



## President's Column

### Disciplinary provisions

The *Legal Profession Amendment (Disciplinary Provisions) Act 2001* (NSW) will commence on 27 July 2001.

The Act is intended to enhance the powers of the Bar Council, the Law Society Council and the Legal Services Commissioner to investigate and deal with conduct which demonstrates that legal practitioners are not fit to practice. It applies to all notifications which have been given prior to the date of its commencement which are statements as to why, despite the commission of an act of bankruptcy (which is given an extended definition in s3(3)) or a finding of guilt of the commission of an indictable offence or a tax offence (which means any offence under the *Taxation Administration Act 1953* (Cth)) the person making the statement considers that he or she is a fit and proper person to hold a practising certificate.

The Act creates a strict regime during which information concerning the notified event must be provided and the investigations of notifications must be completed.

In essence it provides that the Bar Council must complete its investigation within the 'relevant period', which is a period of three months commencing on the date on which it receives the relevant notification to determine whether or not the notifying legal practitioner is a fit and proper person to hold a practising certificate. The three month period may be extended by the Legal Services Commissioner to four months at the Council's request.

The Act places an imperative on speedy action, both on the practitioner and the Council's part. Section 38FH provides that if the relevant period expires without the Council making a determination, then the practising certificate of the notifying barrister is suspended until the matter is determined by the Council or the Commissioner or the suspension is removed by the Supreme Court, whichever occurs first.

In relation to acts of bankruptcy or other notifiable events which occur after 27 July 2001, the Legal Profession



Ruth McColl S.C., President.

Regulation 1994 requires notification to be given to the Bar Council within seven days after the occurrence of the relevant notifiable event. The written statement required by the new s38FB(3) must be provided within 14 days after either the commission of the act of bankruptcy or other notifiable events. The same time periods apply in relation to findings of guilt or acts of bankruptcy which occurred prior to 27 July 2001. In other words, if notice has not already been given of such events, then notice must be given within seven days after 27 July 2001 and the written statement must be provided by 10 August 2001.

The Legal Profession Regulation 1994 is to be amended to state that failing to notify information in relation to an act of bankruptcy, a finding of guilt of an indictable offence or a tax offence within the prescribed time is declared to be professional misconduct. The amendments will also commence on 27 July. A barrister who fails to notify a matter which is declared by the regulations to be professional misconduct will be required to provide a written statement showing why, despite the failure to notify, the barrister considers he or she is a fit and proper person to hold a practising certificate.

Under the amendments to the Act, the Council is given power to require a legal practitioner to provide written information or to produce documents or otherwise assist in or cooperate in an investigation in relation to a notification.

The Council can refuse to issue, cancel or suspend a practising certificate in any of the following circumstances:

- (a) if the Council considers that the act of bankruptcy, indictable offence or tax offence which has been notified was committed in circumstances showing the applicant or holder is not a fit and proper person to hold a practising certificate;
- (b) if an applicant or holder has failed to notify a matter declared by the regulations to be professional misconduct and the Council considers the failure to notify occurred without reasonable cause; or
- (c) if the Council is of the opinion that the holder application has failed to demonstrate in their written statement notifying an act of bankruptcy, guilt of an indictable offence or a tax offence, that he or she is a fit and proper person to hold a practising certificate; or
- (d) if the applicant or holder has failed to comply with the requirement to provide information, documents, or has failed to assist in or cooperate with the investigation or has wilfully misled or obstructed a Council in the exercise of any of its functions under the relevant Division.

While the new regime is strict, it reinforces the Bar's continuing commitment to ensuring that those who hold themselves out as members of the Bar are of good fame and character. The obligation to disclose matters likely to affect a barrister's good fame and character has been a requirement in applications for practising certificates since their inception. The obligation is imposed by the Bar Council approving the practising certificate application form pursuant to cl 6 of the Legal Professional Regulation 1994.

(Continued on page 10)

# Bar Council business for May 2001

## President's report

### Appointment of James Allsop S.C. to the Federal Court, 7 May 2001 and Janine Stevenson to the Family Court, 21 May 2001

The President advised that she had addressed and would address the court on behalf of the Bar at the swearing in ceremonies for Justice Allsop and Justice Stevenson respectively.

### Appointment of Penelope Hock, District Court, 7 May 2001

The President advised that Penelope Hock had been sworn in as a Judge of the District Court. The Attorney General of NSW spoke on behalf of the Bar.

### Appointment of Judith Gibson, District Court as of 21 May 2001

Bar Council noted the appointment of Judith Gibson to the District Court.

## Workers compensation

The President advised that she, Katzmann S.C., B Ferrari and the Executive Director met with The Special Minister of State on 4 May in order to discuss the proposed changes to workers compensation legislation. The Minister had undertaken to arrange for the Association to be provided with actuarial reports on the current scheme, including on legal costs. He had also offered to arrange a meeting with doctors who had given advice on the proposed impairment tables. He had agreed to a further meeting with the Association's representatives after the meeting with the doctors. As of the date of the Bar Council meeting, these meetings had not been arranged, nor had the Bar Association been provided with the actuarial reports.

## HIH collapse

The President informed Bar Council that she had been advised that the State and Federal Governments were in the process of devising a rescue package for HIH victims.

Fees outstanding as a result of the HIH collapse were still estimated at about \$4 million; this probably did not include fees owing to plaintiff barristers in cases where, unbeknown to the barrister, the defendant's insurer was part of the HIH group. Claims against HIH insured barristers was close to \$2.8million. In her column in April *Bar Brief* the President had sought members' views on a donation being made by all members to establish a fund to assist those adversely affected by the HIH collapse and members giving proxies to appropriate nominees to represent them at any creditors' meetings of HIH. There had been no response to these proposals.

Bar Council noted the Association's press release calling for the Federal and State Governments to help victims of the HIH collapse. The Council further noted letters from the President to the Prime Minister and the Premier of NSW asking that they consider creating a pool of funds to protect consumers against similar disastrous occurrences in the future.

## Bar Planning meeting, 26 May 2001

The President advised that although the planning meeting had been set down for one day only, it was but the beginning of the exercise. The meeting was to be regarded as a strategic planning session from which discussion papers and further action would flow. There would be consultation with all parts of the Bar.

## Items for consideration

### Australian Legal Resources International

Bar Council resolved to provide financial assistance of \$5,000 to Australian Legal Resources International (ALRI).

### Legal Assistance Referral Scheme

Bar Council resolved to endorse the proposed new guidelines for the Association's Legal Assistance Referral Scheme.

### BarCare brochure

The Executive Director advised that the brochure had been prepared in consultation with relevant professionals. Bar Council resolved to distribute the brochure to members. It was further resolved that the Association cover costs associated with the initial consultation.

### Tranby Aboriginal College

Bar Council noted that Tranby College had sought financial assistance to conduct modules in its National Indigenous Legal Studies Curriculum course, which provides accredited legal training courses addressing the legal and human rights of indigenous people.

Bar Council noted that the next block of the course was being delivered on 14-18 May 2001. This block includes modules on bail procedures; court procedures; presenting information; and interview skills.

Bar Council resolved to provide \$5000 financial assistance to Tranby College.

### Sponsorship of University Law Societies

Bar Council noted that a sponsorship proposal had been received from: the University of Western Sydney, Campbelltown requesting funding for their entrants in the International

Negotiation Competition, Los Angeles, July 2001.

Bar Council resolved to provide support for the UWS proposal to the value of two economy return airfares Sydney/Los Angeles.

Bar Council further resolved to provide support for the winning team from the ALSA moot to attend an overseas competition along the lines of the assistance provided to the UWS team, should that team be from a NSW university.

## Law Week 2001, May 14-19

The President advised that the Law Week debates, featuring speakers from the Bar Association, the Law Society and the NSW Police Service, had been very successful.

Phillip Boulten spoke for the affirmative in 'The Right to Silence' debate, moderated by the President. Walker S.C. spoke for the affirmative and Sofroniou for the negative in the 'Three Cheers for the Nanny State' debate, moderated by the President of the Law Society of NSW.

Greenwood S.C., the Executive Director and three members of the Bar Association staff had given blood as part of the Law Week 'Blood Oath'.

## Young Barristers Committee: Proposed survey to be sent to all under 5's

Bar Council resolved to send the proposed survey to all barristers with less than five years seniority.

**Note:** Because of the confidentiality provisions in the *Legal Profession Act 1987* (s171P), 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.

DICKERSON Robert

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# Papers to note

*Recommended action plan for national co-ordination and development of pro bono legal services*, 14 June 2001. This report, by the National Pro Bono Task Force, seeks to define pro bono practice, quantify the legal profession's contribution to the community through pro bono work, and formulate an action plan for the national co-ordination and development of pro bono legal services. The report may be obtained from the Australian Law Reform Commission web site at [www.alrc.gov.au](http://www.alrc.gov.au). A copy of the report is held in the Bar Library.

District Court Amendment (Discovery and Inspection) Rule 2001. The object of this Rule is to amend Part 22 of the District Court Rules 1973 to ensure that its provisions are consistent with the provisions of Part 23 of the Supreme Court Rules 1970. A copy of the Rule may be obtained from the NSW Parliamentary Counsel's web site at [www.pco.nsw.gov.au](http://www.pco.nsw.gov.au). A copy is held in the Bar Library.

*Supreme Court practice note 121*: 'Joint conferences of expert witnesses'. This practice note provides guidelines for conducting joint conferences of expert witnesses in order to identify and limit

the issues on which will be contested during trials. 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.

*Supreme Court practice note 120*: 'Common Law Division - Differential case management list'. The purpose of this practice note is to replace practice notes 81, 87 and 88. It will apply from 1 September 2001. 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.

*Health Care Liability Act 2001* (NSW) No.42. An Act regulating the recovery of damages for injury or death caused by medical practitioners and other health care providers. A copy of the Act may be obtained from the NSW Parliamentary Counsel's web site at [www.pco.nsw.gov.au](http://www.pco.nsw.gov.au). A copy is held in the Bar Library.

Workers Compensation Legislation Amendment Bill 2001 (No 2). A Bill for an Act to amend the *Workers Compensation Act 1987* (NSW) and the *Workplace Injury Management and Workers Compensation Act 1998* (NSW) to make further provision for claims procedures,

dispute resolution, commutation, lump sum compensation and other matters; and for other purposes. The Bill, currently waiting for assent, may be obtained from the NSW Parliament web site at [www.parliament.nsw.gov.au](http://www.parliament.nsw.gov.au). A copy of the Bill is held in the Bar Library.

*Legal Profession Amendment (Disciplinary Provisions) 2001*. Act An Act to amend the *Legal Profession Act 1987* with respect to the issue, cancellation and suspension of practising certificates, the meaning of professional misconduct and the functions of the Legal Services Commissioner; and for other purposes. The Bill, currently waiting for assent, may be obtained from the NSW Parliament web site at [www.parliament.nsw.gov.au](http://www.parliament.nsw.gov.au). A copy of the Bill is held in the Bar Library.

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## Barristers hockey match – New South Wales v Victoria

The Summer 2000/2001 edition of *Bar News* reported on the hockey match between the NSW Bar and the Victorian Bar on 14 October 2000.

A return match against the Victorians is scheduled for Saturday 13 October 2001. The time and venue for the match will be advised closer to that date. Hockey players, spectators or those who would like to attend the post-match dinner should contact Andrew Scotting in Garfield Barwick Chambers on ph: (02) 9232 1231 or by e-mail: [scotting@chambers.net.au](mailto:scotting@chambers.net.au)

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## Practising certificate cancelled

The practising certificate issued to **Lawrence Robert Somosi** as a barrister on 27 July 2000 was cancelled on 15 June 2001 by resolution of the Bar Council on 14 June 2001.

**BARCARE**

BarCare is designed to guide barristers through emotional and stress related problems including family or marital problems, drug or alcohol dependency and practice pressures. The Bar Association will cover costs associated with the initial consultation with the BarCare counsellor.

For further information contact the Education Manager on (02) 9229 1722 or [barcare@nswbar.asn.au](mailto:barcare@nswbar.asn.au)

# Coming Up

## 15 Bobbers

A 15 Bobber will be held in the Bar Association Common Room on Friday, 27 July 2001 at 5.00 pm to celebrate the appointment of The Hon. Justice James Allsop to the Federal Court of Australia. The cost of admission is \$15 in advance or \$25 at the door. Invitations forms have been distributed to all chambers and may be obtained from the Bar Association's web site at [www.nswbar.asn.au](http://www.nswbar.asn.au) under 'Coming up'.

## Swearing in

Wayne Haylen QC will be sworn in as a Deputy President of the Industrial Relations Commission of New South Wales and Judge of the Commission in Court Session in Courtroom 5, Level 4, 50 Phillip Street, Sydney on **Friday, 27 July 2001 at 9.30 am**.

Wigs and robes are not worn. The Attorney General, The Hon. Bob Debus MP, will speak on behalf of the Bar. All inquiries should be directed to Denise Fleming: (02) 9229 1720 or e-mail at [dfleming@nswbar.asn.au](mailto:dfleming@nswbar.asn.au).

## Conferences & functions

**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.

**'Honour killings', International Commission of Jurists - Australian section** Tuesday, 31 July 2001, 5:30pm to 7:00pm, NSW Parliament House Theatre, Macquarie St, Sydney. The speakers will include Senator Vicki Bourne, Associate Professor Ahmad Shboul AM and Justice Elizabeth Evatt AO. For more information, contact Zena Dabboussy-Bardouh on ph: 9230 8793, fax: 9230 8835 or e-mail: [Zena\\_Dabboussy-Bardouh@courts.nsw.gov.au](mailto:Zena_Dabboussy-Bardouh@courts.nsw.gov.au). RSVP: Monday 23 July 2001.

**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).

**Women Lawyers' Association - Lunch with Chief Justice Sian Elias of New Zealand 20 August 2001**

The cost of the function is \$44 for members, \$55 for non-members and \$33 for students. Tables of ten can be booked for \$440. Registration forms can be obtained by contacting the WLA office on ph: 9264 3611, fax 9264 6399 or by email [nswwla@ozemail.com.au](mailto:nswwla@ozemail.com.au)

**The International Society for the Reform of Criminal Law: Politics, Crime and Criminal Justice, Canberra, 26-30 August 2001.** The theme of the conference is to examine the inter-relationship of politics and criminal justice systems at local, national and international levels. Topics to be discussed include corruption, judicial independence, law reform commissions and restoration of criminal justice systems following the collapse of civil authority. For more information about the ISRCL and the conference, visit their web site at [www.isrcl.org](http://www.isrcl.org) or contact the Secretariat in Vancouver, Canada on ph: ++ 1 604 643 1252 or e-mail: [secretariat@isrcl.org](mailto:secretariat@isrcl.org). A conference registration brochure is held at the Bar Association Reception.

**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 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, e-mail: [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.

**DNA evidence prosecuting under the microscope, Stamford Grand Adelaide, Glenelg Beach, South Australia, 9-11 September 2001.** This conference, hosted by the South Australian Attorney General and the S.A. Office of the Director of Public Prosecutions, will feature lectures and workshops on DNA evidence and its future role in the courts. For more information, contact the Conference Secretariat on (08) 8379 8222, e-mail [plevin@camtech.net.au](mailto:plevin@camtech.net.au) or visit their web site at [www.camtech.net.au/~plevin/dna/Home.htm](http://www.camtech.net.au/~plevin/dna/Home.htm). A conference information and registration brochure is held at the Bar Association's 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)

**A celebration of federation: The Australian Constitution in retrospect and prospect. The National Conference of the Australian Association of Constitutional Law, Perth, 21-23 September 2001.** Speakers include Sir Anthony Mason AC KBE, The Hon. Daryl Williams AM QC MP, Professor Geoffrey Bolton AO, David Jackson QC and Professor George Williams. Topics include 'Assumptions and expectations of 1901', 'Globalisation of rights and the constitution', 'Changing attitudes to federalism' and 'The role of government and its evolution'. A conference programme and registration brochure is held at the Bar Association's Reception.

**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 the Bar Association Reception.

**17th Biennial LAWASIA Conference / Triennial New Zealand Law Conference 2001, Christchurch, 4-8 October**

*(Continued on page 5)*

**2001.** A conference information and registration brochure is held at the Bar Association Reception. 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.

**Environment and Planning Law Association 2001 conference, Cowra, 19-20 October 2001.** The programme for this conference will include topics of interest to both country and urban legal practitioners, including the anticipated release of the Land & Environment Court Review. For further information, visit the EPLA web site at [www.epla.org.au](http://www.epla.org.au) or contact Michele Kearns on ph: (02) 9221 3527 or e-mail: [kearns@stjames.net.au](mailto:kearns@stjames.net.au)

**2001 Conference of the International Bar Association, Cancun, Mexico, 28 October - 2 November 2001.** The programme includes more than 100 working sessions on topics ranging from cost effective arbitration, cross border insolvency, trans-national organised crime and current issues in refugee law. A conference information and registration brochure is held at the Bar Association's reception. For further information, visit the IBA web site at [www.ibanet.org](http://www.ibanet.org) or contact Lisa Campbell on ph: ++44 20 7629 1206; fax: ++44 20 7409 0456 or via e-mail: [cnfs@int-bar.org](mailto:cnfs@int-bar.org).

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## Letters of demand

The attention of members is drawn to professional and ethical issues that may arise when they become involved in drawing or settling letters of demand addressed to laypersons, particularly members of the public.

While it is legitimate for barristers to provide this service, it is recommended that members give careful, specific consideration to the reasonableness of the wording of the letter of demand, and ensure that the claims which are made are fairly arguable on the basis of instructions carefully obtained by the barrister. Regard should be had to the way that members of the public may interpret peremptory legal language.

The issue is particularly acute where the letter of demand will be sent to a party or possible witness in other proceedings on foot, where the threat made in the letter of demand may affect the addressee's perception of his or her freedom to take part in the proceedings in an unfettered way. This is especially so where the barrister is briefed in the proceedings. A thoughtlessly worded letter of demand may lead to claims of contempt of court and subornation of witnesses, as well as complaints against the barrister's conduct.

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## Parental leave and waiver of practising certificate fee

An inquiry by the Equal Opportunity Committee found that some members are not aware that members leaving the Bar for parental reasons are not required to hold a practising certificate for the period during which they will be absent from the Bar. An application for a fee waiver due to parental reasons should be addressed to the Executive Director.

# Speeches

'The growth of legislation and regulation', by The Chief Justice of Australia, The Hon. Justice A M Gleeson AC. This speech was delivered at the International Conference on Regulation Reform, Management and Scrutiny of Legislation, held in NSW Parliament House on 9 July 2001. The Chief Justice discusses the increasing complexity of legislation and the proliferation of regulations. He discusses the 'democratic deficit' which arises when the law is not created by statute 'enacted by a parliament, after a process of public debate and political conflict, but a regulation made pursuant to authority delegated to the executive government, or to a local authority, by statute'. 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 of the speech is held in the Bar Library.

'Citizens, consumers and courts', by The Hon. J J Spigelman AC, Chief Justice of New South Wales. This speech was delivered at the International Conference on Regulation Reform, Management and Scrutiny of Legislation on 9 July 2001. Justice Spigelman, whilst acknowledging that the judiciary has responded to calls for greater efficiency, warns that there should be limits to which quantitative measurements and performance indicators should be applied to the administration of justice. 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.

'Launch of the Pro Bono Task Force Report', by The Hon. Daryl Williams AM QC MP, 29 June 2001. In this speech, the Attorney-General discusses the key recommendations of the pro bono task force, including plans for the establishment of a pro bono resource centre, government facilitation of pro bono work by other professions in the course of a legal matter and means to foster a pro bono culture. 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.



### The Chartered Institute of Arbitrators Australian Branch

(ABN 65 931 837 789)

#### ENTRY COURSE – SYDNEY

Sun 28 Oct. – Mon 29 Oct. 2001

The Branch will conduct an Entry Course, leading to Associate Membership (ACI Arb). The two-day program, at a Sydney CBD venue, consists of a written assignment, lectures and tutorials and concludes with a written examination. *Course fee: \$1,000 (plus GST).*

#### FAST TRACK PROGRAM TO FELLOWSHIP ASSESSMENT WORKSHOPS FOR LAWYERS – SYDNEY

Fri. 26 Oct. – Sat 27 Oct. 2001

The Branch will conduct Assessment Workshops for suitably qualified candidates who are lawyers and who otherwise have sufficient experience in arbitration. The two-day program consists of small discussion groups, in which candidates will be expected to demonstrate knowledge and skill in arbitration. Attendance at the Workshops will qualify candidates for Associate Membership (ACI Arb) and those who pass the Assessment will qualify for Membership (MCI Arb). Qualified candidates who subsequently pass the Award Writing examination and any practical training may apply for Fellowship (FCI Arb). Fee: *\$1,000 (plus GST)*

Further details from Executive Officer:  
Tel. (02) 9988 3563 Fax . (02) 9988 3571  
e-mail: [mblongstaff@ozemail.com.au](mailto:mblongstaff@ozemail.com.au)

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Peter Crittle is the leader of the Floor • Phillip Perry is the Floor Secretary.

Your application will be treated in the strictest of confidence and should be addressed to our Clerk, Patricia Hoff, and received as soon as possible.

The Board proposes to make a decision before 1 August 2001.

For your information a list of our current floor members appears below.

ARDEN, P.R.	HARRIS, J.M.	MOORE, D.R.	PRIESTLEY, D.A.
BIGGINS, P.	HICKEY, C.K.	MORRISSEY, K.F.	RICKARD, P.A.
CAMPBELL, S.G.	HICKEY, S.W.	NEILSON, G.P.	ROCHE, W.J.
CANDY, A.J.,	INGRAM, B.W.	O'CONNOR, P.J.	SIBLEY, K.
CRITTLE, C.P.	KELLEHER, K.J.	O'SULLIVAN, B.	SMALL, T.N.
ELKAIM, M.A.	LESLIE, A.O.	PEARCE, J.H.	SNELL, M.L.
FARKAS, G.M.	MACFARLANE, I.	PERRY, M.	SWEENEY, P.C.
GREY, L.T.	MARR, D.A.	PERRY, P.L.	TAYLOR, R.T.
HARRINGTON, R.I.	MEADLEY, J.B.	PITTS, C.	WALSH, G.D.
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## Volunteer for the Bar Association Speakers Bureau

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. A speaking engagement is an opportunity to explain how the legal system works. Members in rural and regional New South Wales are encouraged to join.

Those wishing to register for the Speakers Bureau should contact:

Public Affairs Officer  
Ph: (02) 9229 1732 Fax: (02) 9221 1149  
E-mail: [cwinslow@nswbar.asn.au](mailto:cwinslow@nswbar.asn.au)  
or via DX 1204 SYDNEY.

# Practising without a practising certificate

Section 25 of the *Legal Profession Act 1987* (NSW) provides:

- (1) A legal practitioner whose sole or principal place of legal practice is this State must not practise as a barrister or solicitor and barrister without being the holder of a current practising certificate.
- (2) A legal practitioner whose sole or principal place of legal practice is this State must not hold himself or herself out to be a barrister without being the holder of a current practising certificate as a barrister.
- (3) A legal practitioner whose sole or principal place of legal practice is this State must not hold himself or herself out to be a solicitor without being the holder of a current practising certificate as a solicitor and barrister.
- (3A) An interstate legal practitioner must not practise as a barrister or solicitor in this State without being the holder of a current interstate practising certificate issued by a regulatory authority of a participating State.
- (3B) An interstate legal practitioner must not hold himself or herself out to be a barrister in this State without being the holder of a current interstate practising certificate

issued by a regulatory authority of a participating State.

- (3C) An interstate legal practitioner must not hold himself or herself out to be a solicitor in this State without being the holder of a current interstate practising certificate issued by a regulatory authority of a participating State.
- (4) A legal practitioner or interstate legal practitioner who contravenes this section wilfully and without reasonable excuse is guilty of professional misconduct.

Section 48B of the Act provides:

- (1) A person must not act as a barrister or solicitor and barrister unless the person holds a current practising certificate. Maximum penalty: 20 penalty units.
- (2) This section does not prevent a licensed conveyancer from carrying out conveyancing work in accordance with a licence in force under the *Conveyancers Licensing Act 1995*.
- (3) A person who contravenes this section is, whether or not prosecuted or convicted for the contravention, guilty of contempt of any court in relation to which the contravention takes place.

- (4) If a person contravenes this section: (a) no action lies for the recovery of costs in respect of anything done in the course of the contravention, and (b) if any such costs have been paid, the amount paid may be recovered as a debt owed by the person to the other person who paid them.
- (5) For the removal of doubt, it is declared that a reference in this section to a person includes a reference to a body corporate.
- (6) A person who is an interstate legal practitioner does not contravene this section if he person is the holder of a current interstate practising certificate issued by a regulatory authority of a participating State.

In 2000-2001 a small number of barristers failed to renew in a timely fashion their practising certificate, but continued to practise. Bar Council made complaints against them and, in some cases, disciplinary proceedings have already commenced or will commence shortly.

Bar Council view very seriously the conduct of practising as a barrister without being the holder of a current practising certificate.

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# At the lectern

CLE Calendar for August 2001

For more information contact Emma Wright on ph: 9229 1712 or e-mail: ewright@nswbar.asn.au

## August

Date	Audience	Topic	Speakers
Wednesday 8 August	Breakfast	To be advised	
Monday 13 August	Monday night series	Intellectual Property Section: 'Internet Repercussions' Cobden; David Kell;	Chair: Yates S.C. Speakers: Richard Jennifer Stuckey-Clarke
Thursday 23 August	Junior Speaker Series	Building and Construction Disputes - 'What the new player needs to know '	Chair: Ross McKeand Speaker: Tom Davie

## Electronic circulars

The Bar Association is embracing electronic technology and is changing the way it communicates with members.

So far as possible, the Association will be sending out all circulars to members electronically rather than by facsimile to ensure that members are provided with information as quickly and efficiently as possible.

If your e-mail address is different to that which is on the Bar Association's web site, under the 'Find a Barrister' search facility, please advise us as soon as possible. If you do not want your e-mail address to be publicly available, please let us know. While we will use that e-mail address to distribute circulars, it will not appear on the web site.

If your e-mail address changes at any time, please advise us immediately so that our records can be updated.

If you do not have an e-mail address, please let us know and we will continue to forward circulars by facsimile. However, I strongly urge you to have an e-mail account so that we can provide you with information as promptly as possible.

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## Media briefing

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

'Benefits picture far from clear,' Letter to the Editor, *Daily Telegraph*, 6 July 2001 p.25

Visit the Bar Association web site at [www.nswbar.asn.au](http://www.nswbar.asn.au) to obtain the full text of all media releases and letters to the Editor.

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

*Budget Does Little to Improve Access to Justice*, 23 May 2001

*Government Should Move on Reversing the Legal Brain Drain*, 18 May 2001

*GST Causing Serious Cash Flow Problems for Law Firms*, 17 May 2001

*Law Council Says All Australians Must Have Access to Legal Services*, 15 May 2001

Visit the Law Council's web site at [www.lawcouncil.asn.au](http://www.lawcouncil.asn.au) to obtain the full text of all media releases and letters to the Editor.

# Appointments

Mr John Nicholson S.C. has been appointed as a Judge of the New South Wales District Court, effective 23 July 2001.

Mr Roland Day has been appointed as a Magistrate and as a Mining Warden, effective 23 July 2001.

Mr Wayne Haylen QC has been appointed as a Deputy President of the Industrial Relations Commission of New South Wales and Judge of the Commission in Court Session, effective 27 July 2001.

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## New members of the Bar Association

The persons listed below have been accepted as members of the NSW Bar Association at a meeting of Bar Council, 6 June 2001

### Local practising practitioner

Michael Allnutt	Crown Prosecutors
Peter Breen	NSW Legislative Council
Henry Neal	10 Wentworth
Mark Robertson	Ground Floor Wentworth
Robin Sproule	University of Wollongong

### Legal practitioner other than local practising practitioner

Anthony Cheshire	199 Strand, London
David Collins	Latham Chambers (Melbourne)

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Disclosures are made within the statutory scheme created by the *Legal Profession Act 1994* pursuant to which it is incumbent on the Bar Council to observe principles of natural justice in investigating complaints as well as disclosures. No doubt most members of the Bar are familiar both with the reasons for the disclosure requirements, their statutory source and the circumstances in which both complaints and disclosures are investigated.

I have only sketched the provisions of the amendments. It is incumbent upon all members of the Bar to familiarise themselves with the relevant provisions and ensure that they comply with them. Both the Bill and the Regulation can be found on the Association's web-page.

### **Commission of Inquiry into Workers Compensation Common Law Matters**

The Bar Association's submissions were delivered to the inquiry within the prescribed time frame on 13 July 2001. A copy of the submissions can be viewed on the Association's web page. I set out below a summary of the position we have taken in respect of each term of reference.

#### **Term of Reference No. 1**

To recommend the appropriate threshold for 'serious and permanent injury' necessary to recover damages at common law in the WorkCover Scheme, consistent with the available measures of impairment in the statutory workers compensation Scheme, and maintaining access to common law claims under the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998* for seriously injured workers.

#### **Submission**

- The Bar Association does not support a threshold which relies upon an approach similar to the American Medical Association Guides to the Evaluation of Permanent Impairment.
- The Bar Association recommends that the threshold to be applied should be a narrative test based on the current threshold, i.e. 17.6 - 23.5 per cent of a most extreme case.
- The Bar Association recommends that the narrative test should be the only threshold applied, and the alternative threshold set out in s151H(2A)(a) of the *Workers Compensation Act 1987* should be discarded.
  - The justification for this approach is:-
  - the inherent injustice of a whole of body assessment as a threshold;

- historically a range of 25-33 per cent of a most extreme case was found to be too restrictive;
- the present thresholds have not led to an excessive number of common law cases.

#### **Term of Reference No. 2**

To examine more efficient ways to process common law claims under the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998*.

#### **Submission**

- The NSW Bar Association does not support the removal of the determination of common law entitlements from the court system and the transfer or delegation of that determination to an administrative body.
- The existing court system is most appropriate to deal with all aspects of such determination. It achieves high levels of efficiency and speed, and has implemented alternative dispute resolution measures which have both reduced costs and the time taken between the commencement and finalisation of proceedings.
- Any changes should be directed at the detail associated with existing processes, rather than setting up an alternative or additional administrative process.

#### **Term of Reference No. 3**

To identify ways to reduce unnecessary costs and inefficiencies in the processing of common law claims under the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998*.

#### **Submission**

- The NSW Bar Association submits that the court system has established procedures and alternative dispute resolution mechanisms which significantly reduce costs and inefficiencies which may have existed in the past. While no system is perfect, there is little scope for further change, rather the emphasis should be on making existing procedures work more effectively.

#### **Term of Reference No. 4**

To identify ways to reduce the incentive for pursuing common law claims under the *Workers Compensation Act 1987* and the *Workplace Injury Management and Workers Compensation Act 1998*.

#### **Submission**

- The NSW Bar Association does not support any change which either directly or indirectly seeks to dissuade seriously injured workers who have common law entitlements from pursuing their legal rights.
- The existing system has major disincentives in that an injured worker has to establish negligence and satisfy the threshold. A failure to do so carries a sanction of a costs order against the worker. The increased Statutory Scheme lump sum benefits will reduce the number of common law claims.

We have been advised that all submissions to the Inquiry will be placed on the Commission's web site at [www.sheahan.inquiry.nsw.gov.au](http://www.sheahan.inquiry.nsw.gov.au). We intend to make such submissions as are seen to be appropriate on other submissions. The Association is to address Justice Sheahan orally on 30 July 2001.

The Association's submissions were prepared by Cliff Hoeben S.C., Larry King S.C. and Eugene Romaniuk who were briefed for this purpose by the Association through Alan Blanch of Hickson Wisewoulds. They had considerable additional assistance from members of the Common Law Committee and the Workers Compensation Working Party in particular Katzmann S.C., Ferrari, Levy S.C. and Feller. I would like to thank all involved for the hard work they put in to prepare the submissions in a very short time frame and under great pressure.

#### **IT Committee Survey**

The Bar Association has for some years been seeking to address the high cost of access to legal publications. Many members cannot afford personally to subscribe to publications which they use on a frequent basis. Others cannot justify the expense of acquiring publications to which they refer from time to time but are not core materials for their area of practice.

Negotiations with publishers to achieve agreement on making internet access to such services available through the Bar library have not been successful to date. The IT Committee is distributing a survey to obtain data which we hope will support renewed negotiations with the publishers.

It is in the interests of all members of the Bar that this information is gathered. Please take the time to complete and return the survey.

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# In brief

## Advertising membership

Bar Council would like to remind members that they may include on their letterhead the statement 'Member of the New South Wales Bar Association', so long as their membership was current.

## Trolleys in the John Maddison Tower

The John Maddison Tower Building Management Committee has resolved that from 1 July 2001, the use of trolleys in the building's public lifts will not be permitted during 9.45 am to 10.15 am, daily. Counsel wishing to use trolleys in the public lifts to transport books etc to and from the District and Compensation courts in the building are requested to do so outside of that time.

## Sir Maurice Byers Memorial Address

The Hon. Justice Michael McHugh AC will deliver the 2001 Sir Maurice Byers' Memorial Address on Wednesday, 17 October 2001 at 5.30 pm in the Bar Association Common Room. The title of the address will be announced closer to that date.

## Travelling practising certificate regime

On 1 June 2001 Tasmania joined NSW, South Australia, Victoria, the ACT and Northern Territory in the travelling practising certificate regime. Queensland and West Australia are not yet participating.

## Vale

### Kevin Coleman

Kevin Coleman, formerly a Judge of the Compensation Court and member of 2 Wentworth, passed away on 17 June 2001. A funeral service was held on Thursday, 21 June 2001 at 1.30pm at the Church of St. Mary Magdalene, New South Head Road, Rose Bay.

## Barristers' Clerk

As from 6 August, 2001, a vacancy will exist on the Ground floor Wentworth Chambers for a Barrister' Clerk.

Expressions of interest in appointment to that position are invited and should be directed to:

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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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