



## President's Column

### Maintaining the Rule of Law

At last year's Bench and Bar Dinner, the President of the Court of Appeal, The Hon. Justice Keith Mason spoke about the increasing recognition of the right of judges to speak out on matters affecting the interests of the judiciary as coinciding 'with the lapse into silence of most attorneys-general as protectors of the judiciary.'<sup>1</sup>

The most vocal proponent of that view has been the Commonwealth Attorney-General, Darryl Williams AM QC MP. He made his position clear soon after the Coalition Government took power when he pointed out that, in his opinion, it was 'consistent with maintaining the independence of the judiciary from the executive that the judiciary should not normally rely on the attorney-general to represent or defend it in public debate.' He applied one reservation, however, namely that 'where sustained political attacks occur that are capable of undermining public confidence in the judiciary it would be proper and may be, depending on the circumstances, incumbent upon an attorney-general to intervene.'<sup>2</sup>

Mr. Williams' stance on the attorney-general's role aroused considerable controversy. It was criticised by Sir Anthony Mason<sup>3</sup> and the then Chief Justice Sir Gerard Brennan<sup>4</sup> and many others.

In 1999 the former attorney-general and chief justice of South Australia, the Hon. LJ King AC QC wrote: 'The attorney-general as law minister has, beyond the political responsibilities of a ministerial portfolio...a special responsibility for the rule of law and the integrity of the legal system which transcends, and at times may be in conflict with political exigencies.' While accepting Mr. Williams' view as to the 'essentially political nature of the office of attorney-general, he saw it as 'the special role of the attorney-general to be the voice within government and to the public which articulates, and insists upon respect for the judicial and other legal institutions through which they are applied.'<sup>5</sup>

The delicate balance between when it is appropriate for an attorney-general to defend the judiciary as opposed to



Ruth McColl S.C., President.

remaining silent are being tested in the Northern Territory. On 6 February 2001, at an admission ceremony in the Supreme Court of the Northern Territory, his Honour Mr. Justice Angel delivered a strongly worded address criticising the Northern Territory Attorney-General (who is also the Chief Minister, Mr. Dennis Burke) for failing to fulfil his role of defending the rule of law by remaining silent in the face of 'a vituperative and unbridled attack on [Justice Mildren] ...in respect of a gaol sentence he passed in the ordinary course of his duties.'

Justice Angel also criticised the Attorney-General for failing to refute the allegation that the Government's failure to appoint John Tippet Queen's Counsel last year (despite a recommendation for his appointment from the Chief Justice) was an attempt to develop 'a subservient and compliant legal profession'. Tippet had acted for the North Australian Aboriginal Legal Aid Service (NAALAS) in its proceedings challenging the validity of Chief Magistrate Bradley's appointment. He had also been a vocal critic of mandatory sentencing policies and legislation wearing his hat as President of the NT Law Society. His nomination was pursuant to a protocol agreed between the Northern Territory Government and the Supreme Court and the legal

profession for the appointment of Queen's Counsel. The failure to appoint him was, apparently, only the third time in 100 years in Australia that a Government had refused to follow a Chief Justice's recommendation for appointment.

Justice Angel's address concluded with the following observation:

It was Aldous Huxley who wrote that insensitive stupidity is the main root of all other vices. There is, in each jurisdiction of Australia, a need of an Executive that respects the rule of law and of an Attorney-General who holds himself or herself responsible for upholding the rule of law and thus the integrity of the legal system, and who respects the institution of the judiciary and the enduring principles of legal justice which the judicial system administers.

His Honour's plea is compelling. It is law and order issues, particularly the issue of mandatory sentencing, which appears to be at the heart of the tension between the judiciary, the legal profession and the Attorney-General in the Northern Territory. It is a matter of grave regret that the position has deteriorated to the stage where a judge has felt the need to remind the Attorney-General of his essential role in maintaining the rule of law.

His Honour's remarks highlight the potential for conflict between the executive and the judiciary when, frustrated by a silent attorney-general, the judiciary feels compelled to take matters into its own hands. They are a timely reminder of the need for attorneys-general who have embraced a policy of standing mute, to be sensitive to the increasing attacks on the judiciary, particularly in the area of sentencing, and the need to play their part in maintaining the rule of law.

### Get ready

In his address at the Opening of Law Term Dinner for the New South Wales Law Society Chief Justice Spigelman informed the profession of the significant progress the Supreme Court had made in the reduction of delays. By the end of term in 2000 in every division of the

*(Continued on page 4)*

# Bar Council business

## November 2000

### Business arising

Judgment of Administrative Decisions Tribunal, *Law Society v M* [2000] NSWADT 137; Bar Association summary of judgment; Legal Profession Amendment (Indictable Offences) Regulation 2000

The President advised that this regulation had been made following the judgment in *M's Case*. It required practitioners to disclose to the Bar Council or the Law Society Council any indictable offence for which the applicant has been found guilty. It is then a matter for the relevant Council to determine what further action, if any, should be taken against the practitioner.

Bar Council resolved to publicise in *Bar Brief* the statutory requirement that persons applying for a practising certificate are required to inform the Bar Council, if they have been found guilty of any indictable offence, of the nature of the offence.

### President's report

#### Regional Bar visits: Orange, 15 October 2000; Parramatta, 14 October 2000

The President advised that she, Walker S.C. and the Executive Director met with members of the Orange Bar; the President, Walker S.C., Slattery QC and the Executive Director had also met with members of the Parramatta Bar. The President believed that the functions had been both enjoyable and useful for all concerned.

#### Meeting with John Ruger, Athlete Ombudsman, United States Olympic Committee, 16 October 2000

The President advised that she, Slattery QC, Holmes QC, Duncan Miller and the Executive Director had met with Mr Ruger to discuss how the Olympic pro bono scheme had operated, and possibility of a similar scheme being established for the 2002 Winter Olympics in Salt Lake City and for the 2004 Athens Olympics. Mr Ruger had been very appreciative of the assistance given by the Bar during the Sydney Olympics, and said he would argue strongly for similar schemes to be in place for future Olympics.

#### Australian Bar Association Council meeting in Perth, 22 October 2000

The President advised that she and the Executive Director had attended the Australian Bar Association's Council meeting in Perth on 22 October 2000.

#### Australian Bar Association - Charter of Judicial Independence

The President advised that the ABA was continuing its work on a revision of its 'Charter of Judicial Independence'.

#### Law Council of Australia Annual General Meeting in Perth, 23 October 2000

The President advised that she and the Executive Director had attended the Annual General Meeting of the Law Council of Australia in Perth on 23 October 2000. \

#### Bar Association Committees and Sections function, 27 October 2000

The President noted that on 27 October 2000 the Bar Council held a function in the Common Room for members and staff who had assisted the Association in its committee and section work during 2000.

#### University of New South Wales Symposium 2000 - 'Mandatory Sentencing: Rights and Wrongs', 28 October 2000

The President advised that she and the Executive Director had attended the symposium on mandatory sentencing at the University of New South Wales on 28 October 2000. The Bar Association had contributed \$2000 towards the cost of the

symposium. Other sponsors were the University of New South Wales, the Aboriginal and Torres Strait Islander Commission and the International Commission of Jurists (Australian Branch).

#### Meeting with Mr Ian Govey, General Manager, Civil Justice and Legal Services, Commonwealth Attorney-General's Department, 9 November 2000

The President advised that she met, at his request, with Mr Govey to discuss issues of common interest, in particular the failure of the Commonwealth to increase counsels' fees to fully compensate for the 10 per cent GST. There had been a general discussion on the Commonwealth's fee scales.

#### Social function at the Compensation Court, 15 November 2000

The President advised that she and other members of the Bar Council, and the Executive Director, attended the Compensation Court's annual function for the Bar Council and the Council of the Law Society of NSW on 15 November 2000.

#### Professional Indemnity Insurance

The President advised that the Executive Director had written to four insurance brokers inviting them to submit a proposal for appointment as insurance broker to the Bar Association. The responses, due in early December, would initially be considered by the Professional Indemnity Insurance Committee, chaired by Meagher S.C.

#### Scale of fees charged by barristers acting in workers compensation matters

The President advised that she, Katzmann S.C. and the Executive Director met with the Hon. John Della Bosca MLC on 17 October 2000 to discuss the Bar Association's concerns with parts of the Workers Compensation Legislation Amendment Bill 2000.

The Minister had undertaken to consider a number of the Association's suggestions and to arrange for a senior officer of WorkCover to advise the Executive Director of the result of that consideration.

The President had again raised the pressing need for the overdue increase in workers compensation scale fees.

#### Criminal Procedure Amendment (Pre-trial Disclosure) Bill 2000

Bar Council noted that a lot of important detail was not in the Bill, but is to be included in future regulations, which inevitably receive little parliamentary scrutiny. The Executive Director and Philip Boulten briefed a number of members of Parliament about the Association's concerns with the Bill.

#### New constitution for Counsel's Chambers Limited

The President advised that Counsel's Chambers wished to adopt a new constitution at its annual general meeting on 29 November 2000. Bar Council resolved that the Bar Association consent to the proposed changes.

### Items for consideration

#### NAALAS v Bradley

Walker S.C. advised he had recently appeared for the North Australian Aboriginal Legal Aid Service in an appeal against the summary dismissal in June by the NT Supreme Court of the NLAAS' application that Mr Hugh Bradley's appointment as Chief Magistrate be declared void. The Chief Magistrate had been appointed under a secret agreement that involved remuneration and conditions unprecedented for a judicial officer.

On 16 November the NT Court of Appeal held that the case should proceed to trial.

#### Bar Association Membership

The President advised that she had written to approximately 100 holders of NSW practising certificates who were not members of the Bar Association inviting them to become a member of the Association.

## **Delegation of powers under NSW *Legal Profession Act* to Professional Conduct Committees**

Bar Council resolved to delegate to each of the professional conduct committees all powers which the Bar Council may exercise under Part 10 of the *Legal Profession Act 1987*, save and except for the power to make a determination under s. 137(2) and s. 155 of the Act.

It was further resolved to delegate to each of its professional conduct committees the Council's power under s. 37(1)(a) of the New South Wales *Legal Profession Act 1987* to require a barrister to provide an explanation satisfactory to the Council in respect of specified conduct by the barrister as a barrister or solicitor.

### **Bar Council Meeting Schedule 2001**

Bar Council noted that meetings of Bar Council in 2001 will be held at 4.30pm on:

Wednesday 24 January 2001

Thursday 22 February 2001

Thursday 15 March 2001

Thursday 19 April 2001

Thursday 17 May 2001

Thursday 14 June 2001

Thursday 12 July 2001

Thursday 16 August 2001

Thursday 13 September 2001

Thursday 4 October 2001

Thursday 1 November 2001

Other meetings will be convened as and when necessary.

# **December 2000**

## **Business arising**

### **Workers' Compensation Legislation Amendment Bill 2000**

The President advised that the Special Minister for State, The Hon. John Della Bosca MLC, tabled a draft Workers' Compensation Amendment Bill in the Legislative Council in October. The Association's Working Group on Workers Compensation met with the Minister's advisors and officers of WorkCover and had drawn to their attention a number of concerns with the draft Bill. The President had also written to the Minister on the draft Bill. The Bill had been amended and introduced into the Legislative Council on 1 November 2000.

The Bar Association made a further submission to the Minister. The President, Katzmann S.C. and the Executive Director met with the Minister and his advisors on 15 November 2000 to discuss the Bill. The Bill had not been further amended.

The President wrote about the Bill in her column in the December *Bar Brief*.

### **Court reporting**

The President advised that she had raised the problem of obtaining daily transcripts in the District Court at the Attorney General's Criminal and Court Forums on 4 December 2000. The President had also written about the matter in the December issue of *Bar Brief*.

## **President's report**

### **Australian Bar Association Council meeting in Adelaide, 2 December 2000**

The President advised that she and the Executive Director attended the Australian Bar Association's Council meeting in Adelaide on 2 December 2000.

### **PII – South Australia**

The President advised that the recent amendment to South Australia's *Legal Practitioners Act 1981* introducing the national travelling practising certificate to that State now required an interstate practitioner to advise SA clients if they do not hold a professional indemnity insurance policy approved by the SA Attorney General.

## **Items for consideration**

### **Appointment of Supreme Court Arbitrators for 2001**

**Bar Council agreed to the nomination of the following barristers as arbitrators:**

**Arbitrators for proceedings on claims arising from personal injuries:**

Roger William Rodney Parker QC

John Sebastian Coombs QC

Brian Harrie Kevin Donovan QC

Andrew Stewart Morrison S.C.

Anna Judith Katzmann S.C.

Michael Frank Eagle

Robert Edmund Quickenden

Anthony John Enright

William John Lawrence Berry

Allen Raymond Lakeman

Robert Norman O'Neill

**Arbitrators for general common law matters:**

John Anthony Ringrose

Graham Phillip Segal

**Arbitrators for general equity matters:**

Robert Anthony Campbell

Serge Galitsky

### **Practising certificates**

Bar Council resolved that the Executive Director be authorised to issue practising certificates on behalf of the Bar Council.

**Bar Council resolved to approve the appointment of the following new Community Members to Professional Conduct Committees:**

Ms Anna Fader

Mr Robert Nakhla

Ms Helen Steptoe

**NSW Law Reform Commission Issues Paper 18 and Review of Part 10 of the *Legal Profession Act 1987* by the NSW Law Reform Commission**

The Bar Association has made a submission in response to Issues Paper 18.

### **District Court country sittings**

The President advised that in recent weeks a number of complaints had been made by members about the District Court's country sittings. An article by Bill Walsh, who has chambers in Orange, would appear in the forthcoming *Bar News* on the Court's country sitting arrangements.

### **Course on representing clients at mediation**

Bar Council noted the arrangements made by the Mediation Committee to hold a two day course on representing clients at mediation, in conjunction with Bond University, in early 2001.

**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.

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

Court, virtually every case ready for hearing was given a date. He anticipates that 'for the foreseeable future, there will be no holding list in any division of the Court'. This position has been reached because of additional appointments to the Court in the Common Law Division and to the Court of Appeal as well as the availability of acting judges. Having reached this happy position, his Honour advised that the Court intends to focus its case management to ensure that there is a flow of cases ready to proceed. Accordingly, litigation lawyers can expect 'case management in the Court to require stricter compliance with timetables and adjournments will be harder to get'. His Honour warned that what he perceived as a legal culture in New South Wales 'which accepted that it takes years to get a case on for trial in the Supreme Court ... must change'. Such advice, he said, to clients should cease for it is 'no longer true'. 'The profession should now accept that delays of two years in preparing a matter for a first instance trial in the Supreme Court of New South Wales are no longer appropriate in the usual case' (see: [www.lawlink.nsw.gov.au/sc](http://www.lawlink.nsw.gov.au/sc)).

### District Court Transcripts

The Director-General of the Attorney-General's Department, Mr. Glanfield, has advised that he is to implement a short-term solution to the pressing need for additional transcripts in District Court civil matters. This 'short term solution' took effect as at the beginning of Law Term on 29 January 2001. It involves providing four additional daily transcripts for civil matters and ensuring the full availability of the existing three daily transcripts in civil. In order to commence this service, sound reporters are to be contracted from the private sector until sufficient sound reporters can be recruited and accommodated.

Chief Judge Blanch says the seven daily transcripts will be allocated to cases nominated by the List Judge. Practitioners may, in accordance with existing practice, submit that their case

is appropriate for a daily transcript. The effect of the increased availability of daily transcripts in civil matters will mean, according to the Chief Judge that transcripts will be made available for seven out of the sixteen civil cases heard each day in that jurisdiction. That is, of course, a substantial improvement. While it is acknowledged that a running transcript is not required in every case, nine unsupported courts is still, in my view, too many.

Virtually all courts in the Supreme Court are supported by daily transcript and were, prior to the transfer of the substantial portion of that court's common law jurisdiction to the District Court. There seems no sound reason why cases which were seen as warranting daily transcript in the Supreme Court should have lost that quality in the District Court.

Mr. Glanfield has also advised that the increasing levels of demand for transcript services from all jurisdictions requires a thorough review of the provision of transcription services, a matter on which the Bar Association will be consulted. As I said in my last column (December, *Bar Brief*), such a review should include giving parties given the option of retaining private court reporting services if daily transcripts cannot be made available as a matter of routine. The Association will continue to press the Attorney-General's Department for the highest level of transcript support in all courts.

<sup>1</sup> Spring 2000, *Bar News*

<sup>2</sup> The Hon. Daryl Williams AM QC MP, article on Judicial Independence for the *Canberra Times*, 13 January 1997

<sup>3</sup> Sir Anthony Mason AC, KBE 'No Place in a Modern Democracy for a Supine Judiciary', (1997) 35 (11) *LSJ* 51.

<sup>4</sup> Sir Gerard Brennan AC, KBE, 'The State of the Judicature' (1992) 72 *ALJ* 33.

<sup>5</sup> 74 *Australian Law Journal* 444 at 453, 457..

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## Criminal Law CLE Seminars

The Criminal Defence Lawyers' Association is a non-profit organization of solicitors and barristers formed for the chief reason of fostering the proper and fair administration of criminal justice and the integrity, independence and expertise of lawyers involved in the defence of criminal charges. The Association will be holding two, two-hour seminars during March and April.

On 20 March at 5:30 pm Dr. Brian McDonald, one of Australia's best DNA experts, will be discussing how DNA is extracted from tissue and body fluids, how it is analysed and what flaws may arise in testing. At 6:30 pm Stephen Odgers SC, who is the author of *Uniform Evidence Law* and a Lecturer at the Faculty of Law of the University of Sydney, will be giving a seminar on 'questioning unfavourable witnesses'. If a witness called by a party gives evidence, which is unfavourable to the party, that party may, with the leave of the court, question the witness as if in cross-examination. Provisions in the *Evidence Act 1995* relating to prior inconsistent statements and the hearsay rule also have important implications in this area. Relevant decisions of the Court of

Criminal Appeal have generated as many questions as answers and the High Court is part-heard on a case involving many of these issues. Stephen Odgers SC who is the Counsel for the Appellant in that case, will analyse these issues in his talk.

On 23 April at 5:30 pm, Professor Graham Starmer who is the head of the Psychopharmacology Department at the University of Sydney and arguably the best expert witness in NSW on the consumption of alcohol and illicit drugs and its effects on a person's blood alcohol level and ability to reason, will be discussing a recent practice of the NSW Police in taking urine (not blood) samples from persons said to have been driving under the influence of a drug. Professor Starmer is highly critical of this practice and he will explain why. Finally at 6:30 pm, Chrissa Loukas who is a Public Defender and Head of the Criminal Law Review Division of the New South Wales Attorney General's Department will be giving a talk on Defence Disclosure. Chrissa has been instrumental in the drafting of the State Government's Defence Disclosure Provisions and will outline details of the Bill, describe some of the amendments that have been made

to the proposed scheme and give some insight into how the new rules are likely to work in practice.

The seminars will be chaired by Ken Horler QC and will be held at the Law Society Lecture Theatre, which is located at level 9, 170 Phillip Street, Sydney. The costs of the seminars are \$35 each for 2001 members or \$50 each from non-members. For more information, please contact the Association's Secretary on (02) 9390 7777 or by email at [aussidefenders@start.com.au](mailto:aussidefenders@start.com.au).

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# Papers to note

*Law Council policy on judicial appointments.* This policy was adopted at the Law Council meeting on 16 December 2000. A copy of the policy is available from the Law Council web site at [www.lawcouncil.asn.au](http://www.lawcouncil.asn.au). A copy is held in the Bar Library.

*Legal Services in Family Law*, by Rosemary Hunter. This report, published in December 2000 by the Justice Research Centre, compared the services received by legally-aided and self-funded clients on the basis of outcomes, funding, costs, client satisfaction and service quality. The results show that legal aid clients do not appear to be disadvantaged in relation to outcomes achieved or the quality of the services they receive. A copy of the report is held in the Bar Library.

*Australian Law Reform Commission Discussion Paper 64. The judicial power of the Commonwealth: A review of the Judiciary Act 1903 and related legislation.* This 529 page report examines issues such as allocating original federal jurisdiction between federal and state courts, transfer of proceedings between and within courts, appellate jurisdiction of federal courts and claims against the Commonwealth. Submissions must be received by the Commission no later than 16 March 2001. The report may be obtained from the ALRC web site at [www.alrc.gov.au](http://www.alrc.gov.au). A copy of the report is held in the Bar Library.

*Legal Aid NSW: Annual Report 1999-2000.* In 1999-2000 the Legal Aid Commission of NSW provided 274,276 client services. More than 39,000 callers were assisted by the free Legal Aid HelpLine. These and other statistics are contained within the report, which is available from the Legal Aid web site at [www.legalaid.nsw.gov.au](http://www.legalaid.nsw.gov.au). A copy of the report is held in the Bar Library.

*Attorney General's Department of New South Wales: Annual Report 1999-2000.* A copy may be obtained from [www.lawlink.nsw.gov.au/agd](http://www.lawlink.nsw.gov.au/agd). A copy of the report is held in the Bar Library.

*District Court Practice Note No.57: 'Costs orders against practitioners'.* This Practice Note reminds practitioners of their duty to the Court to ensure the efficient and expeditious conduct of proceedings. It sets out the circumstances in which the court relies on practitioners to observe listing procedures, directions and rules and to ensure readiness for trial. 'Failure in any of these respects may be taken into account in exercising the

jurisdiction to order costs against practitioners personally.' A copy of *Practice Note No.57* is held in the Bar Library.

*Corporations Law Amendment Rules 2000 (No.1).* These rules were published in the Commonwealth Government Gazette on 8 December 2000 as Statutory Rule No.333 of 2000. The amendment commenced on 1 January 2001. A copy is held in the Bar Library.

*Federal Court Amendment Rules 2000 (No.7).* These rules were published in the Commonwealth Gazette on 22 December 2000 as Statutory Rule No.372 of 2000 and commenced on that date. They make amendments in relation to the issuing of subpoenas, making of consent orders and the form of a trustee's report in annulment applications under the *Bankruptcy Act 1966* (Cth). A copy is held in the Bar Library.

*District Court Amendment (Access to Subpoenaed Material) Rule 2000.* The Explanatory note states that the object of this rule, which commenced on 1 January 2001, is to amend Part 29 of the District Court Rules 1973 to facilitate access in civil proceedings to documents or things produced to the Court pursuant to a subpoena requiring production issued by the Court. A copy is held in the Bar Library.

*Federal Court practice note 18: 'Tax List'.* This practice note, which commenced on 6 February 2001, outlines the introduction of a temporary tax list to handle anticipated appeals by taxpayers. A copy is held in the Bar Library. A copy may be obtained from the Federal Court web site at [www.fedcourt.gov.au](http://www.fedcourt.gov.au)

*NSW Supreme Court practice note No.117: 'Corporations list practice note'.* The purpose of this practice note is to explain the operations of the Corporations List. A copy may be obtained from the Supreme Court web site at [www.lawlink.nsw.gov.au/sc](http://www.lawlink.nsw.gov.au/sc). A copy is held in the Bar Library.

*NSW Supreme Court practice note No. 118: 'Mediation'.* Amendments to Part 7B of the *Supreme Court Act (1970)* permit the court to refer parties to mediation. This practice note sets out the procedure by which the Court may refer proceedings to a registrar to discuss with parties the advantages and disadvantages of mediation. A copy may be obtained from the Supreme Court web site at [www.lawlink.nsw.gov.au/sc](http://www.lawlink.nsw.gov.au/sc). A copy is held in the Bar Library.

On CD & Internet

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# The new Bar Association web site

The Bar Association has substantially redesigned and upgraded its web site. Core information and facilities from the former version, such as 'Find a barrister' and 'media releases' have been retained. The quantity and scope of current awareness information has increased considerably.

The centrepiece is the Bar Bulletin Board, a focal point for news of forthcoming social events, CLE seminars, conferences, recently released reports, regulations and practice notes.

The screenshot shows a navigation menu on the left with items like 'About us', 'ACIR Application', 'Barristers' Rules', 'Bar Bulletin Board', 'Committees, sections & working parties', 'Contact us', 'Education & CLE', 'Find a Barrister - Advanced search', 'Find a clerk', 'Legal Assistance', and 'Library'. The main content area is titled 'The Bar Bulletin Board' and features several announcements:

- An Address by Her Honour Associate Justice Ruth Bader Ginsburg**: Supreme Court of the United States of America, Tuesday 5 February 2001 at 5:00pm. [Click here](#) for further details.
- Representing clients at mediation & negotiation**: A two day professional course, Bar Association Common Room, 16-17 February 2001. [Download your registration form here](#).
- Vale**: Michael Emington & Patrick Peter Costello ([Funeral and memorial service](#)).
- Current awareness**: 15 Bobbers Advertising in Bar Brief, Conferences Continuing Legal Education, New members of the Association.

## Searching the Bar Association web site

Another distinguishing feature of the new web site is the search facility. This may be accessed via the text box, which will appear at the top of each page in the site. The results are displayed in list form, with a short description of the document's relevance (five stars being most relevant, through to one star for the least). The search term is displayed in context and the user is given an indication of the document's size and file type (PDF, RTF or HTML).

The screenshot shows the search results for the term 'misfeasance'. It includes a search bar with 'misfeasance' entered and a 'Search' button. Below the search bar, it says 'Documents 1 - 1 of 1 matches. More \*'s indicate a better match.' The first result is titled 'The New South Wales Bar Association\*\*\*\*' and includes a snippet of text: '... Criminal Law Glenn Bartley, Sexual Assault Communications Privilege, 10 October 2000. Available in RTF and PDF format Criminal Law Misfeasance and Misfeasance: the inactivity of highway authorities' Have the courts gone too far? Will the High Court remove it? What are the likely consequences?' Presented ... [http://www.nswbar.asn.au/Professional/Education/CLE/CLEpapers/Contents\\_CLE.htm](http://www.nswbar.asn.au/Professional/Education/CLE/CLEpapers/Contents_CLE.htm) 03/02/01, 1048 bytes

Many parts of the site remain under construction, but will be finished in the coming weeks. Any inconvenience is regretted. New and helpful features to look for will include a searchable database for the Bar Association Speakers Bureau and e-mail list servers, which will enable users to receive Bar Association publications electronically, and to participate in discussion groups.

The web site address remains the same: [www.nswbar.asn.au](http://www.nswbar.asn.au). We welcome your comments and suggestions, which can be e-mailed to [webmaster@nswbar.asn.au](mailto:webmaster@nswbar.asn.au)

## In Brief

### Bench and Bar Dinner

The Hon. R J Debus MP, Attorney General of New South Wales, has accepted an invitation to be the Guest of Honour at the 2001 Bench and Bar Dinner on 18 May 2001 at the Westin Sydney.

### Volunteer polling officers

Bar Council and the Returning Officer would like to thank the following members for volunteering to act as polling officers during elections for the 2001 Bar Council. In alphabetical order they were:

Elizabeth Beilby  
Neale Dawson  
Sandrah Foda  
Nicole Kuruez-Gilchrist  
Jeremy Kinross  
Juris Laucis  
Tim Moore  
Charles Moschoudis  
Nicholas Newton  
Robert Newton  
Charles McNamara  
Wade Roper  
Penelope Sibtain  
Matthew Tyson  
Harry Woods

### Christmas Carols 2000

The Smith Family has expressed its appreciation for donations to the Christmas Toy Appeal at the 2000 Bar Christmas Carols.

## Disciplinary decisions on the Bar Association web site

The Bar Association's web site ([www.nswbar.asn.au](http://www.nswbar.asn.au)) includes reference to professional conduct decisions which concern barristers as well as those relating to other legal practitioners which contain matters of principle.

Those members wishing to view the decisions should click on the hyperlink labelled 'Professional Conduct'.

The web site contains an index and an outline of decisions from 1999 to the present and is updated as decisions are handed down.

The decisions are listed under the case name, with the legal practitioner's name included. Cases heard *in camera* are not available.

The outline provided is brief but is hyperlinked to the LawLink web site at [www.lawlink.nsw.gov.au](http://www.lawlink.nsw.gov.au), which provides the full text of the decision.

# Barristers graduating from the 2nd Bar Practise Course 2000

Name	Chambers	Name	Chambers
Dion Accoto	Frederick Jordan	Richard Jankowski	Sir Owen Dixon
Farid Assaf	12 Selborne	Leonard Karp	Ground Floor Windeyer
Gabrielle Bashir	Forbes	Gemunu Kumarasinhe	1 Jack Place, Lennox Head NSW
Elizabeth Beilby	Sir James Martin	Nicole Kurucz-Gilchrist	Ground Floor Windeyer
Paul Bolster	6 Selborne	Juris Laucis	3 Wentworth
Grant Brady	11 Garfield Barwick	Levingston, John	8 Wentworth
Timothy Chadwick	3 Wentworth	Loughnan, Stephen	11 St James Hall
John Clark	4 University	Peter Lowe	Ada Evans
John Connors	Newcastle	James Momsen	5 Selborne
Edward Cox	16 Wardell	Dallas Morgan	Elizabeth Street
Vera Culkoff	10 Wentworth	Charles Moschoudis	Frederick Jordan
Neale Dawson	Denman	Robert Newton	Latham
Christopher Dibb	8 Selborne	Michael Northcott	Edmund Barton
Thomas Duggan	9 Selborne	Natalie Obrart	8 Selborne
Geoffrey Gemmell	Maurice Byers	Giuseppe Pesce	Edmund Barton
Simon Glascott	Maurice Byers	David G Price	Denman
Trevor Hall	11 Garfield Barwick	Terrence Sullivan	C/- Michael Robinson, 10 Selborne
John Heazlewood	Lachlan Macquarie	Martin Walsh	8 Garfield Barwick

## Income Protection *for Barristers*

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A specially designed sickness and accident policy that is occupation specific for barristers. The definition of disablement relates specifically to your occupation as stated in the policy schedule (i.e. Barrister) providing you with the ultimate in security. This policy is packed with many worthwhile features including 24 hour worldwide cover and full indexation of benefits.

### *Life Insurance*

The Term Life Insurance policy available to barristers can now be extended to include payment of the sum insured on Total and Permanent Disablement that is occupation specific. This means that barristers insured for say, \$1 million, under this policy would qualify for a \$1 million payable on (i) Death or (ii) \$1 million payable for a permanent disablement that prevents them from resuming their practice as a barrister.

### *Business Insurance* **Group Australia** PTY LTD

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Cnr Albert and Turbot Streets  
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PO Box 267 ROMA ST BRISBANE QLD 4003

### *Trauma Insurance*

This policy pays a cash lump sum on diagnosis of one of 35 medical conditions listed under this policy. e.g. cancer, stroke, heart attack, by-pass surgery etc. We will offer cover up to \$1.5 million for members of the Australian Bar Association.

### *Waiver Benefit*

Barristers insured for all three risk products will qualify for 'waiver of premium benefits'. This means that if you are receiving sickness benefits from your income protection policy we will waive premium payments on all three policies for as long as you are unable to return to work.



### **Peter Steele**

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without obligation on:  
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**Mob 0418 742 657**  
**Fax 07 3362 2885**  
psteale@powerup.com.au

## **FREECALL 1800 552 555**

# New photocopy system at the Federal Court

The Federal Court of Australia Registry (New South Wales) has introduced photocopy cards to be used when practitioners, litigants in person and other clients wish to photocopy documents in the Registry using Registry photocopiers.

Card readers have been connected to all photocopiers in the Inspection Room. It is therefore necessary to purchase photocopy cards before photocopying can be carried out.

Cards are available for purchase from the Cashier and come in 5 denominations - \$5.00, \$10.00, \$20.00, \$50.00 and \$100.00. The photocopy cards have their face value preset in the card. When the card value has been exhausted, new cards can be purchased.

Where a client wishes to inspect a file, an Application to Inspect Documents must be completed. Where the client is not a party in the proceeding, a search fee of \$21.00 is payable. Where a Registry photocopier is to be used, a \$3.00 request fee is also payable. A photocopy fee of \$1.00 for each page also applies. However, with the introduction of photocopy cards, only one request fee per day will be charged for photocopy card(s).

Specifically, a request fee of \$3.00 will be payable each time a card (or a number of cards) is purchased. If another card (or other cards) is purchased later on the same day, by the same person, no further request fee will be payable.

Where a client only infrequently copies documents, it is suggested that the client calculate the number of pages to be copied prior to purchasing a photocopy card.

Other arrangements apply in relation to persons who are exempt from paying fees or who have fees waived.

Should you need assistance or require further information please contact the Registry on (02) 9230 8567.

# 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 5 December 2000.

## Local practising practitioner

Margaret Allars	University
John Clark	University
Dragan Gasic	Lachlan Macquarie
Trevor Hall	11 Garfield Barwick
Leonard Karp	Ground Floor Windeyer
Christopher Murtough	Countess Street Mosman

## Legal practitioner other than local practising practitioner

Alexis Barlow	Campbell, ACT
Michael Burnett	MLC Centre, Brisbane
Brian Cronin	Quay Central, Brisbane
Salvatore Di Carlo	Gregory Crt Chambers, Brisbane
Christopher Erskine	Blackburn Chambers, ACT
John Hutton	North Quay, Brisbane
John Kimmins	North Quay, Brisbane
Stephen Lee	MLC Centre, Brisbane
Anthe Philippides	MLC Centre, Brisbane

## BFP 2000

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**Price** of \$330 (incl. GST) includes 60 days' email support, and 1 hour's tuition in Sydney CBD.

#### **Contact:**

Caroline Smith on (tel) 8233 0352; (fax) 9231 6660;  
email: p.blacket@mauricebyers.com  
for further information or to arrange a demonstration.

## NSW Supreme Court circuit sittings for 2001

### Civil

Circuit	Sittings commence	Duration (weeks)
Central West (Dubbo)	18 June	1
Newcastle	23 April	3
	19 November	2
Northern Rivers	29 October	2
Riverina	20 August	1
Wollongong	28 May	2
	26 November	2

Criminal trials will be held in places other than Sydney as and when the need arises.

# Speeches

**'Opening of the Law Term Dinner'**, by the Hon. J J Spigelman AC, Chief Justice of New South Wales, 29 January 2001. The Chief Justice began by examining the importance of legal institutions for economic development. He proceeded to discuss the steps that have been taken to reduce backlogs in the court system and warned that 'cases should be prepared for hearing by the time of a Final Conference and adjournments should only be given in exceptional circumstances...Over the years, a legal culture developed in New South Wales which accepted that it takes years to get a case on for trial in the Supreme Court. That culture must change...Those of you who have traditionally advised clients that it takes years to get a case on for hearing in the Supreme Court should cease doing so. It is no longer true.' The speech may be obtained from the Supreme Court web site at [www.lawlink.nsw.gov.au/sc](http://www.lawlink.nsw.gov.au/sc). A copy is held in the Bar Library.

**'Native title and environmental management in a federal system: 13th National Conference of The Environment Institute of Australia'**, by the Commonwealth Attorney-General, The Hon. Darryl Williams AM QC MP. This speech, delivered on 7 December 2000, outlines the Commonwealth Government's policy on Indigenous Land Use Agreements and the interaction between native title, national parks and mining tenements. 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.

**'Future directions for human rights: A fair go for all conference'**, by the Commonwealth Attorney-General. This speech, delivered at the John Curtin International Institute on 8 December 2000, examines, amongst other things, Australia's human rights performance and a possible Bill of Rights. 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.

**'In Quito with Cotapaxi and the genome'**, by the Hon. Justice Michael Kirby AC CMG. This speech was delivered on 4 December 2000 at the Australian National University Conference on Constructing Law and Disability. This speech discusses many of the legal and ethical dilemmas arising from rapid advances in genetic science. A copy of the speech may be obtained from the High Court web site at [www.hcourt.gov.au/speeches](http://www.hcourt.gov.au/speeches). A copy is held in the Bar Library.

**'Legal aid funding'**, by The Hon. John Hatzistergos MLC. This speech was delivered in the State's Upper House on 31 August 2000. In this speech he commends, among others, the Bar Association's Legal Assistance Scheme for the pro bono work undertaken. The speech may be obtained from Hansard on the NSW Parliamentary web site, [www.parliament.nsw.gov.au](http://www.parliament.nsw.gov.au)

# Appointments

## Supreme Court of New South Wales

Peter McClellan QC has been appointed as a Judge of the Supreme Court of New South Wales, effective 30 January 2001.

The Hon. Peter Newman RFD QC has been appointed as an Acting Judge of the Supreme Court of New South Wales, effective 8 February 2001 to 7 February 2002.

## District Court of New South Wales

George Rummery QC has been appointed as an Acting Judge of the District Court of New South Wales, effective 8 February 2001 to 30 June 2001.

Neil Milson, Magistrate, has been appointed as an Acting Judge of the District Court of New South Wales and as a Judge of the Drug Court of New South Wales, effective for the period c21 January 2001 to 20 January 2002

Ian Barnett, Magistrate, has been appointed as an Acting Judge of the District Court of New South Wales and as a Judge of the Drug Court of New South Wales, effective 21 December 2000 to 31 July 2001.

## Acting Public Defenders

John Booth, Crown Prosecutor, has been seconded as an Acting Public Defender, effective 27 January 2001 to 26 January 2002.

Eric Wilson has been reappointed as an Acting Public Defender, effective 27 January 2001 to 26 January 2002.

## Crown Prosecutors

Helen Wilson, Nicole Noman and Edwin Moberley have been appointed Crown Prosecutors, effective 8 February 2001.

## Acting Crown Prosecutors

Tanya Bright and David Degnan have been appointed Acting Crown Prosecutors, effective 8 February 2001 to 7 February 2002.

# Media Briefing

## Media releases issued by the Law Council of Australia

*Law Council Moves to Make Judicial Appointments More Transparent*, 28 January 2001.

*Attorney-General Wrong on Law Council Criticisms*, 13 December 2000.

*Human Rights Law Award 2000*, 11 December 2000.

*Law Council Supports NT Judge's Comments* - 6 February 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 submissions and media releases.

## Media releases issued by the Australian Bar Association

*New President for the Australian Bar Association*, 7 February 2001.

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# Bar Association launches Speakers Bureau

In 2001 the Bar Association will launch its Speakers Bureau. In doing so, it will join the Law Institute of Victoria, and the Law Societies of Queensland, South Australia and New South Wales, all of which have an organised speakers programme.

It is a concept that will be familiar to many members, particularly those who have participated in the Law Society's Speakers Program for quite some time. Those barristers in particular, are encouraged to register. Members can, of course, participate in both schemes.

## The benefits of joining the Speakers Bureau

Surveys by the Law Society indicate that most practitioners who have participated in their programme have reported that it is a worthwhile exercise. It is 'an important opportunity for the legal profession to take a role in helping people learn about their legal rights and obligations. The one-to-one contact with

people through this Program gives them a personal view of a profession that is caring and willing to contribute to their community'<sup>1</sup>.

Barristers who participate in the Bar Association Speakers Bureau will gain exposure to a wider audience. The forum may range from a community group, an industry association, or a chamber of commerce.

Members in rural and regional New South Wales are encouraged to join.

How will it work?

Eventually, the Speakers Bureau will be operated via the medium of the Bar Association's web site. A database containing contact details, areas of practice, second or third languages, previous speaking engagements and interests outside the law. This will enable clients to search for a suitable speaker and contact the barrister directly.

In the immediate future, however, the priority is to register new volunteers for

the scheme. Those wishing to register for the Speakers Bureau should contact the Public Affairs Officer on ph: (02) 9229 1732 ; fax: (02) 9221 1149 ; e-mail: cwinslow@nswbar.asn.au or via DX 1204 SYDNEY. Please include details of other languages spoken, interests and previous engagements.

## Conditions

Once the Bureau is fully operational, the following points will be emphasised to both barristers and clients alike:

- a barrister is **not** speaking on behalf, or expressing the views, of the Bar Association;
- the Bar Association will not attempt to influence the topic or the content of the speech delivered;
- the Speakers Bureau is a service for the benefit of members and the wider community. It is **not** a source of free legal advice; and

<sup>1</sup> Law Society of New South Wales web site

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## Visit from UNSW Indigenous Pre-Law students



*Ruth McColl S.C., with 2 students from UNSW.*

On Wednesday, 24 January 2001, the Bar Association hosted an historic event when the students from the University of New South Wales Indigenous Pre-Law Program came to visit. The program for the day was designed to show the law students the reality of life at the Bar in an endeavour to plant some early thoughts about the possibility of the Bar as a future career option. The focus was an informal exchange of information and advice as well as providing some contacts between the students and individual barristers.

The day was part of the Indigenous Lawyers Strategy which has been designed to increase the number of indigenous lawyers at the NSW Bar. As there are only two at the present, the opportunities are challenging and involve a carefully structured and long term approach.

After a welcome from the President, Ruth McColl S.C., six members of the EO Committee or its subcommittee took two students each back to their chambers. They were shown the various different facilities and had an in-depth discussion about running a legal practice as a counsel. After a short visit to the duty list being conducted by Justice Sperling in the NSW Supreme Court, a convivial lunch provided a further opportunity for informal discussion and exchanges of ideas. Justice Branson of the Federal Court joined the students for lunch, as did the Deans of the Law Schools at UNSW and University of Technology Sydney.

As the Chair of the EO Committee, Michael Slattery QC, commented: 'This is just one small part of our overall strategy and we believe that through fostering links with indigenous lawyers and law students and by providing opportunities for them to observe barristers at work (and play), we can provide active and positive assistance when they are at the point of considering their choice of a career or a later choice of a career change.'

The program will be repeated next year and it is hoped that it will become a permanent part of the Indigenous Pre-Law Students Program.

# Postcard from the Northern Rivers Circuit



*The vagaries of regional practice. Barristers at Lismore Chambers keep their heads above water – just!*

## Bar Council of Western Australia

The following members were elected to Bar Council of the Western Australian Bar Association at the December General Meeting held on 6 December 2000:

President:	Philip Eaton
Vice President:	Michael Buss QC Audrey Braddock David Clyne
Council members:	Susan Richardson Christopher Shanahan Leo Tsaknis
Junior members: under three years	Christopher Edmonds Richard Farrell
Practising at chambers other than Francis Burt Chambers	Penelope Giles

## Workers compensation – scale of fees

The Bar Association has for many months made submissions concerning the scale of fees and interstate and country loadings for barristers in workers compensation cases. According to correspondence received late last year by the Bar Association, the Special Minister of State and Minister for Industrial Relations, The Hon. John Della Bosca MLC, will be reviewing the scale of fees for legal professionals acting in workers compensation cases.

'Work is progressing rapidly on the implementation of workers compensation reforms. The dispute resolution processes of the WorkCover Scheme will be reviewed shortly to ensure that disputes are resolved quickly and at minimum cost', said the Minister.

'I have noted well the NSW Bar Association's views and will take them into account as part of the review process'.

Members will be kept informed of progress on this issue in subsequent editions of *Bar Brief*.

## Qantas Club – Discounts for members

Special Qantas Club rates have been re-negotiated for all members of the New South Wales Bar Association. The following memberships rates are now on offer:

1 year membership	\$ 225.50
2 years membership	\$ 396.00
one off joining fee	\$ 187.00
(all rates are inclusive of GST)	

This represents a considerable saving over the standard joining fees for individual membership. Further, the joining fee has been waived for the period 1 March to 31 May 2001.

Special application forms are available by calling Bar Association Reception on (02) 9232 4055. Members must send their applications directly to:

Qantas Club Service Centre  
GPO Box 4357QQ  
Melbourne VIC 3001

## Requirement to notify change of address to the Bar Association

Members are reminded of the need to notify a change of address of chambers to the Bar Association's Membership Officer. Regulation 12(1) of the *Legal Profession Regulation 1994 (NSW)* provides:

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 twenty one (21) days after the change occurs.

It is most important that the Bar Association be kept informed when you change your chamber address, in particular. This is even more so at the time of renewal of practising certificates.

In addition, the Bar Association is increasingly providing information to its members in electronic format. This improves the efficiency of delivery of information, and reduces the cost to the Association. Accordingly, if a member has an email address but has not provided it to the Association or, alternatively, has recently changed email address, he or she should inform the Membership Officer, Barrie Anthony, at [banthony@nswbar.asn.au](mailto:banthony@nswbar.asn.au)

# The Ginsburg Address



ABOVE: Associate Justice Ruth Ginsburg, U.S. Supreme Court, delivering an address on 'Workways of the Supreme Court'.

On Tuesday, 6 February, Associate Justice Ruth Ginsburg of the U.S. Supreme Court delivered an address on 'Workways of the Supreme Court' before a full house in the Bar Association Common Room.

Justice Ginsburg outlined the Court's review granting process, oral argument before the Court and the way decisions are reached. A copy of the speech is held in the Bar Library.



RIGHT: From left to right: Richard L. Greene, US Consul-General, Ruth McColl S.C., Associate Justice Ginsburg and Professor Martin Ginsburg.

# At the Lecturn

**6 March:** 'The Insurance Contracts Act and the insurance contract - an aid to interpretation'.

The Chair of the seminar will be Elizabeth Cheeseman and the Speaker will be Richard Cavanagh.

**12 March:** 'Federal Magistrates Service and its impact on family law practice'.

The Chair of the seminar will be Robertson S.C., and the Speaker will be Chief Federal Magistrate Diana Bryant.

## 15 Bobber

A 15 Bobber will be held in the Common Room on Friday, 9 March 2001 at 5.00 pm to commemorate the appointments of His Honour Judge Stephen Norrish QC and His Honour Judge Michael Finnane QC to the District Court of New South Wales. An attendance form may be obtained from the Bar Bulletin Board at [www.nswbar.asn.au](http://www.nswbar.asn.au)

## Law Society v M [2000] NSWADT 137

The Legal Profession Amendment (Indictable Offences) Regulation 2000 was made following the judgment in *Law Society v M* [2000] NSWADT 137. Persons applying for a practising certificate are required to inform the Bar Council if they have been found guilty of any indictable offence and, if so, the nature of the offence. It is then a matter for Bar Council to determine what further action, if any, should be taken against the practitioner.

## Australian Law Awards

Over the vacation, it was reported that the President was to be involved in judging a set of awards which would involve identifying the best QC, best criminal chambers and best commercial chambers.

This is no longer the case. The President has withdrawn from the panel, and advised the organisers accordingly.

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

# Legal Assistance in the Land & Environment Court

By David Buchanan S.C.

I write as the barrister briefed by the Environment Protection Authority to appear for it as appellant in the matter of *Environment Protection Authority v Alkem Drums Pty Ltd* [2000] NSWCCA 416.

In this appeal from proceedings on sentence about matters of law which the judge, not the respondent raised, Alkem Drums, for quite legitimate reasons (avoiding further costs) had no interest in being legally represented and withdrew from the appeal. When the matter came on for hearing, the Court of Criminal Appeal expressed concern at the absence of a proper contradictor, particularly because of the difficult and important questions involved. At its request, I approached the Association to see whether *amicus curiae* could be found. It was then suggested to me that a former solicitor of the EPA now at the bar, Mr Tom Howard of 5 Selborne Chambers, might be prepared to act and Bar Association staff kindly approached him to ask if he would do so. Mr Howard agreed to act and was within the hour given leave to act as *amicus* and the matter was relisted for hearing at a later date.

On the hearing of the appeal, Mr Howard discharged his role with vigour and erudition. The case was indeed quite complex and involved a question of the invalidity of legislation. On most questions, Mr Howard agreed with my submissions. But on one point, the submissions made by Mr Howard persuaded me of the futility of mine. On another, we were quite opposed to each other and argued it fully before the Court. The difficulty of that, the main question (whether in the circumstances an offence was a continuing one) was illustrated by the fact that on that question of law, the bench was divided.

When the judgment was delivered, on the main question, the Court (Foster AJA, Dunford J & Smart J) agreed with Mr Howard rather than the EPA.

I would like to record the assistance which the Court received from Mr Howard and the benefit to the proceedings of his preparedness to act as *amicus* in a difficult matter (for no fee). Mr Howard acted in the true traditions of the Bar.

# Australian Industrial Relations Commission Duty Advocate Scheme

Last year, the Bar Association established a successful duty advocate scheme for the fortnightly Wednesday 'callovers' of the unfair dismissal list at the Australian Industrial Relations Commission. One or two junior barristers were rostered on every fortnight, armed with a slim folder of material setting out the relevant legal principles, to appear for those who attend without representation.

The scheme has two purposes: to assist those who are unable to afford representation; and to assist the Commission by making sure that the 'callover' list runs as smoothly and quickly as possible.

At the 'callovers' the Commission hears and determines short jurisdictional arguments (eg whether the employee was a casual, was a probationary employee, or whether the claim was filed out of time). A single member of the Commission hears and determines from 5 to 15 matters in a day, and usually 2 to 5 of those will involve an unrepresented litigant.

Volunteers are sought for 2001. Given the current numbers who have already volunteered each barrister would need to participate no more than 2 times a year.

Would you please contact the coordinator of the scheme, Ingmar Taylor, H B Higgins Chambers by e-mail [taylor@hbhiggins.com.au](mailto:taylor@hbhiggins.com.au) or by DX 190 Sydney or phone 9223 3633 to express your interest.

The Bar Association would like to thank the following barristers for participating last year:

Name	Chambers
Ian McCluskey	Maurice Byers
Anthony Britt	Owen Dixon
Duncan Inverarity	State
Shane Prince	State
Adam Hatcher	HB Higgins
John Pritchard	Jack Shand
Colin Magee	Denman
Geoff Warburton	H B Higgins
Patricia Lawson	H B Higgins
Brana Vukadinovic	Maurice Byers
Neale Dawson	Denman
Sylvia Peidade	9 Wentworth
Chris Whitelaw	Chalfont
Ian Latham	Denman

By Ingmar Taylor



## WYONG SHIRE COUNCIL TENDERS (No. 2101) FOR PROVISION OF LEGAL SERVICES

Council invites tenders for the provision of legal services from barristers, suitably qualified legal practitioners and law firms which specialise in, or have experience with, legal matters associated with the running of a large multi-purpose Council.

The term of the contract will be for 3 years, commencing 1 July 2001, and terminating 30 June 2004.

Tenders are to include details of fee structures which will be used when charging for services. Details of experience in Local Government is also required, including a list of Local Government clients and the extent of the representation of these clients, as well as nominated referees. It is Council's intention to select a panel of legal representatives rather than a single firm or person. It should be noted that inclusion on the panel will not automatically entitle a practitioner to be allocated legal work. The distribution of work will be at the entire discretion of the Council. Council employs a solicitor on a salaried basis.

Tenders are to be lodged in a sealed envelope endorsed: General Manager – Tender – Legal Services (No. 2101) and are to be addressed to the undersigned or placed in the tender box located on the ground floor of the Administration Centre, Hely Street, Wyong on or before the advertised closing time.

**Tenders close at 4.00 pm on Friday, 23 March 2001.**

For further information, please contact Mr John Burgess, Director Corporate and Community Services, on (02) 4350 5202.

Tender specifications are available and can be downloaded from Council's website [www.wyongsc.nsw.gov.au](http://www.wyongsc.nsw.gov.au)

J S Dawson  
General Manager

PO Box 20, Wyong NSW 2259  
DX 7306, Wyong

# New achievement award for Bar Practice Course

Beginning in 2001, outstanding achievement in each of the bi-annual Bar Practice Courses will receive recognition through a new Achievement Award, valued at \$250. This gesture of support for new barristers was made possible through the generosity of Newcastle barrister, Mr Warwick Tregilgas.

The award was approved by the Education Committee of the Bar Association in November 2000, and is to be awarded at the discretion of the Course Director.

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## The Great Bar Boat Race 2000

The Great Bar Boat Race, held on 18 December 2000, was a great success. Proceeds from entry fees were donated to the Bar Association's official charity for 2000-2001, the Aboriginal Medical Service. A total of \$4,727 was raised.

## Vale

**Patrick Costello** passed away on 20 January 2001.

A funeral service was held on Saturday, 27 January 2001 in St Finbarr's Catholic Church, Byron Bay.

A memorial service was held in Sydney on Thursday, 1 February 2001 at St Patricks Church, Grosvenor Street.

**Michael Errington** of Culwulla Chambers passed away on 29 January 2001.

A memorial service was held on Friday, 2 February at St James Anglican Church.

A wake was held at 4.30 that afternoon in the Bar Association Common Room.

# Volunteers sought for pro bono schemes in 2001

## A message from the President

### Dear Colleagues

Members need no reminding that there has been a proliferation of pro bono schemes in recent years. The Bar Association has repeatedly stated that such schemes are not intended to relieve governments of their obligation to provide adequate funding for legal aid services. Nor are they intended to provide general assistance for unrepresented litigants or for complex and lengthy trials. They are, however, designed to assist deserving litigants to have their cases properly presented to the court.

This year, again, I urge all members of the Bar with expertise in the areas of practice covered by these schemes to offer their services. If these schemes are to succeed, they require the co-operation of sufficient numbers of members of the Bar to ensure that the burden of providing pro bono assistance does not fall heavily on only a few of our members.

Those members who volunteer their services for any or all of the schemes listed below, are reminded that pro bono assistance is not to be used as an introduction obtain a 'speculative' brief.

### Supreme Court Pro Bono Scheme

Last year the Supreme Court established, with assistance from the Bar Association, a scheme for the provision of legal assistance on a pro bono basis to deserving litigants in appropriate cases commenced in that court. The central aspects of the scheme were embodied in Part 66A of the New South Wales Supreme Court Rules

A judge will make an order for referral to the Registrar of the Court, who will then contact a barrister who has volunteered to participate.

### Federal Court Pro Bono Scheme

May I also take this opportunity to again ask members of the Bar to volunteer for this scheme if they have not already done so? Those members who have already volunteered would no doubt be glad if some additional names could be given to the Registrar. The feedback on the operation of the Scheme to date has been very good and to those members who have been involved I record my thanks. The central aspects of the Federal Court scheme are contained in Order 80 of the Federal Court Rules.

### District Court Pro Bono Scheme

I would also like to encourage members to volunteer their services for a pro bono scheme established by the District Court which operates along lines similar to those operated by the Supreme Court of NSW and the Federal Court. The central aspects of the District Court scheme are contained in Part 28C of the NSW District Court Rules.

### Bar Association Legal Assistance Scheme

I would like to ask members to again offer their support for our own Legal Assistance Scheme. Our scheme, which has formally existed since 1996, offers people who genuinely cannot afford to pay for barristers the opportunity to have their matters legally assessed and, if appropriate, to have barristers appear for them in court.

Over the years there has been a significant increase in the number of requests for assistance. There is no indication that the increase in requests will abate. In order that the same generous people are not overburdened from doing legal assistance work, and to assist us in the day-to-day running of the scheme, I should be grateful if members would indicate their willingness to be involved, stipulating their preferred areas of law. A copy of the scheme's guidelines is available at the Bar Association Reception. It may also be obtained from the Bar Association's web site at [www.nswbar.asn.au](http://www.nswbar.asn.au)

If you are willing to offer your services to assist the scheme, please complete the detachable form on page 15 and 16 of this edition of *Bar Brief* and return it as soon as possible.

**Ruth McColl S.C.**

**President**

# Bar Council Committees 2001

## Arbitration Committee

Sandy Street S.C. (Chair)  
Glen Miller QC  
Brian Donovan QC  
Larry King S.C.  
Ray McLoughlin S.C.  
Campbell Bridge S.C.  
Ross Letherbarrow S.C.  
Chandra Sandrasegara  
Robert O'Neill  
Andrew Lidden  
Michael Eagle  
Kerrie Leotta  
Peter Dooley

### Bar Association Staff Member

Lynne Colley

## Bar Planning Committee

Bar Association Executive (ex officio)  
Justin Gleeson S.C. (Chair)  
Brian Rayment QC  
Philip Greenwood S.C.  
Jeremy Gormly

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and heads or nominees of Bar Council Committees and Sections

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## Education sub-committees

(These members, after consultation with the Chair of the Education Committee, will be appointed to sub-committees of the Education Committee. These are: Practising Certificate and Reading, Examinations, Bar Practice Course and Reading Review Panel. These sub-committees will be chaired by a member of the Education Committee.)

Glen Miller QC  
John Graves S.C.  
John Griffiths

# Bar Council Committees 2001 *(continued from page 15)*

John Levingston  
Mariz Tzannes  
Andrew McSpedden  
John de Meyrick  
Richard Lancaster  
Brian Ralston  
Carol Webster  
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Valerie Heath  
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# Bar Council Committees 2001 *(continued from page 16)*

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Anna Fader (Community member)  
Prof. David Barker (Academic)

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## **Reminder**

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

Smoking is prohibited.

# Conferences

**World Women Lawyers Conference, London, 1-2 March 2001.** This conference, organised by the International Bar Association's Women's Interest Group, includes sessions on 'Women and debt: the impact of insolvency on women and families', 'Women's rights as human rights' and 'Access to employment for women'. Further information may be obtained from the IBA web site at [www.ibanet.org](http://www.ibanet.org). A copy of the registration brochure is held at the Bar Association Reception.

**UN Economic Sanctions Conference, Radisson SAS Portman Hotel, London, 12 February 2001.** This conference, jointly organised by the International Bar Association Human Rights Institute and the International Peace Academy, will examine the legal issues surrounding economic sanctions. Panels will hold discussions on Iraq, Angola and 'Towards smarter sanctions'. Information may be obtained on ph:++44 207 629 1206, fax: ++44 207409 0456; e-mail: [caroline.kerr@int-bar.org](mailto:caroline.kerr@int-bar.org) or by visiting the International Bar Association web site at [www.ibanet.org](http://www.ibanet.org). A copy of the registration brochure is also held at Bar Association Reception.

**5th Biennial Pacific Rim Computer Law Conference, Intercontinental Hotel, Sydney, 22-24 February 2001.** The theme of this conference, jointly organised by the International Bar Association and the Computer Law Association and the NSW Society for Computers and the Law, is 'Global ebusiness issues for the 21st Century'. Information regarding the conference may be obtained from the Computer Law Association's web site at <http://cla.org> or via e-mail: [clanet@aol.com](mailto:clanet@aol.com). A copy of the information and registration brochure is available in PDF format from the Bar Association web site. A copy of the brochure is also held at the Bar Association Reception.

**National Superannuation Conference for Lawyers, Coolumb, QLD, 22-24 March 2001.** The Law Council of Australia, in conjunction with the Leo Cussen Institute is conducting the annual National Superannuation Conference for Lawyers in March 2001. For further information, contact Dianne Rooney on ph: (03) 9602 3111, fax: (03) 9670 3242 or via e-mail: [dirooney@leocussen.vic.edu.au](mailto:dirooney@leocussen.vic.edu.au)

**Inter-Pacific Bar Association 11th Annual Conference, Le Meridien Grand Pacific, Tokyo, 22-25 April 2001.** The theme of this years conference is 'The 21st Century - Challenges facing lawyers in the Asia-Pacific Region' and includes a 'diverse and provoking conference programme'. Those wishing to attend are urged to make all necessary travel arrangements by 28 February 2001. Delegates may register online at [www.ipba.org](http://www.ipba.org) Alternatively, a conference registration brochure is available at the Bar Association Reception.

**American Bar Association 27th National Conference on Professional Responsibility / 17th National Forum on Client Protection, Lowes Miami Beach Hotel, Florida, 31 May - 2 June 2001.** Information may be obtained from the conference web site at [www.abanet.org/cpr/prconf.html](http://www.abanet.org/cpr/prconf.html).

**10<sup>th</sup> LAWASIA Energy Law Conference, Xian, China, 15-18 May 2001.** The topics include 'Legal issues for transnational energy development', 'Public and third party access to energy infrastructure' and 'WTO rules and the Chinese energy industry'. General enquiries should be directed to Ms Roslyn West, the LawAsia Secretary General on ph: (08) 89469500, fax: (08) 8946 9505 or via e-mail: [lawasia@lawasia.asn.au](mailto:lawasia@lawasia.asn.au). Copies of the conference registration and information brochure are held at the Bar Association Reception.

**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 e-mail: [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.

**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).

**Australian Bar Association Conference, Paris, 7 - 10 July 2002.** Conference details will be published in future editions of *Bar Brief*.

**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 e-mail: [Info@conference.co.nz](mailto:Info@conference.co.nz).

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

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

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## Association e-mail Directory

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### Education Department

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### Executive Director

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### Sickness & Accidents Inquiries

[sickacc@nswbar.asn.au](mailto:sickacc@nswbar.asn.au)



# Pro Bono assistance

Fill out the form below if you are willing to participate in any of the pro bono schemes noted below.

## Expression of Willingness to participate

NAME:

(Please print name in full)

PHONE:

CHAMBERS

Please tick any of the boxes below which represent areas in which you would be willing to provide pro bono assistance under the Scheme.

### SUPREME COURT PRO BONO SCHEME

- |  |   |  |
|--|---|--|
| <input type="checkbox"/> Probate matters                 | <input type="checkbox"/> Commercial matters         | <input type="checkbox"/> Common Law (Civil)  |
| <input type="checkbox"/> Protective matters              | <input type="checkbox"/> Admiralty matters          | <input type="checkbox"/> Equity (General)  |
| <input type="checkbox"/> Adoptions matters               | <input type="checkbox"/> Defamation matters         | <input type="checkbox"/> Crime   |
| <input type="checkbox"/> Professional negligence matters | <input type="checkbox"/> Administrative Law matters | <input type="checkbox"/> Appellate work (indicating area of interest e.g. Workers' Compensation appeals) |
| <input type="checkbox"/> Possessional matters            | <input type="checkbox"/> Corporations Law matters   | <input type="checkbox"/> _____   |
|  |   | <input type="checkbox"/> _____   |

### FEDERAL COURT OF AUSTRALIA PRO BONO SCHEME

- |  |  |
|--|--|
| <input type="checkbox"/> Administrative Law                        | <input type="checkbox"/> Trade Practices and Consumer Protection |
| <input type="checkbox"/> Veterans and Social Security Entitlements | <input type="checkbox"/> Native Title                            |
| <input type="checkbox"/> Human rights and Equal Opportunity        | <input type="checkbox"/> Bankruptcy                              |
| <input type="checkbox"/> Industrial Relations                      |  |



## DISTRICT COURT PRO BONO SCHEME

- |  |   |
|--|---|
| <input type="checkbox"/> Common law personal injury<br>(including motor accidents) | <input type="checkbox"/> Family provision and de facto<br>relationships |
| <input type="checkbox"/> Commercial  | <input type="checkbox"/> Professional negligence                        |
| <input type="checkbox"/> Construction  | <input type="checkbox"/> Defamation                                     |

## NSW BAR ASSOCIATION'S LEGAL ASSISTANCE SCHEME

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- |   |  |
|---|--|
| <input type="checkbox"/> Administrative                     | <input type="checkbox"/> Franchising                             |
| <input type="checkbox"/> Admiralty                          | <input type="checkbox"/> Human Rights & Equal Opportunity        |
| <input type="checkbox"/> Advocacy - appellate               | <input type="checkbox"/> International                           |
| <input type="checkbox"/> Alternative Dispute Resolution     | <input type="checkbox"/> Industrial Relations                    |
| <input type="checkbox"/> Arbitration                        | <input type="checkbox"/> Insurance                               |
| <input type="checkbox"/> Aviation                           | <input type="checkbox"/> Intellectual Property                   |
| <input type="checkbox"/> Bankruptcy                         | <input type="checkbox"/> Landlord and Tenancy                    |
| <input type="checkbox"/> Building                           | <input type="checkbox"/> Local Government                        |
| <input type="checkbox"/> Commercial                         | <input type="checkbox"/> Migration                               |
| <input type="checkbox"/> Common Law                         | <input type="checkbox"/> Native Title                            |
| <input type="checkbox"/> Communications                     | <input type="checkbox"/> Negligence - Medical                    |
| <input type="checkbox"/> Constitutional                     | <input type="checkbox"/> Personal Injury                         |
| <input type="checkbox"/> Corporations                       | <input type="checkbox"/> Property                                |
| <input type="checkbox"/> Criminal                           | <input type="checkbox"/> Revenue                                 |
| <input type="checkbox"/> Customs                            | <input type="checkbox"/> Trade Practices and Consumer Protection |
| <input type="checkbox"/> Defamation                         | <input type="checkbox"/> Trusts                                  |
| <input type="checkbox"/> Early Neutral Evaluation/Appraisal | <input type="checkbox"/> Veterans & Social Security Entitlements |
| <input type="checkbox"/> Environment and Planning           | <input type="checkbox"/> Wills and Estates                       |
| <input type="checkbox"/> Equity                             | <input type="checkbox"/> Workers' Compensation                   |
| <input type="checkbox"/> Family Law                         |  |

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**Once completed, please return this form covering all four schemes to:**

***The Manager,  
Legal Assistance Scheme,  
NSW Bar Association,  
174 Phillip Street Sydney, NSW 2000  
or DX 1204 Sydney.***

***Inquiries should be directed to Heather Sare on ph: (02) 9232 4055; fax: (02) 9221 1149  
or e-mail: [hsare@nswbar.asn.au](mailto:hsare@nswbar.asn.au)***