



## Intellectual disabilities and the criminal justice system

On 18 September 2002 William Edwards, Deputy Public Defender, Los Angeles Public Defenders' Office, will be giving an address on 'Intellectual disabilities and the criminal justice system'.

Prior to working in Los Angeles, Mr Edwards worked in the southern United States. There, he conducted many pro bono capital cases in Mississippi, Texas, Louisiana and Florida, focusing on issues of mental retardation.

In 1996 Mr Edwards was invited by Temple University's Institute on Disabilities to write a training guide for lawyers who represent people with mental retardation. He has served on the American Bar Association's Death Penalty Representation Project from 1997-2000. He currently

serves on the ABA's Criminal Justice Section and its Commission on Mental and Physical Disability Law. Mr Edwards frequently lectures both nationally and internationally on issues involving people with mental retardation who are involved with the criminal justice system. He has published numerous articles on issues involving people with mental retardation who are charged with crimes which incur the death penalty. He has also testified before many State governmental legislative bodies regarding legislation to exempt people with mental retardation from the death penalty. This has included the Senate Committee in California and the Capital Case Task Force in Florida.

### Intellectual disabilities and the criminal justice system

Chair: Richard Cogswell SC, Crown Advocate  
Speaker: William Edwards, Deputy Public Defender, Los Angeles Public Defenders' Office  
Venue: Public Defenders' Conference Room  
Date: Wednesday, 18 September 2002  
Time: 5.15pm seminar commences  
Cost: no charge

*Attendance at the lecture will earn 1.5 CPD points in the substantive law, practice & procedure and evidence strand.*



## Fair's Fare? The history of equity jurisdiction in NSW

By Geoff Lindsay SC & Hugh Stowe

Following the release of the 'centenary essays', the next essay project being coordinated by the History Committee of the NSW Bar Association is *Fair's Fare? The History of Equity Jurisdiction in NSW*.

The proposed work will comprise a series of essays designed to provide a comprehensive account of the historical development of the Equity Jurisdiction in New South Wales.

Justice JD Heydon has accepted the role of Consultant Editor, Geoff Lindsay SC is the

Project Chairman, and Hugh Stowe is the Project Secretary. A number of prominent exponents of equity from the Bench, Bar and academia, have agreed to act as project consultants.

A number of barristers have already expressed interest in becoming involved in the project. The Committee is looking to involve other barristers (of all levels of seniority and background) to assist in the

*Continued on page 2*

## contents

- 2 CPD Programme
- 3 Computerised case management in NSW courts
- 4 Appointments
- 5 Bar Council business
- 6 Hearing loops in NSW courts
- 7 Technology for justice conference
- 8 Executive visit to Orange
- 9 Royalty and the law in Malaysia
- 10 Papers to note

## Media briefing

Excerpts from recent interviews given by members of Bar Council

'I can't help but remark the contrast between the way in which fees are paid for a Royal Commission into commercial matters whereas in areas that really matter so far as ordinary people in ordinary cases, particularly crime, there is a grievous under funding of legal aid around the whole country', Bret Walker SC, **regarding payment of legal fees for witnesses in the HIH Royal Commission, Sunrise, Channel Seven, Wednesday, 21 August 2002.**

'These are three gang rapes. If you divide 55 by three, you are perhaps looking, very crudely, at a better measure of the comparison [with a sentence for murder]. And when you do it that way, then I think you will find that the comparison with single murders, though obviously one that ought to be carried out, is not so straightforward', Bret Walker SC **regarding the 55 year gang rape sentence, SBS World News, Friday, 16 August 2002.**

'The courts should always take into account what is capable of being called community feeling. Although I suspect no-one, the courts included, is really capable ever of

*Continued on page 9*

# Continuing Professional Development Programme

Visit the Bar Association's web site at:

<http://www.nswbar.asn.au/Professional/Profdevt/CPDtable.htm>

to obtain the latest version of the CPD programme of seminars and events for 2002-2003

- CPD for the ACT, regional areas and downtown Sydney
- Developing partnerships with universities and co-ordinating CPD with the Bar Association's initiatives on behalf of law students

Planning is underway to ensure that barristers practising downtown, in regional areas, and in the ACT, receive as much opportunity to participate in and contribute to the CPD programme as their Sydney CBD counterparts.

A series of 'mini conferences' is planned to provide eight CPD points across the four required strands, each running from late Friday afternoon until early in the afternoon of the following Saturday.

## Parramatta

There will be a seminar in Parramatta on Thursday, 24 October 2002. This seminar is being developed in consultation with the Parramatta Bar, and will allow barristers in that region to accumulate four CPD points in the 'ethics and regulation of the profession' strand, and the 'Management' strand. Barristers should continue to consult the web site for further details of planning as it proceeds.

## Downtown Sydney

On 8-9 November 2002, in the Moot Courtroom of UTS, the Bar Association, in partnership with the Law School of UTS, will be conducting 'a mini conference', which will commence at 2:00pm on Friday, 8 November, with a session on 'A Career at

the Bar', to which UTS law students will be invited, and proceed through four two hour seminars, one in each strand of CPD, to a conclusion, at 1:30pm on Saturday, 9 November 2002.

## Partnerships with law schools

One of Bar Council's goals is for there to be cross fertilisation with law schools, and a coordination of the current efforts of Bar Association Committees and groups to engage with law schools, academics, and law students, for the purposes of :

- providing information and an opportunity for discussion with law students who might be planning a career at the New South Wales Bar;
- explaining the New South Wales Bar Association's EEO initiatives, particularly with respect to women, and members of indigenous communities; and
- presenting prizes awarded annually to law students by the Bar Association.

The envisaged mini conferences, commencing with that planned for downtown Sydney at UTS, on 8-9 November 2002, would aim to attract the attendance, and participation of academics and law students, in order to project an

appreciation of the broader context demonstrating the need for the maintenance of an independent Bar in our society.

The UTS mini conference on 8-9 November 2002, will provide a good opportunity to engage in partnership with a University Law School in the delivery of CPD, and to other related initiatives of the Bar.

Barristers could mark in their diaries the following further tentative mini conference dates.

Tentative mini conference dates:

Parramatta

14-15 March 2003 (at UWS)

Wollongong

21-22 March 2003

(at University of Wollongong)

Newcastle

28-29 March 2003

(at University of Newcastle)

Canberra

4-5 April 2003 (at ANU)

Lismore

11-12 April 2003

(at Southern Cross University)

Each of the above is to be confirmed. Check the Bar Association web site for details.

## *Fair's Fare?* The history of equity jurisdiction in NSW

*Continued from page 1*

research and writing of essays. There will be scope for different levels of involvement.

The first meeting for the Project team is scheduled for 2 September 2002, at 5pm in the Bar Association Conference Room 3. The purpose of the meeting is to establish the pool of barristers who may be interested in active involvement, and to discuss the direction of the project and the scope for individual contribution.

The essay topics are still under review, but it is provisionally proposed to include topics related to significant periods in the history

of equity, equity in NSW in a national and international context, courts and the equity jurisdiction, personalities in the law, significant developments in the law, the interaction between parliament and Persons interested in becoming involved or obtaining further information (and who have not already registered their interest), should contact either Geoff Lindsay SC on ph: (02) 9232 6003 or e-mail: [lindsaygc@wentworthchambers.com.au](mailto:lindsaygc@wentworthchambers.com.au) or Hugh Stowe on ph: (02) 9221 6455 or via e-mail: [hughstowe@wentworthchambers.com.au](mailto:hughstowe@wentworthchambers.com.au)

## CPD points for *Bar News*

Contributors of articles published in *Bar News*, which meet the CPD criteria, will receive CPD points – one point per hour of preparation, up to a maximum of six points, as individual professional development activity.

Contributions of articles to the *Bar News* published in June 2002 have also accumulated individual professional development points for the practice year 2002/2003.

# Computerised case management in NSW courts

*By Sue Graham, NSW Attorney General's Department*

The NSW Attorney General's Department has launched a project to implement a new computerised case management system in the NSW Supreme, District and Local courts. The Courts Online Registry System (CORTS) will allow courts in NSW to replace their aging computer databases with a new application that is able to meet community expectations for more responsive and effective court services. The CORTS Project will implement new systems in the Supreme, District and Local Courts as well as the Sheriff's Office.

The characteristics of CORTS that distinguish it from other computer systems supporting courts and registries are:

- It will provide a common base of system software to all NSW courts, permitting information to be exchanged electronically between each court, justice agencies, the legal profession and court users in general.
- It will use standardised web-based Internet technology that permits a greater number of people to more readily access the courts' systems, at reduced cost and from a larger range of locations. This will lead to a broader range of information tools being made available to the public in general and to legal practitioners in particular.
- It is designed to give courts an improved capacity to modify their systems in response to changes in case management practices and other business demands. This will allow courts to respond more rapidly to changes in legislation and litigation volumes.
- Its scope will be comprehensive within each court, permitting all information relevant to case management and administration to be contained in a single database. Each court's reliance on paper systems for most of its processes may thereby be substantially reduced, with benefits in terms of shortened processing times and reduced transaction costs.

The Attorney General's Department assembled the CORTS Project implementation team in January 2002 after

approval of the project by the Attorney General. The implementation team consists of specialists from the selected system contractors – Aspect Computing Pty Ltd as the prime contractor with Coram Solutions Pty Ltd as the principal sub contractor- together with other specialists and advisers selected from court registries and the Department. The design phase for the Supreme Court was completed in mid 2002 and work is now proceeding on configuring the system to meet the needs of each of the jurisdictions.

During the design phase, the CORTS Project Team reviewed the processes of the Supreme Court, and with each successive design phase for the other jurisdictions, the team will take the opportunity to build commonality across the jurisdictions. This will be of assistance to court users as there will be more standardised ways of interacting with the jurisdictions that are within the CORTS scope.

The core software application of CORTS is based on *CourtCase*, a proprietary Australian software product developed by Coram Solutions Pty Ltd. CORTS offers the facility for creating a virtual court file which can contain every item that would normally be held on a court's paper file, albeit in electronic form. Within the CORTS environment each party may be given the right to access the virtual case file, subject to any security limitations a court may impose. This will be supplemented by a range of optional electronic tools that automate case listing, the attachment of documents and the conduct of interlocutory processes online.

The new system will offer some special features to the legal profession. In order to obtain the participation of the legal profession, the Legal Technology Reference Group is consulted on a regular basis and the features of CORTS that may affect the profession are discussed. The reference group consists of both barristers and solicitors from small to large firms. Jeff Kildea is the Bar Association's

representative. Some of the CORTS features that are of specific interest to the legal profession include:

**Electronic filing:** Documents may be filed in a court electronically using an Internet web interface, saving litigants and other court users the time and effort that would otherwise be spent in filing paper documents in a court registry office.

**Case information access:** The parties in a given case will be able to use a common web interface to access a wide range of information about the case, including the ability to view case transactions such as listing events, documents filed by other parties and court orders.

**Improved access to justice for individuals:** By having the capacity to access court information systems via the Internet, litigants who are outside the major urban centres will be less disadvantaged in their access to court-based services. Practitioners in regional areas will have a reduced reliance on agents and can expect to be able to more readily monitor the progress of cases commenced in other regions. The capacity to access justice information online also offers opportunities to the physically impaired who might otherwise have difficulty in visiting a court building.

**Speedier outcome information:** Courts will acquire the capacity to record case outcomes faster, enabling earlier notification of case results and quicker enforcement of court decisions.

**Broader simultaneous access to case information:** The electronic version of the court record can be made available to a greater number of people simultaneously and in faster time than is presently achievable with paper records.

**Case management:** Courts will acquire a more versatile case information database that provides a greater range of case management tools than current court-based computer systems provide. This will give courts practical information tools in

*Continued on page 4*

# Appointments

## Supreme Court of NSW

The President of the Court of Appeal, the Hon Justice Mason, has been appointed as Acting Chief Justice of the Supreme Court of New South Wales, effective 20 August 2002 - 14 September 2002.

His Honour Judge Cooper and Master Macready have been appointed as acting judges of the Supreme Court of New South

Wales, effective 30 September 2002 - 20 December 2002 and 29 July 2002 - 20 December 2002 respectively.

The Hon Acting Justice Burchett and the Hon Acting Justice Davidson have been re-appointed to act as judges of the Supreme Court of NSW, effective 3 September 2002 - 2 September 2003 and 9 August 2002 - 8 August 2003 respectively.



## In brief

Garth Blake of 8 Wentworth Chambers has been awarded a Churchill Fellowship to investigate policy and practices in overseas churches and their agencies for training clergy with reference to, and dealing with, child sexual abuse. The Fellowship will enable Garth to undertake research in Canada, the United States and the United Kingdom over the next year.

Christine Nash has returned to the Public Defenders after a period of two and a half years as the Director of the Legal Representation Office. The Legal Representation Office was established to provide independent legal assistance to people in their dealings with the Police Integrity Commission.



## Computerised case management in NSW courts

*Continued from page 4*

managing case lists and in meeting other special needs, such as those of unrepresented litigants.

### Integration of court information:

CORTS will enable the bringing together of case specific electronic information that is presently stored in different locations, such as court transcript and information that may be provided to courts by enforcement and custodial agencies.

**Listing diaries:** CORTS will provide a facility by which practitioners and other case participants may participate online in case listing by being given approved access to listing diaries and schedules.

**Online callovers:** Litigants will be able to participate in online status conferences, callovers and other case preparation hearings rather than appear in person in a courtroom. Online callovers have been trailed in a number of specialised courts, such as the NSW Land and Environment Court. CORTS, however, offers the

prospect of providing similar facilities to all NSW courts.

**Co-ordinating appellate action:** The cross-jurisdictional reach of CORTS will permit the sharing of information between courts and tribunals that are involved in appellate actions. Information collected in a lower court may be incorporated into the record of the appellate court, including lower court transcript. This is expected to provide savings in time so that delays in appellate hearings can be minimised.

**Public information:** There will be a greater range of information that can be made available to the public more quickly than is presently possible, including the potential for online viewing of court files, court lists, judgments, transcript and general information. These benefits will also extend to the statistical information that is presently collected by other justice agencies, such as the Bureau of Crime Statistics and Research and the Judicial Commission.

## Bar Association staff

The Bar Association has appointed Anita McNally to the position of Administrative Support Manager, effective Monday 29 July 2002.

Anita was employed for ten years by Thomson Legal & Regulatory, initially as a legal editor. In 1995 she was appointed Business Unit Manager at Thomson and then General Manager of the Law Publishing Division in 1998, where she was responsible for managing all aspects of the group, including HR, facilities management, budgets and business plans.

Anita has a law degree, a post-graduate diploma in management and is currently completing her Masters of Management in Human Resource Management.



# Bar Council business July - August 2002

## President's report

### **Obligations of legal practitioners under sec 198J of the *Civil Liability Act 2002***

The President advised that he and the Executive Director had received a number of queries by barristers seeking guidance of their obligations under sec 198J of the *Civil Liability Act 2002*. (Section 198J stipulates that a barrister must inform his/her client about the effects of Division 5B and 5C under the Act.) The President will prepare a note to the Bar on this issue.

The President outlined what he understood to be the major issues being considered by the NSW Government for its second tranche of tort law 'reforms'. A Bill is expected to be introduced into the Parliament in September.

The President noted the establishment of a joint Commonwealth/State and Territory governments review panel. The review panel comprises Justice David Ipp, Acting Judge of Appeal, Supreme Court of New South Wales, Professor Peter Cane, Professor of Law at The Australian National University, Dr Don Sheldon, Chairman of the Council of Practising Specialists and Cr Ian McIntosh, Mayor of Bathurst.

The review panel has been asked to report on a range of aspects of the law of negligence, including:

- common law principles to limit liability arising from personal injury or death;
- principled options to limit liability and quantum of awards for damages;
- proposals for allowing individuals to assume their own risk;
- options to limit claims of negligence to within three years of an event (ie reducing the statute of limitations);
- options for a requirement that the standard of care in professional negligence matters, including medical negligence, accords with the generally accepted practice of the relevant profession at the time of the negligent act or omission; and
- options for exempting or limiting the liability of eligible not-for-profit organisations from damages claims for death or personal injury.

The first report of the review panel is due by the end of August 2002.

The NSW Attorney General is also working on possible reforms to the area of defamation law. The President and Junior Vice President had met with the Attorney General on this issue. The Council discussed possible amendments to the legislation.

### **Advocates' immunity**

The President advised that he had had discussions with the Attorney General about possible legislation to re-state the principle of advocates' immunity in modern terms and clarify the extent of the immunity.

### **Life membership**

The President discussed the criteria for the appointment of life membership as set out in the Constitution of the New South Wales Bar Association. A person resident overseas was eligible for life membership, although such as appointment would be an extension of previous practice. The Bar Council noted that life membership can, under the Constitution, be awarded for exceptional service to the profession of the law.

Bar Council resolved that should any member of the Council wish to nominate someone for Life Membership they bring a paper to the Council setting out their reasoning for the nomination.

## Items for consideration

### **Renewal of practising certificates**

The Executive Director informed the Bar Council that as at 1 August 2002 the Association had issued 2030 practising certificates; 2076 renewal notices had been issued. Thirty one barristers have not yet applied to renew their practising certificates. This is a similar number to non-renewals in previous years.

The Executive Director informed the Bar Council that staff had worked long hours over the past two weekends and each work day evening to process the renewals. Over the past few days the staff of the Association had been ringing barristers who had not submitted their renewal applications to find out whether or not they intend to renew. Similarly, staff had followed-up cases where an application had been received, but no proof that the applicant held PII. The information being obtained direct from the brokers was incomplete.

The Bar Council resolved by acclamation to thank the staff for their tremendous efforts

in issuing the practising certificates. The Council also expressed a vote of thanks for Meagher SC for his work in settling the various PII policies being offered to the Bar.

### **Reported proposal to introduce a no-fault scheme in respect of claims by victims of catastrophic injuries.**

The Council discussed the *Herald's* report indicating that the New South Wales Government is intending to introduce in September 2003 a no fault scheme in respect of claims by victims of catastrophic injuries. The President advised that he was not aware of any such proposal, but undertook to make inquiries of the Government.

### **Review of the *Legal Profession Regulation 1994***

The Executive Director informed the Bar Council that the Director, Professional Conduct, the Legal Policy Officer and he were also working on a response to the Attorney General's Department's review of the *Legal Profession Regulation 1994* and the proposed Regulatory Impact Statement.

The proposed amendments to the Regulations, are largely uncontentious. However several significant changes the Association requested have not been included. This is being followed up.

### **Education - *Readers Handbook***

The Executive Director informed the Bar Council that the *Readers Handbook* and the multi-volume Bar Practice Course documentation are now on compact disc. This will mean very significant savings in paper usage, staff time and will make updating the material administratively simpler.



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# Electronic circulars

The Bar Association distributes circulars by e-mail to all of its members.

During June and July of each year, when practising certificates must be renewed, it is essential that the Bar Association keep its members informed of developments, particularly with regard to professional indemnity insurance.

The Bar Association understands that the frequent updates on PII were not directly relevant to non-practising (Class B) members, and regrets any inconvenience the receipt of such e-mail may cause.

Circulars are now being distributed once per day (at around 4.00pm) under the banner of *The Daily Brief*. Each circular includes a short subject description to indicate its relevance to the user.



## New members of the Bar Association

### Local practising practitioner

Michael Adamo	Bellevue Parade Nth Curl Curl
Anthony Barber	Garfield Barwick Chambers
David Carroll	Maurice Byers Chambers
Michael Coroneos	Forbes Chambers
Robert Harding	Culwulla Chambers
Roger Harper	Culwulla Chambers
Annette Haughton	Edmund Barton Chambers
David McLure	7 Wentworth Chambers
Philippa Ryan	4 St James' Hall
Jarrold White	6 Selborne Chambers

### Legal practitioner other than local practising practitioner

Carolyn Conway	239 George St, Brisbane
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# Hearing loops in NSW courts

By Laurie Glanfield, Director-General, NSW Attorney General's Department

In the April 2001 edition of *Bar Brief*, I provided advice regarding the Department's provision of assistive devices to people with hearing impairments in the courts. At the time I referred to a review of our provisions which involved seven portable Sennheiser infra-red systems, available across the State upon request. We were aware that our inventory was insufficient but were faced with minimal technical options; there were no suitable replacement infra-red systems on the market and we were aware of the technical and security difficulties posed by permanent hearing loops.

As part of our review, we decided to trial hearing loops in Lismore courthouse. The hearing loop solution was evaluated and despite significant efforts it was deemed inappropriate for the NSW Courts' environments. The technical problem of 'spill over' was quite significant, thus putting at risk the integrity of the judicial process. (In our circumstances spill over meant a person with a Telecoil in their hearing aid could listen to courtroom proceedings from outside the courtroom elsewhere in the courthouse.) We were therefore obliged to decommission the hearing loops.

Infra-red systems on the other hand operate on a line-of-sight principle and do not pose security problems. In the last six months we were able to source and test a newly released Sennheiser infra-red system. These portable systems were judged superior to the old infra-red systems, and in fact produced better sound quality than the hearing loops trialed at Lismore.

Twenty five portable infra-red systems have been procured for use throughout the State's courts. My Department is currently identifying strategic locations for permanent placement of some of these systems for use upon demand.

The remaining systems will be available across the State upon request, with five working days notice.

It is critical to notify the court whenever you or a client with any disability might benefit from access provisions while attending court (such as wheelchair access and parking information, a sign language interpreter, the infra-red system or extra breaks due to concentration difficulties or personal needs). You or your client are encouraged to contact the registrar of the relevant court, in advance of the court appearance. Doing so enhances our ability to provide you with effective service.

If you or a client require further information in relation to securing the infra-red system you are invited to obtain advice from the Department's web site: [www.lawlink.nsw.gov.au](http://www.lawlink.nsw.gov.au) and select 'people with disabilities'. You can also contact Ms Julia Haraksin, Coordinator, Disability Strategic Plan on ph: (02) 9228 8460 TTY: (02) 9228 7733 or [julia\\_haraksin@agd.nsw.gov.au](mailto:julia_haraksin@agd.nsw.gov.au).



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## 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 BarCare information line (02) 9230 0433 or visit the Association's website [www.nswbar.asn.au](http://www.nswbar.asn.au)

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## 3<sup>rd</sup> AIJA technology for justice conference

*By The Hon Justice Peter Underwood, President-Elect  
Australian Institute of Judicial Administration*

The focus of the 3<sup>rd</sup> AIJA technology conference is intensely practical. The programme has been developed to provide the answers that practitioners are seeking as they try to adapt to the technologies changing the legal process.

For many practitioners, responding positively to the challenge of technology is not just a question of being up-to-date, it also makes sound business sense. For example, implementing the appropriate eFiling systems can mean a productivity bonus of up to 40 per cent for suburban and regional practitioners.

We also have evidence that electronic filing and case management are saving practitioners up to a day per week on travel and procedural appearances.

Delegates to the conference will be provided with the information they need to make the right technology choices: which innovations are working, which ones aren't, the costs involved and where to go for advice on implementation.

Emphasising its practical focus, the conference will showcase state-of-the-art systems complemented by the fresh perspectives provided by an impressive range of speakers from US, Canada, Singapore, New Zealand, Netherlands and the UN International Criminal Court for the former Yugoslavia.

Other issues of immediate interest to practitioners to be examined include case management systems improvement and the resurgence of interest in integrated justice systems. The conference will also highlight the spectacular DIY kiosk-based system, aimed at the litigant with limited resources, which is used by the California Superior Courts.

The information flow will not be one-way. In fact, the conference will provide a much-needed forum for practitioners to engage directly in the progress of technological change.

This conference provides a unique opportunity for all practitioners to benefit from the cascade of new online services becoming available.

**3rd AIJA technology for justice conference, Sydney  
Convention and Exhibition Centre, Darling  
Harbour, 20-22 October 2002.**

For further information, contact the Conference Secretariat at GPO Box 2609, Sydney NSW 2001, ph: (02) 9241 1478, fax: (02) 9251 3552, e-mail: [techjust@icmsaust.com.au](mailto:techjust@icmsaust.com.au) or visit the AIJA web site at [www.aija.org.au](http://www.aija.org.au)  
(seven points in the management strand)

# Bar Council Executive visits Orange

By **Bill Walsh**

**William Owen Chambers, Orange**

Members of the western regional Bar gathered at Orange on Saturday, 17 August 2002 for a visit by the Bar Association's President, Bret Walker SC, its Senior Vice-President, Ian Harrison SC and its Executive Director, Philip Selth.

Orange turned on some of its nice weather and some of its beautiful cool-climate wines. Members traveled from Dubbo in the north and Wagga in the south to join their colleagues from Orange.

The occasion gave us an opportunity to congratulate Howard Hamilton, the former Crown Prosecutor at Dubbo, on his recent appointment to the Bench of the Local Court.

Walker SC brought us up to date with the latest developments affecting the Bar, particularly in relation to tort law reform. There was also discussion as to the implementation of the Continuing

Professional Development Programme and how it would impact upon regional members.

A most enjoyable and convivial day was had by all. As always, we in the 'bush' very much appreciated the visit as well as the genuine interest and friendship shown by the President, Senior Vice-President and the Executive Director.



## Media briefing

*Continued from page 1*

settling on a single view of community feeling. There is no such thing. There's a range of opinion, there is an ebb and flow and there's therefore a trend in sentencing severity. We happen, I think to be on an upward trend at the moment', Bret Walker SC, **regarding the 55 year gang rape sentence**, *World At Noon*, ABC Channel 2, Friday, 16 August 2002.

'My view is that we have a system that works and we ought not to making comments about what is too high or too low but to regard the system as operating effectively', Ian Harrison SC, **regarding the 55 year gang rape sentence**, *TEN Morning News*, Channel 10, Friday, 16 August 2002.

'Those people who are now saying this is the right sort of sentence ought to reflect on the debate last month when they were outraged the system wasn't working. I said then, and I repeat it, we have a great system and it operates. If the Court of Criminal Appeal thinks this is outrageously high or a little bit too high they will say so', Ian Harrison SC, **regarding the 55 year gang rape sentence**, *The John Stanley Show*, 2UE, Friday, 16 August 2002.

'I've no doubt that the message sent by this sentence, again assuming it survives appeal, will spill over, I would imagine, into certain forms of violent confronting robbery and certainly into murder. However, it's also extremely important to remember that the whole point of having a judge with a sentencing discretion is to fit sentences to particular offenders and particular offences, and for those reasons I have some concern that this particular sentence will

get more prominence than it really deserves', Bret Walker SC, **regarding the 55 year gang rape sentence**, *AM*, ABC 666 2CN, Friday, 16 August 2002.

Media releases, articles and letters to the Editor issued by the Bar Association 'Expressions of justice worth hearing', [Re: judges expressing opinions out of court] Op-Ed article by Bret Walker SC, *Sydney Morning Herald*, 29 July 2002, p.11

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

Media releases issued by the Law Council of Australia

*Law Council meets negligence review panel*, 12 August 2002

*Law Council tells Senate hearing... insurance solutions for insurance problems*, 8 August 2002

*Dying babies claim appalling*, 2 August 2002

*Law Council calls for balanced reform of negligence law*, 1 August 2002

*Law Council announces its public liability experts*, 26 July 2002

*Securing the future of competition regulation*, 24 July 2002

Submissions by the Law Council of Australia

*Bankruptcy Legislation Amendment Bill 2002*, a submission to the Inspector General in Bankruptcy by the Business Law Section, 2 August 2002

*The review of the law of negligence*, a submission to the Department of Treasury, 29 July 2002

*Public liability insurance - proposed reform of bodily injury damages law*, a submission to Kevin Foley Deputy Premier, Treasurer, Minister of Industry Investment and Trade (South Australia), 24 July 2002

*Trade Practices Act review*, a submission to the Department of Treasury by the Business Law Section, 24 July 2002

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# The Judiciary, Executive, Royalty and the law in Malaysia

On 25 July 2002, Karpal Singh delivered an address on 'The Judiciary, Executive, Royalty and the law in Malaysia' before a full house in the Bar Common Room.

A distinguished lawyer and former member of Parliament in Malaysia, Karpal Singh spoke of worrying developments for human rights and the independence of the Judiciary in that country. Mr Singh discussed the introduction of legislation in the States of Terengganu and Kelantan, which is designed to implement *Syariah* (Islamic) law for a range of offences. He described the Bills as 'draconian' and 'pregnant with serious blows to the public and national interest and the judicial system' and questioned their validity, arguing that they were inconsistent with federal constitutional law.

Karpal Singh criticised some members of the Malaysian judiciary for not withstanding the 'overbearing influence of Dr Mahathir'. It is, he argued, 'important for a judiciary worth its name to be assertive in its defence of the rule of law and its own independence and integrity, so as to ensure there is no loss of confidence in an institution which is vital to any democracy'.



Karpal Singh.

Mr Singh finished his address by referring to the case of Anwar Ibrahim. He believes there is still recourse to clemency on the part of the King of Malaysia, who may decide a case on the grounds of public policy. A royal pardon, he argued, would 'restore public confidence in the Executive, the Judiciary and the law in Malaysia'.

An edited version of Mr Singh's address, together with an interview, will appear in the forthcoming edition of *Bar News*.



Karpal Singh addresses the NSW Bar.

## Request for details of fees owed to counsel

In August 2002, pursuant to sec 114B of the *Legal Profession Act 1987 (NSW)*, Andrew Brown was appointed Manager of the following solicitor's practice:

• **Peter John Doherty, solicitor (manager appointed) practising as Lloyed Lancaster**

Counsel with outstanding fees should contact Mr Brown as soon as possible. Whilst Mr Brown has advised that he cannot guarantee fees outstanding would be paid in total or recover of any fee due from any source, he would do his best to assist counsel owed fees. Andrew Brown may be contacted on ph: (02) 9926 0321, fax: (02) 9926 0166 or via e-mail: [asb@lawsocnsw.asn.au](mailto:asb@lawsocnsw.asn.au)



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# Professional conduct update

On 28 February 2002 the Bar Council of the New South Wales Bar Association noted that it had not been able to make a determination for the purposes of sec 38FC of the *Legal Profession Act 1987* with respect to the notification made by **(Christian) Roger de Robillard**. It was further noted that an indefinite statutory suspension of the practising certificate of Mr de Robillard would follow on 6 March 2002 in accordance with the provisions of sec 38FH of the *Legal Profession Act*.

Sec 38 FG(2) requires the Legal Services Commissioner to take over the Council's determination when a statutory suspension of a practising certificate arises. The Commissioner has now determined that the events which Christian Roger de Robillard notified were not committed in circumstances which show that he is not a fit and proper person to hold a practising

certificate. The Bar Council, having regard to the Commissioner's Report dated 24 August 2002 and the conditions agreed to by Mr de Robillard to be attached to his practising certificate, resolved to issue him with a practising certificate for the period up to and including 30 June 2003.



## Papers to note

*The Judicial conduct and complaints system in Victoria: A discussion paper*, July 2002. A copy is held in the Bar Library.

*Sentencing dangerous drivers in New South Wales: Impact of the Jurisic guidelines on sentencing practice*, July 2002. The Judicial Commission of NSW has released its report into the impact of the State's first sentencing guideline judgment for offences of dangerous and aggravated dangerous driving. The report looks at the impact of the *Jurisic* guideline judgment on the length of sentences and the consistency of sentences imposed for these offences. A copy of the report is held in the Bar Library.

*Justice for all*, July 2002. This white paper sets out policy options for reform of the criminal justice system in England and Wales. It aims to 'rebalance the system in favour of victims, witnesses and communities and to deliver justice for all, by building greater trust and credibility'. The full text of the white paper may be obtained in PDF from the Criminal Justice System's web site at <http://www.cjsonline.gov.uk/home.html>. A copy of the executive summary is held in the Bar Library.

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The courtyard is a designated "Quiet Space" which is affiliated to *The Quiet Garden Trust*. This Trust encourages the development of quiet gardens and quiet spaces in cities around the world. They are to be found in Britain, Europe, North and South America, India, Africa, Australia and New Zealand.

Feel free to visit the courtyard at anytime. Bring your lunch or make yourself a tea or coffee on the way through.

## Bar Council regional representatives

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