$55

(Lunch & GST included).

Seminar = one unit of MCLE points

# A strategy to assist Indigenous lawyers to practise at the Bar

On 21 March, at the Lloyd McDermott Rugby Development Team dinner, McColl S.C. officially launched a strategy to assist Indigenous lawyers to practice as barristers.

Bar Council approved the strategy last year and assigned the Equal Opportunity Commission the task of preparation and implementation.

Currently, there are only three Indigenous Australians practising as barristers. The causes for lack of representation of Indigenous Australians at the Bar are numerous. In addition to significant economic, social, educational and health-care disadvantages, there are a number of very specific and substantial hurdles faced by those Indigenous students who are fortunate or determined enough to commence a career in law. They are often living away from a remote area where family are located and are residing with friends and relatives who are often barely able to provide the necessities of life, let alone an ideal environment in which to study.

Having attained their degree, the Bar appears to Aboriginal law graduates to be a remote institution, which has no track record of welcoming Indigenous Australians.

Both these obstacles should be redressed, and are capable of redress, by an initiative from the Bar. Furthermore, such an initiative would be beneficial to the Bar. The highly skilled but generally privileged background of many barristers does not often bring them into direct contact with Aboriginal people. The Bar will benefit if there are significant numbers of people from a diversity of backgrounds begin practising. Furthermore, Aboriginal causes need independent-minded, articulate and persuasive Indigenous advocates. Practice at the Bar fosters all these qualities.

The strategy outlined below is designed, at least in a limited way, to redress them. Once successful the scheme can be expanded.

Supporting Indigenous law students who show advocacy skills

The first part of the strategy is the provision of support to a number of Aboriginal law students who show capacities as advocates by the time of their last two years as students. This part of the strategy is designed to ensure that the most talented advocates among Aboriginal law students are successfully



*McColl S.C. launches the Indigenous Lawyers Strategy.*

able to complete their law courses to qualify them for admission and without the need to take salaried, public service or other employment that may later effectively discourage them from coming to the Bar.

## **Earliest contact**

At the earliest point in their legal careers, when they start at Law School, indigenous law students need to be brought into contact with the Bar so that they can commence to consider it as a serious career option. This can be done in several ways. First, the University of New South Wales holds a pre-law program for Aboriginal law students throughout Australia in January/February of each year. Members of the Bar should participate with the rest of the legal profession in that program. Students on the pre-law program should be invited to come to Chambers and see the Bar in action and to come to functions organised by the Bar's Equal Opportunity Committee. The Bar's Duty Barrister Scheme may also provide some opportunities for their involved assistance. This early contact is likely to result in the developing of informal mentoring networks between law students who are potential candidates for the scheme and members of the Bar.

Even before particular students are selected for participation in the scheme, there are many points of contact and employment opportunities available for indigenous law students within Chambers. Positions as research and administrative assistants are regularly made available to law students in Chambers. Positions for indigenous law students can be sought by the Equal Opportunity Committee through Bar Brief

and notices to Clerks and heads of Chambers. This will facilitate ease of contact between these students and the Bar during their undergraduate program generally as well as providing a degree of financial assistance.

## **Finding the students**

Professor Paul Redmond, Dean of the Law School at the University of New South Wales and Professor David Barker, Dean of the Law School at the University of Technology have both indicated a willingness to participate in a Bar scheme in which they will nominate indigenous law students from their law schools who in their judgment show potential to go to the Bar. Up to six law students would be nominated in each year. The private Bar and the Public Defenders and Prosecutors would then select two law students each for sponsorship to come to the Bar. The selection process will emphasise the need to ensure that an adequate number of female indigenous law students are included in the scheme.

The selection of suitable candidates would occur in the course of the study year before the final undergraduate year of study. The students selected would then receive the benefit of a number of sources of financial, practical and academic assistance from the efforts of the New South Wales Bar.

Professor Redmond and Professor Barker believe that each year they will be able to identify a number of talented indigenous law students who show advocacy skills and would be suitable candidates to come to the Bar. It is expected there will be no difficulty in selecting candidates each year.

New South Wales University and the University of Technology have been chosen initially as the sources of students for this scheme, because of their well-developed facilities and programs of study and support for indigenous students and particularly law students. These two Universities will pilot the scheme which can be extended to other Universities once it is established.

## **Selecting appropriate students**

A committee of Bar Council, comprised of indigenous barristers, representatives of the Bar's Executive and some members of the Equal Opportunity Committee would undertake the selection process on behalf of the Bar. Indigenous barristers will be fully involved in the implementing of the scheme. Because of the Government's involvement in the scheme

(see below) the Attorney-General or a representative of the Attorney-General may also wish to participate in the selection process.

Providing resources to the selected students

**Once law students have been selected to join the scheme, the Bar can give or help organise various forms of assistance to them. This may be achieved through, and with the assistance of the following:**

- Direct contact with Chambers to give indigenous law students familiarity with work at the Bar and to create some early relationships with individual barristers and the opportunity to do paid work in Chambers;
- Suppliers of insurance and other financial services to the Bar should be asked either to employ or sponsor indigenous law students through to the end of their undergraduate program;
- Individual barristers can be involved in tutoring Aboriginal law students in their academic studies; and
- The Judiciary, who often employ law students as associates and research assistants. Many members of the judiciary would be ready to give an opportunity to indigenous law students and participants in the scheme to take up these positions.

### **The period between graduation and admission to the Bar**

The second phase of the scheme covers the period between the scheme members' graduation and their admission to the Bar. There are a number of one-off expenses and special financial needs that law students incur between the time of their graduation from University through until their entry into full-time practice whether at the Bar or as solicitors. Principal among those special needs are the expiry of Commonwealth Government student allowances, the lack of income during the College of Law course (which is now compulsory for all persons even those going straight to the Bar from University) and the fees associated with that course and with the Bar Practice Course.

Discussions with Adrian Tucker of the Department of Aboriginal Affairs indicate that the Department appears to be willing to recommend to the New South Wales Government a partnership arrangement with the New South Wales Bar Association in which the Government would provide an annual scholarship (probably of the order of about \$20,000 per student) to cover College of Law fees and other expenses occurring during this gap period. This initiative would provide an opportunity for the Bar Association

and the Government to work co-operatively to achieve an important social objective. Though not yet formulated into a Policy Paper within Government, indications that such funding might be available have been encouraging.

Other practical measures can be taken by the Bar Association, such as the waiving of fees on its Bar Practice Course for indigenous candidates for the Bar who are in the scheme. The Mum Shirl Foundation may also be a source of covering educational expenses for members of the scheme undertaking the Bar Practice Course. It is intended to approach ATSIC to explore the possibility of other financial assistance being provided to scheme members during this period.

Finally, the legal robe makers such as Blashki & Co may be prepared to donate legal wear and robes to indigenous lawyers commencing at the Bar. There is currently a donation from Blashki & Co to the person who tops the Bar entrance exams.



*Mullenjaiwakka, Sydney Chambers.*

### **Early practice at the Bar**

The third part of the scheme is to create the best environment possible at the Bar for scheme members to practice successfully. Once members of the scheme have graduated from the Bar Practice Course, the Equal Opportunity Committee would play a close role in finding them suitable placements in Chambers where their practices were likely to develop within their first two years at the Bar. Early enquiries indicate that there are many sets of Chambers in Sydney that are very willing to provide space for indigenous barristers.

### **Tutors and mentors**

The Equal Opportunity Committee can play a special part in assisting scheme members to find tutors and mentors for their first years at the Bar. There is a number of senior juniors and Silk who have already indicated a personal

commitment to assisting indigenous Australians to come to the Bar and who have already offered their assistance as tutors or mentors. Although it will be difficult in the first few years of the scheme to achieve this, an indigenous member of the Bar will always be one of the tutors or mentors of a new barrister within the scheme.

New barristers within the scheme will have tutors within the Bar's usual tutor-pupil system, however, the Equal Opportunity Committee will assist in finding them more than one tutor if required and can initially put them in touch with committed and helpful mentors. Mentors will be selected on the basis of their commitment to assist the scheme and their capacity best to develop the practises of these new barristers. Even after the formal tutor-pupil relationship of the first year at the Bar has finished, mentoring will continue until the new barrister has a self-sustaining practice.

### **Solicitors support**

Dan Gilbert of Gilbert & Tobin has volunteered to arrange a group of solicitors' firms to support the scheme by ensuring in a co-ordinated way that the indigenous barristers within the scheme are regularly briefed by those supporting law firms. Dan Gilbert is prepared to be the point of co-ordination for ensuring that these law firms support the barrister scheme members. Dan Gilbert has indicated that the large commercial law firms in Sydney will immediately give support to the scheme. He also indicated that the supporting solicitors' firms should include a number of smaller firms with criminal and other common law expertise. If approval is given to the scheme, further work can be done to define the arrangements by which the support will be provided by the volunteer law firms. Dan Gilbert indicated that Gilbert & Tobin is itself prepared to support barristers involved in the scheme.

### **Some other initiatives**

After finding Chambers for scheme members, a series of other initiatives would then be undertaken by the Equal Opportunity Committee to assist these barristers' practices. The principal of these are identified below.

- Introducing the scheme members to senior juniors and Silks at the Bar who practise in the new barrister's preferred areas of practice.
- Providing opportunities for the new barristers to speak to solicitors firms in specialised areas of practice such as native title and thereby to develop contacts within those firms.
- The State Attorney-General has already indicated a willingness to direct the

State Crown Solicitor to provide work opportunities to assist the practices of indigenous Australians coming to the Bar.

- All State Government departments that brief the Bar directly can be approached to ensure that those departments are aware of the scheme members who have come to the Bar.
- The Federal Attorney-General can be approached to ask the Australian Government Solicitor to direct work to scheme members who have come to the Bar.
- A member of the Equal Opportunity Committee and all the indigenous barristers will be given a role in conjunction with other members of the Bar to develop the practises of each scheme member, once at the Bar.

## Conclusion

The Equal Opportunity Committee believes that this scheme will result in bringing more Indigenous lawyers to the Bar each year. For further information about this scheme, contact the Secretary of the Bar Association's Equal Opportunities Committee, Shanthini Govindasamy on ph: (02) 9229 1739, fax: (02) 9221 1149, or via e-mail: [sgovind@nswbar.asn.au](mailto:sgovind@nswbar.asn.au)

## Law Week Debates - 15 May 2001

*An exciting evening of topical debates featuring prominent speakers from the Law Society of New South Wales, the NSW Bar Association and the NSW Police Service.*

### 'The Right to Silence'

A debate between the NSW Police Service, Prosecuting Unit, and the Law Society of NSW.

**Moderator:** Ruth McColl SC, President NSW Bar Association

**Speakers:** Lawyers: Jane Sanders, Michael Antrum and Francis Farmikidis.

Police Prosecutors: Craig Murray, Chris McGoldrick, and Les Dalrymple

### Law Week Debate: Three Cheers for the Nanny State: Is NSW over regulated?

**Moderator:** Mr Nicholas Meagher, President, The Law Society of NSW

**Speakers:** John North, Bret Walker S.C., Rena Sofroniou, Justin Gleeson S.C., Andrew Bell & Richard Horsley

**6.30pm - 8.30pm**

**Venue:** Smith Room, Wesley Centre, 220 Pitt Street, Sydney.

For further information contact Lorraine Clark 9926 0287 or email [lgc@lawsocnsw.asn.au](mailto:lgc@lawsocnsw.asn.au)

## St. Thomas Moore Society & Christian Lawyers Fellowship Law Week Dinner

**Speaker:** The Honourable Paul Flannery QC

**Venue:** NSW Bar Association Dining Room  
174-180 Phillip Street, Sydney.

**Monday 14 May 7.00pm for 7.15pm**

**Cost:** \$50 single \$95 with partners

Bookings are essential please contact Naomi Stafford (02) 9267 9800 DX 1433



## CONFUSED BY THE EVIDENCE ACT?

Don't be caught without the publication  
**EVIDENCE ACT CASES 2000**

**EVIDENCE ACT CASES 2000**, published by the DPP (NSW), is an essential reference and research tool for navigating the often complex provisions of the Evidence Act 1995 (NSW). This 214 page publication contains comprehensive summaries of almost all Evidence Act cases heard in 2000 in the Court of Criminal Appeal and the High Court, together with a selection of Court of Appeal, Supreme Court and District Court cases.

Evidence Act Cases 2000 contains a —

- Table of Contents based on the structure of the Evidence Act
- Table of Cases
- Detailed subject index
- Comprehensive index according to sections of the Act, plus entries on evidentiary provisions of the Crimes Act 1900 and Criminal Procedure Act 1986
- Reported citations where applicable

The cost is \$75 including GST and postage.

Copies can be obtained by mailing a cheque or money order made payable to the Office of the Director of Public Prosecutions (NSW), to —

Kate Ellson  
Office of the DPP (NSW)  
DX 11525 Sydney Downtown or  
Locked Bag A8, Sydney South NSW 1232

Enquiries can be made by email to [kellson@odpp.nsw.gov.au](mailto:kellson@odpp.nsw.gov.au) or by contacting Kate Ellson on —

telephone (02) 9285 8703  
facsimile (02) 9283 2924

Office of the Director of Public Prosecutions (NSW)  
265 Castlereagh Street Sydney NSW

# Appointments

## NSW Supreme Court

The Hon. Justice David Hodgson has been appointed as a Judge of Appeal, effective 23 April 2001.

The Hon. Justice Peter Young has been appointed Chief Judge in Equity, effective 23 April 2001.

The Hon. Jane Mathews has been appointed as an Acting Judge and Acting Judge of Appeal, effective 16 April 2001 to 15 April 2002.

The Hon. James Rolfe QC has been appointed as an Acting Judge and Acting Judge of Appeal, effective 30 April 2001 to 29 June 2001.

The Hon. Acting Justice Brownie has been appointed as an Acting Judge and Acting Judge of Appeal, effective 3 May 2001 to 2 May 2002

George Palmer QC has been appointed as a Judge of the Supreme Court, effective 23 April 2001.

## NSW District Court

His Honour Acting Judge Andrew CBE, and His Honour Acting Judge Sir Robert Woods CBE, have been appointed as Acting Judges of the District Court of New South Wales, effective 30 March 2001 to 30 June 2001.

## Local Courts

Gregory McCarry has been appointed as an Acting Magistrate, Mining Warden and as a Licensing Magistrate, effective 2 April 2001 to 30 November 2001.

Acting Magistrate Malcolm Beveridge has been appointed as a Licensing Magistrate, effective 14 March 2001 to 30 June 2001.

## NSW Compensation Court

His Honour Judge Burke has been appointed as an acting Judge, effective 19 March 2001 to 18 September 2001.

---

# Papers to note

*Aspects of judicial independence.* This paper was presented by The Hon. Justice CSC Sheller at the 2001 Compensation Court Conference, on 30 March 2001. It outlines the origins and history of judicial independence and relates the concept to the superannuation surcharge on judges' salaries, funding for courts and the administration of workers compensation law in NSW. A copy of the paper is held in the Bar Library.

*Regulation: Putting the profession in good order.* This paper by the NSW Legal Services Commissioner, Mr Steve Mark, was presented on 28 March 2001 at the 2001 Conference of Regulatory Officers in Canberra. The Commissioner asserts that 'the traditional complaints handling paradigm is ad hoc and reactive, triggered only in response to problems that have already occurred.' He advocates that it be replaced with an approach that is 'pro-active, public and positive'. A copy of the paper is held in the Bar Library.

Make [www.nswbar.asn.au](http://www.nswbar.asn.au) your home page.

# ECONOMIC LOSS REPORTS NO WIN / NO FEE INJURY LAWYERS NOTE!

We are a specialised company with highly qualified accounting and other professional personnel with significant litigation experience at all levels.

- ◆ Personnel with over 30 years experience
- ◆ Rapid reporting service
- ◆ No Win / No Fee - subject to acceptance of instructions

Let us assist you today

- ◆ **Economic Loss Reports for MVA, Work Related Accidents, Negligence Claims of all types**
- ◆ Loss of Business Income
- ◆ Business Valuations
- ◆ Financial and Other Investigations

## PERSONAL INJURY SUPPORT PTY LIMITED

Po W Mar <small>B.Com, M.Tax, FCA, ASIA</small> Sydney City	&	John C Malouf <small>BA, CPA</small> Sydney & Parramatta
(02) 9221 2577		Tel (02) 9630 1155
(02) 9223 1243		Fax (02) 9630 9513

# PII survey 2001

## Willis Australia Limited

Following the appointment of Willis Australia Limited (Willis) to provide services and advice to the Bar Association in connection with professional indemnity insurance, this survey was commissioned for the purposes of providing both the Bar Association and Willis with general statistical information from the members to enable informed consideration of the issues surrounding professional indemnity insurance for members of the Bar.

The survey was conducted in an anonymous manner during February 2001 and 796 responses were received by 28 February 2001. This represents in excess of 40 per cent of the members of the Bar. A further 21 responses have been received since that time, however those responses have not been incorporated into this report.

The respondent group was very representative of all sectors of the Bar, as can be seen from Tables 1 and 2.

**Table 1 – Years of Practice as a Barrister**

Years of Practice	Number of Responses	Percentage
0 – 5 years	191	24 per cent
5 – 10 years	271	34 per cent
10 – 20 years	138	17 per cent
More than 20 years	196	25 per cent

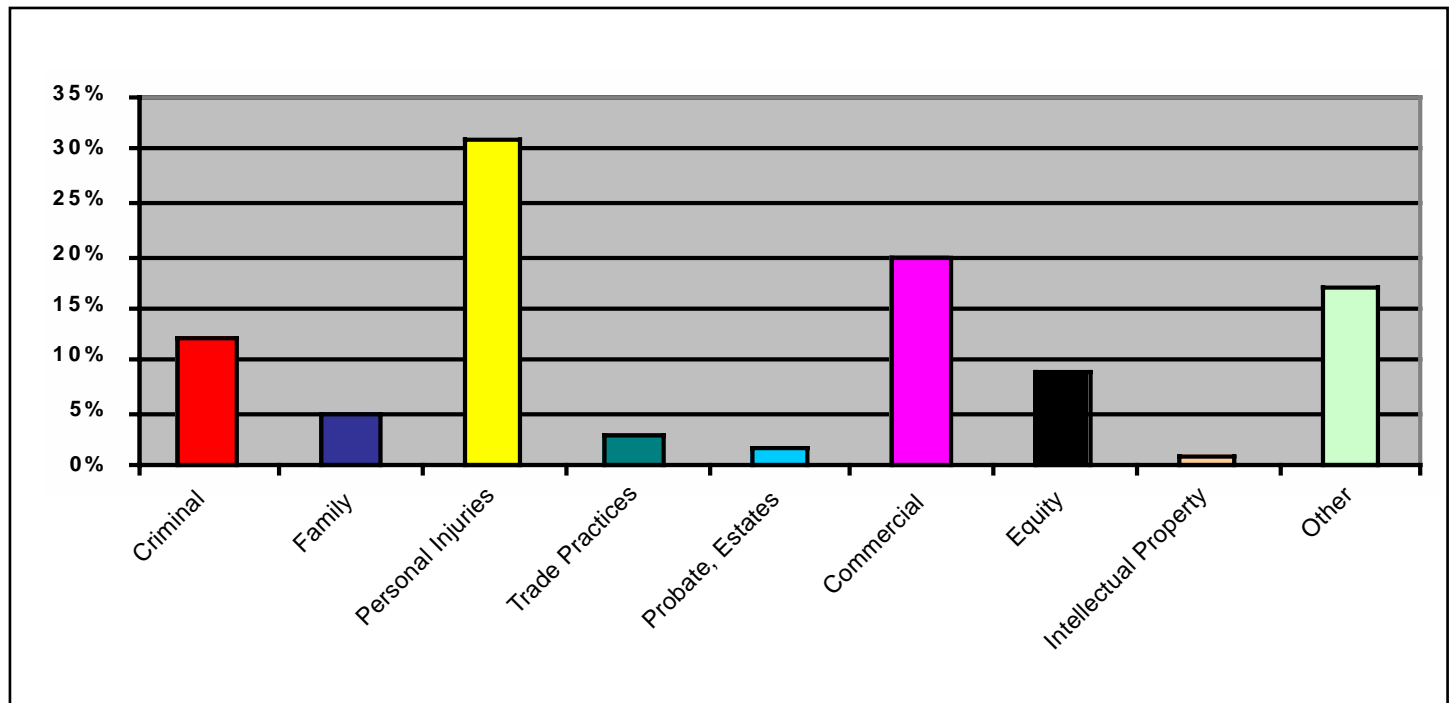
**Table 2 – Gross fees for the past 12 months**

Gross fees	Number of Responses	Percentage
Under \$250,000	370	46 per cent
\$250,001 – \$500,000	102	13 per cent
\$500,001 – \$750,000	246	31 per cent
Over \$750,000	78	10 per cent

## Practice Information

Respondents were asked to provide a percentage split of their practice into 8 practice areas according to gross fees. A category of 'other' was also included. These responses have been combined to provide a representative view of the general practice areas of the members of the Bar as shown in graph 1.

**Graph 1 – Percentage split of Practice**



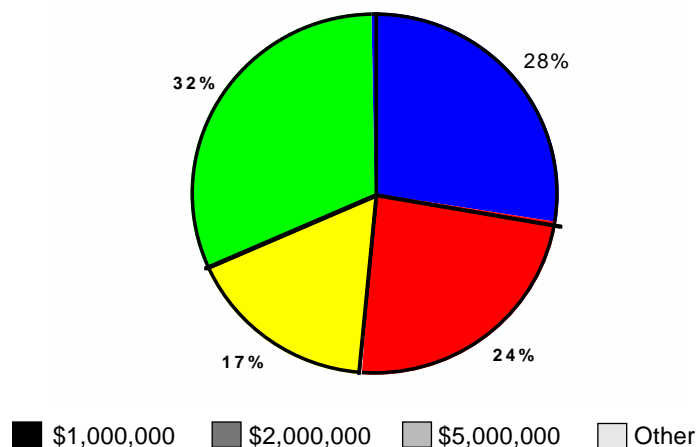
## Level of Cover

A series of questions were asked to determine current levels of indemnity, the level of excess members were prepared to carry, and whether or not they supported the imposition of a penalty excess for commonly recurring or easily avoidable claims such as for delay or missed limitation periods.

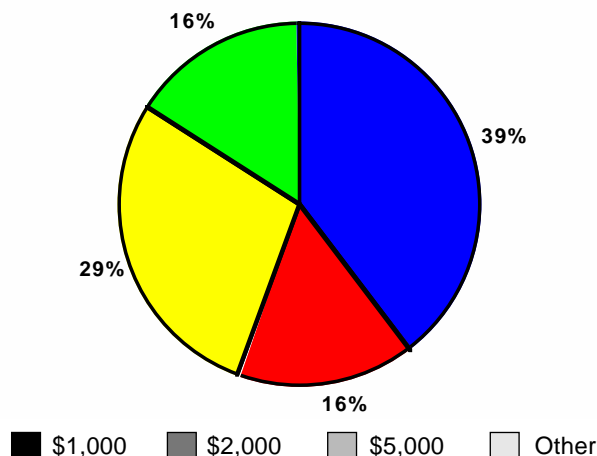
56 per cent of respondents were of the view that a penalty excess should be applied to commonly recurring or easily avoidable claims.

Graphs 2 and 3 detail the responses to the current limits of indemnity held and the excess members would be prepared to carry in the event of a claim.

**Graph 2 – Limit of Indemnity held**



**Graph 3 – Level of Excess prepared to carry**

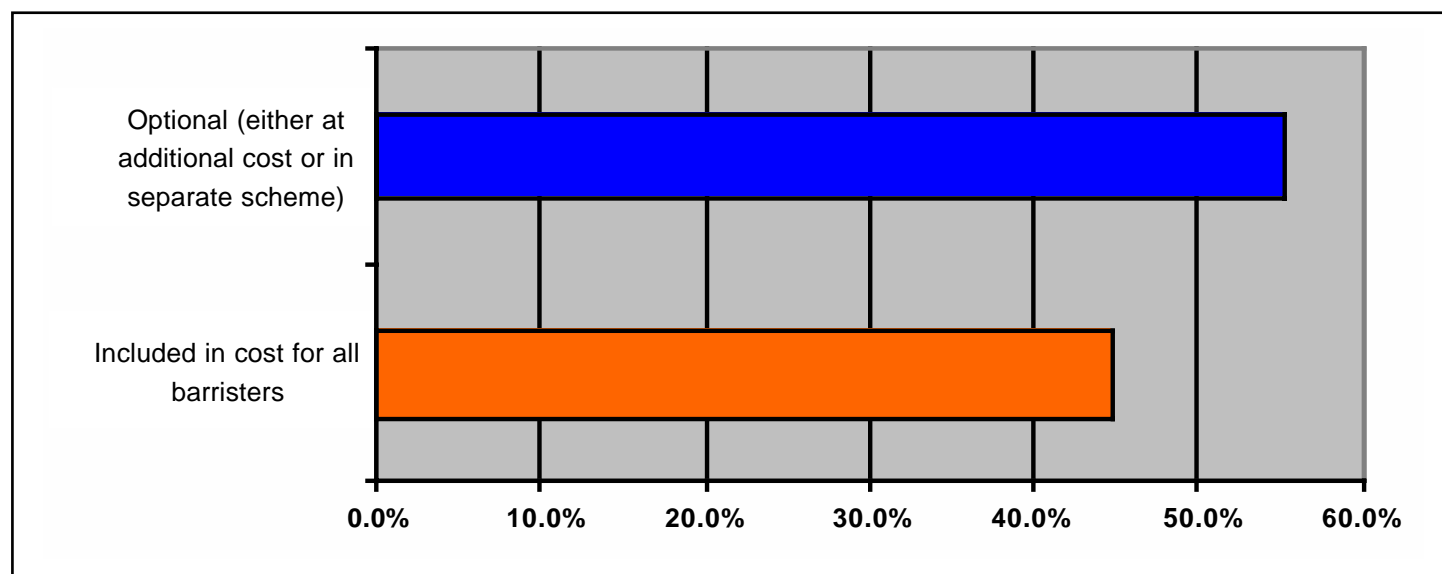


**Disciplinary Proceedings**

As reported in the President’s circular to members dated 23 March 2001, the cost of investigating and defending disciplinary proceedings has been a significant contributor to underwriting losses.

87 per cent of those who responded to the survey said that the policy should continue to provide cover for representation in disciplinary proceedings. However, 55 per cent of that 87 per cent (ie. 391 of 708) believed that the disciplinary proceedings cover should be optional either at an additional cost or as part of a separate scheme, see Graph 4.

**Graph 4 – Cover for disciplinary proceedings**



**Claims Information**

Of the 796 respondents to the survey, only seven per cent reported having had a claim in the past six years, while 16 per cent reported notifying circumstances which might give rise to a claim during the same period.

Respondents were then asked to provide brief details of claims and circumstances notified. Interestingly, 32 per cent of ‘claims’ arose from Advocacy work. That is, the Barristers Immunity from Suit would not be a defence to 68 per cent of claims made or circumstances notified during the past six years. Table 4 details the broad areas of work which have resulted in claims.

**Table 4 - Area of Claims**

Area of Claim	Number	Percentage
Advocacy	55	32 per cent
Criminal Law	7	4 per cent
Drafting	18	10 per cent
Mediation	2	1 per cent
Opinions	52	30 per cent
Other	38	22 per cent

**Commentary**

The collated survey information has been of enormous benefit in negotiating with prospective underwriters for the renewal of professional indemnity insurance for the period from 1 July 2001, by providing an insight into the views of working members of the Bar.

Willis Australia Limited are currently finalising arrangements with a number of international insurers with a view to offering professional indemnity insurance to members from 1 July 2001.

# VALE

## Garry Donald Clare – 1951-2001

Garry Donald Clare died tragically in a car accident on 3 April 2001.

He was born in Sydney on 21 February 1951 and we had a great night at his 50th birthday party earlier this year. He was educated at Granville Boys High School, where he was a prefect in his final year. He was a good, cheerful and gregarious but independent student who excelled in all sports.

He was a great Rugby Union and Rugby League player and was unfortunate after being selected to tour South Africa in an under 18 side to miss the tour through an injury in the last trial match. He represented his school in all sports for the whole of the six years he attended High School. He played for Western Suburbs League, S.G. Ball and Jersey Flegg representative sides, playing for two years in each, and he was then graded into Western Suburbs Rugby League.

After leaving school in 1969 he started work as a junior with the Government Insurance Office and soon after that started his legal career by doing the Barristers Admission Board course, which he completed in 1977. He remained with the GIO for 20 years, during which time he rose to be the head of the GIO third party section and became the solicitor on the record in Sydney for five years. When administrative changes were made in the GIO, and a separate office structure was to be set up in Parramatta, Garry was asked to set up the office and run it, which he did with great success. He greatly assisted many young people who worked in the GIO on their way either to independent practices as solicitors, or to admission to the Bar, and managed to keep in touch, and remain friends with so many of them.

He left the GIO in 1989, was admitted to the Bar, and took chambers first at University Chambers and subsequently at Selborne Chambers, and practised mainly in motor vehicle and industrial accident cases. He was a good advocate and a formidable opponent and negotiator.

Garry married Delwyn Smith in October 1972 and had two children Melissa (1976) and Allison (1978). He had a very special relationship with his parents Lorna and Don. Garry was a very sincere and honest person with a fierce loyalty to his wide circle of good friends. I remember with great pleasure the times we had together on circuit in country New South Wales, particularly in Bathurst, with many other members of the Common Law Bar, such as Brian Murray QC.

*By John Crumpton QC*

## Law Week Charity Gala Dinner Dance SATURDAY 19 MAY 2001

Hosted by Naiman Clarke Specialist Legal Recruiters in conjunction with the Law Week Board to celebrate Law Week 2001 and to raise awareness and support for people with an Intellectual Disability through the Apex Foundation's "Up-Club" project.

**Fantastic Prizes to be won:** Special celebrity guests.

**7.00pm for 7.30pm**

**Venue:** The Westin Ballroom, Martin Place Sydney.

**Cost:** \$125 per person or \$1200 for a table of ten

**Dress:** Lounge Suit/Evening

**Bookings are essential – Contact:** Naiman Clarke on (02) 9233 7977

**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

E-mail: 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

E-mail: 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 e-mail 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

# Conferences

## **Fourth Annual Australian Institute of Judicial Administration Tribunals Conference, Millennium Hotel, Sydney, 8 June 2001.**

The programme for this year's conference is entitled 'Tribunals: They need to be different'. It includes seminars and workshops on: 'Disqualification on the grounds of bias - some current developments,' 'Principles of conduct for members of merit review tribunals' and 'Examination of the application of the rules of evidence in proceedings in quasi-judicial tribunals'. To obtain further information, including programmes and registration forms, visit the AJJA web site at [www.ajja.org.au](http://www.ajja.org.au) or contact them on ph: (03) 9347 6600. A conference registration brochure is available from Bar Association Reception.

## **International Advocacy Workshop, Prato, Italy, 11-16 June, 2001.**

This is an intensive workshop for advocates and forensic experts. Participants will be taught by leading international advocacy teachers, have the opportunity to explore the variety of experiences and skills of other participants and receive individual coaching in their specific skill levels. It will be arranged by Monash University Law Faculty, with the assistance of the Australian Advocacy Institute. For further information contact the conference organisers on ph: (03) 9905 3344 or email: [jenny.morison@law.monash.edu.au](mailto:jenny.morison@law.monash.edu.au) or visit their web site at [www.law.monash.edu.au/advocacyworkshop](http://www.law.monash.edu.au/advocacyworkshop)

## **Criminal Lawyers Association of the Northern Territory, 8<sup>th</sup> 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](mailto:convention.catalysts@norgate.com.au)

## **Faculty of Advocates Biennial Conference, Edinburgh, 28-30 June 2001.**

A conference information and registration brochure is held at the Bar Association Reception.

## **Australian Bar Association Conference, Paris, 7 – 10 July 2002.**

Conference details will be published in 2001 editions of *Bar Brief*.

## **Family Courts of Australia 25th Anniversary Conference, Hotel Inter-Continental, Sydney, 26-29 July 2001.**

This conference will examine the role of family courts services during the next 10 years, the development of mediation and new systems of delivery of Family Court Services. A draft programme will be available shortly.

## **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](http://www.abanet.org)

## **International Association of Lawyers / Union Internationale des Avocats, 45th Congress, Turin, 29 August - 2 September 2001.**

Topics to be discussed include 'The legal profession: the challenge of the third Millennium', 'Globalisation of the economy' and 'Children and criminal law'. For more information contact the UIA on ph: ++33 1 22 88 55 66, fax: ++33 1 44 88 55 77, e-mail: [uiacentre@wanadoo.fr](mailto:uiacentre@wanadoo.fr) or visit their web site at [www.uianet.org](http://www.uianet.org). A preliminary conference programme and registration brochure is held at the Bar Association Reception.

## **6th Annual Conference and General Meeting of the International Association of Prosecutors, Sheraton on the Park, Sydney, 2-7 September 2001.**

The principal theme of the conference is 'The role of the prosecutor in the new millennium' and the programme will include discussion on: 'The UN Convention against Transnational Organised Crime', 'The establishment of the International Criminal Court' and 'The plight of prosecutors in developing nations'. A copy of the preliminary programme and registration brochure may be obtained from the IAP 2001 Conference Managers on ph: (02) 9262 3135, email: [iap2001@tourhosts.com.au](mailto:iap2001@tourhosts.com.au) or by visiting their web site at [www.tourhosts.com.au/iap2001](http://www.tourhosts.com.au/iap2001). A copy of the preliminary programme is held at Bar Association Reception.

## **Australian Wills & Probate Conference 2001, Vancouver, 16-19 September 2001.**

This conference is organised by the Leo Cussen Institute. For more information, contact Patricia Palman on ph: (03) 9602 3111, e-mail: [ppalman@leocussen.vic.edu.au](mailto:ppalman@leocussen.vic.edu.au) or visit their web site at [www.leocussen.vic.edu.au](http://www.leocussen.vic.edu.au)

## **The 2001 World Congress on Family Law and the Rights of Children and Youth, Bath, 19-22 September 2001.**

Topics for discussion include 'The revision of the Hague Convention on the Abduction of Children', 'International access arrangements' and 'Protection of children from violence'. For more information contact Capital Conferences Pty Ltd on ph: (02) 9252 1635, fax: (02) 9241 5282, e-mail [lawrights@capcon.com.au](mailto:lawrights@capcon.com.au) or visit their web site at [www.lawrights.asn.au](http://www.lawrights.asn.au). A registration brochure and programme is held at Bar Association Reception.

## **17<sup>th</sup> Biennial LAWASIA Conference / Triennial New Zealand Law Conference 2001, Christchurch, 4-8 October 2001.**

Programme information may be obtained from the NZ Law Society's web site at [www.nz-lawsoc.org.nz](http://www.nz-lawsoc.org.nz) or via email: [Info@conference.co.nz](mailto:Info@conference.co.nz) in January 2001.



## JAGUAR XJ, SALOON. OBJECTION OVERULED!



### FREE ON-ROAD COSTS

Until May 31st 2001 you pay no on-road costs on any new Jaguar.\* Savings in excess of \$6,100<sup>†</sup> make this a unique opportunity to own a Jaguar. In fact when you add Jaguar's 3 year/100,000km warranty with free scheduled servicing it simply becomes too good to pass by.

This table shows how much state government stamp duty, registration fees and CTP insurance you'll save on each Jaguar model. What it doesn't show is the remarkable Jaguar driving experience that cannot be matched at any price.

To arrange an exclusive demonstration of one of the Jaguar range, please contact your Local Authorised Sydney Jaguar Dealer.

#### SAVINGS AND PRICES FROM:

S-TYPE	SAVE on-road costs from \$6,148 <sup>††</sup>
	Until May 31st you pay just \$88,000 <sup>††</sup>
XJ Series	SAVE on-road costs from \$7,913 <sup>††</sup>
	Until May 31st you pay just \$123,250 <sup>††</sup>
XK Series	SAVE on-road costs from \$10,848 <sup>††</sup>
	Until May 31st you pay just \$182,000 <sup>††</sup>



**XJ SERIES**

CITY AUTOMOBILES. 49 McLachlan Avenue, RUSHCUTTERS BAY 2011. TEL: (02) 9361 4066 FAX: (02) 9360 1407. [www.city-automobiles.com.au](http://www.city-automobiles.com.au)  
 NEW ROWLEY MOTORS. 393 Pacific Highway, ARTARMON 2064. TEL: (02) 9436 0231 FAX: (02) 9436 0246. [www.newrowley-motors.com.au](http://www.newrowley-motors.com.au)  
 DENLO JAGUAR. 14-18 Church Street, PARRAMATTA 2150. TEL: (02) 9687 8200 FAX: (02) 9689 2369. [www.denlo.com.au](http://www.denlo.com.au)

\*Free on-road costs offer only applies to unregistered 2000 or 2001 model year vehicles. †On-road costs savings based on vehicles purchased in New South Wales. ††Recommended retail prices based on S-TYPE 3.0 V6, XJ8 3.2 and XK8 Coupé. XJ8 4.0 Sport model shown. Offer ends May 31, 2001.