



Renewal of practising certificates 2002-2003

All practising certificates expire on 30 June 2002.

Renewal forms for 2002 – 2003 have been posted to all current holders of a practising certificate. If a practising certificate is to be issued before 30 June 2002, the Bar Association needs to have received *all* the necessary paperwork by 25 June 2002.

If it appears likely that the necessary professional indemnity insurance documentation will not be available until later in June (as may well be the case), renewal applications should nonetheless be forwarded to the Bar Association. It will assist processing if a note is made on the applications stating who is the proposed insurer. The schedule showing proof of insurance should be forwarded as soon as available, but must be received before the end of June.

A processing fee of 12 per cent is incurred against renewal forms received after 30

June 2002 where it might reasonably be thought the barrister should have renewed before 1 July 2002. It is an offence under secs 25, 48B and 48C of the *Legal Profession Act 1987* to, amongst other things, act as a barrister or hold oneself out to be a barrister, without being in possession of a current practising certificate.

The Association has received indicative rates for professional indemnity insurance for the period 1 July 2002-30 June 2003 from Heath Lambert. A Suncorp rate sheet is available for members of the New South Wales Bar Association who are also members of The Queensland Bar Association. Willis and Aon will quote a premium on application.

Members can obtain copies of the relevant policy wordings and rates from the brokers and the Bar Association's web site at www.nswbar.asn.au



WLA Fiftieth Anniversary

On Thursday, 13 June 2002, the Women Lawyers Association of New South Wales held its 50th Anniversary Gala Dinner in the Dining Room of State Parliament. More than 400 members and guests were present.

The Women Lawyers Association of New South Wales held its first meeting at the Pickwick Club, Sydney, on 6 March 1952. The President of the Association in 2002, Marilyn Bartole, presented life membership certificates to those founding members attending on the night. Also attending were past presidents, including Ruth McColl SC and Dominique Hogan-Doran.

Achievement awards were presented to Justice Jennifer Boland, Janet Coombs AM, Anna Katzmann SC, Chrissa Loukas and Justice Mahla Pearlman AM. The recipients were selected on the basis of their professional excellence and their

achievements in advancing opportunities for women in the legal profession. Symbolising the awards were 'The Goddess Goblets', unique blown glass pieces commissioned from Byron Bay artist Colin Heaney. The awards themselves were sponsored by the WLA of NSW, the Law Society, the Bar Association, Young Lawyers and the Attorney General's Department of New South Wales

The Guest Speaker, the Hon Justice Mary Gaudron, was presented with a Lifetime Achievement Award. Justice Gaudron, the first woman to be appointed to the High Court of Australia, was forthright in her criticism of the profession and its institutions. She spoke about the need for the legal profession to abandon its 'system of patronage' and work practice inflexibility, which entrenches discrimination against women and fails to meet the demands of the administration of justice.

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Kosovo bound



On 17 June 2002 Christopher Maxwell QC of the Sydney Bar takes up a position as an International Prosecutor with the United Nations Mission in Kosovo (UNMIK). He will be working out of Pristina, and perhaps other regions in Kosovo, prosecuting war crimes. The period of his appointment will be six months or more.

Maxwell QC has prosecuted homicide in Sydney for many years and will use that experience in his new position. He joins a growing number of Australian lawyers involving themselves in international criminal law.

Continuing Professional Development Programme

By Robert Hayes, Director of Studies

Bulletin four: Overview of CPD requirements

Bar Council has approved the formal requirements for the Continuing Professional Development programme. Details will be available on the Bar Association web site www.nswbar.asn.au, and in hard copy from the Bar Association.

From 1 July 2002, in each practice year the barrister must accumulate 10 CPD points. Points may be accumulated through face-to-face activity, or through a combination of face-to-face and individual professional development activity. However, for the year July 2002 – June 2003, the relevant period can include events and activities between 24 April 2002 and 30 June 2002, including the Peppers Winter Conference. Details of these events will be published shortly in *Bar Brief* and on the web site.

The 10 CPD points must be spread across four strands, namely:

1. Ethics and regulation of the profession;
2. Management (risk, practice and personal);
3. Substantive law, practice & procedure, and evidence; and
4. Advocacy, mediation, and other barristers' skills.

A minimum of one CPD point must be accumulated in each strand.

The entire 10 points may be accumulated in face-to-face activity across the four strands, but a maximum of six CPD points may be accumulated through individual professional development activity.

CPD points may be accumulated by the barrister who helps to prepare, to deliver, who chairs, who teaches, who is a trainer, a scholar or a trainee, in a programme which meets the criteria for CPD.

The criteria for CPD activity are as follows:

The CPD activity must be:

- of significant intellectual or practical content and must deal primarily with matters directly related to the practice of law;

- relevant to a practitioner's immediate or long-term needs in relation to the practitioner's professional development as a barrister and practice of law; and
- conducted by persons who are qualified by practical, academic or other relevant experience in the subject covered.

The Bar Association will be providing a CPD programme, in Sydney central CBD, downtown CBD, in the ACT, and in the regions, which will be sufficient in itself to meet the full CPD requirements. In addition, certain providers and certain conferences, seminars, workshops and other professional development activities will be accredited by the Bar Council as appropriate for CPD. Information on accreditation will be kept up to date in *Bar Brief*, and on the web site.

Points required for CPD will be reduced proportionately where the barrister holds a practising certificate of less than twelve months duration.

Activities undertaken by barristers at the request of the Director of Studies in connection with the Bar exams, the Bar Practice Course, or the Continuing Professional Development Programme will attract CPD points. Similarly with mentoring schemes specifically approved for CPD. Again, details will be maintained on the web site, and in *Bar Brief*.

Fine tuning of Bar Association's Wednesday evening seminar programme

The Bar Association's Wednesday evening seminar timetable is evolving and subject to change. It will be maintained in an up-to-date form on the web site, which should be consulted just prior to attendance at any previously advertised seminar. There may have been a change! The current timetable is set out below.

Regions, public defenders, crown prosecutors, and other groupings

Discussions are ongoing with groupings of barristers outside the Sydney Central Business District as to how CPD might best be developed and delivered to them.

Bar Association's evolving CPD programme

Note: There are numerous alternative avenues to the Bar Association's programme for accumulation of CPD points. Details will be posted on the web site.

Venues for the Bar Association CPD programme

Sydney Central Business District

Bar Association's offices, B/174 Phillip Street, Sydney

- Conference Rooms 1-4 (Conf Rms)
- Bar Common Room (BCR)
- Bar Association's Library

Sydney Downtown Business District

Carl Shannon Chambers, 13/175 Liverpool Street, Sydney

- Public Defenders' Conference Room

Australian Capital Territory and regional areas

- TBA

Bar Association's Wednesday evening seminar series

The CPD seminars and addresses in the Bar Association Conference Rooms and Bar Common Room

Bar opens at 5pm

Event commences at 5.15pm

Introduction by Chair 5.15pm -5.30pm

Delivery by speaker 5.30pm – 6.15pm

Comments from Chair, questions and discussion 6.15pm

Close – TBA

Series Programme as developed to date:

Here is the series programme, as developed to date. Again, it is to be emphasised that arrangements may be subject to last minute change.

(RR) = Registration, and in certain cases, a fee, is required for events marked (RR). Consult the web site for details, and for the registration form.

(MFR) = These sessions are mandatory for readers.

2002 1 July – 31 December

JULY	Topic	Speaker	Chair	Venue	CPD Strand	Points
Wednesday 3	Appellate Practice Workshop	Geoff Lindsay SC		Conference Rooms 1-4	Advocacy	1.5
Wednesday 10	Barrister's record keeping	Education Section of ATO		Conference Rooms 1-4	Management	1.5
Wednesday 17	Appointment of silk	Bret Walker SC		Bar Common Room	Ethics	1.5
Wednesday 24	How cash management principles apply to barristers in relation to their tax responsibilities	Education Section of ATO and Dennis Robertson CPA		Conference Rooms 1-4	Management	1.5
Thursday 25	Address by Karpal Singh	Karpal Singh (Malaysia)	Bret Walker SC	Bar Common Room	Substantive law	1.5
AUGUST	Topic	Speaker	Chair	Venue	CPD Strand	Points
(RR) Wednesday 7	Legal research online	Bar Library and Law Book Co		Bar Library	Management	1.5
(RR) Monday 12	Risk management	Willis Australia		Conference Rooms 1-4	Management	1.5
(RR) Tuesday 13	Risk management (repeat of 12/8)	Willis Australia		Conference Rooms 1-4	Management	1.5
(RR) Wednesday 14	Risk management (repeat of 12/8)	Willis Australia		Conference Rooms 1-4	Management	1.5
(RR) Thursday 15	Risk management (repeat of 12/8)	Willis Australia		Conference Rooms 1-4	Management	1.5
(RR) Wednesday 21	Legal research online	Bar Library and Law Book Co		Bar Library	Management	1.5
SEPTEMBER	Topic	Speaker	Chair	Venue	CPD Strand	Points
Wednesday 4	Advanced taxation for barristers	Peter Fraser	David Bloom QC	Conference Rooms 1-4	Substantive law	1.5
Wednesday 11	Accountant's view of issues relevant to barrister's practice	David Hall, Chartered Accountant		Bar Common Room	Management	1.5
Wednesday 18	Intellectual disabilities and the criminal justice system	William J Edwards, Deputy Public Defender, Los Angeles Public Defenders	Richard Cogswell SC Crown Advocate	Public Defenders' Conference Rooms, Carl Shannon Chambers	Substantive law	1.5
OCTOBER	Topic	Speaker	Chair	Venue	CPD Strand	Points
(MFR) Wednesday 2	Regulation of the profession	TBA		Conference Rooms 1-4	Ethics	1.5
Wednesday 16	Sir Maurice Byers Lecture	Emeritus Professor Leslie Zines		Bar Common Room	Substantive law	1.5
NOVEMBER	Topic	Speaker	Chair	Venue	CPD Strand	Points
(MFR) Wednesday 6	Ethics 1	TBA		Ethics	Ethics	1.5
(MFR) Wednesday 20	Ethics 2	TBA		Ethics	Ethics	1.5
DECEMBER	Topic	Speaker	Chair	Venue	CPD Strand	Points
(MFR) Wednesday 4	Ethics 3	TBA		Ethics	CPD Strand	1.5
(MFR) Wednesday 18	Ethics 4	TBA		Ethics	Ethics	1.5

2003 January – February 2003

Barristers will need to consult the web site for CPD activity in this period.

MARCH	Topic	Speaker	Chair	Venue	CPD Strand	Points
Wednesday 5	Mediation Workshop	Robert Angyal (Convenor)			Advocacy	1.5
Wednesday 19	A session aimed particularly at assisting clerks. Barristers are invited to attend.	Dr Olav Nielsen, Psychiatrist Panel comprising medical practitioners and psychologists involved in the BarCare programme			Management	1.5
APRIL	Topic	Speaker	Chair	Venue	CPD Strand	Points
(MFR) Wednesday 2	Costs	Greg McNally	Ian Harrison SC	Conference Rooms 1-4	Substantive law	1.5
(RR) Wednesday 9	Developing effective professional relationships	Jennifer Dakers			Management	1.5
(RR) Wednesday 23	Voice in court	Robyn Fraser		Conference Rooms 1-4	Advocacy	1.5

May and June 2003

It is currently proposed that in May and June 2003 the Bar Association's CPD programme will progress downtown, into the regions, and to the ACT, through a series of mini-conferences, in each of six locations. Details to be announced.

All NSW barristers would be able to register for these mini-conferences, which would run from Friday late afternoon through to Saturday early afternoon, and would address key issues in each of the four CPD strands. Planning for these mini-conferences would proceed in close consultation with the ACT and the regions. Details would be published on the web site in March 2003.

Note: A barrister who, by 30 April 2003, has attended the entire Bar Association Wednesday evening seminar session will have accumulated 32 CPD points, and will have accumulated more than the minimum of one required in each strand. Only 10 points are required for each practice year. Hopefully barristers will find it relatively effortless and quite attractive to accumulate more. The following is a diagrammatic depiction of this barrister's CPD activity over the practice year 2002-2003.

Strand	Total Points accumulated in each strand
Ethics	9
Management	12
Advocacy	4.5
Substantive Law	7.5
TOTAL	33

Important message to readers who complete the Bar Practice Course in August/September (BPC 2/02).

You must undertake CPD, according to the requirements as published on the website, but in your case, certain CPD seminars are mandatory. These are indicated on the programme by MFR = Mandatory For Readers.

Bar Council, before the expiry of your reading period, may designate seminars additional to those already marked MFR as mandatory for readers.

Bar Council business for April – May 2002

President's report

New South Wales Bar Association Executive meeting with NSW Law Society Executive, 3 April 2002

The President advised that on 3 April 2002 the Executive had met with the NSW Law Society Executive for an informal discussion about matters of common interest.

Meeting with the President of the Law Council of Australia, 5 April 2002

The President noted that on 5 April 2002 the Vice-President and the Executive Director had met with the President of the Law Council of Australia to discuss tort law reform and the Commonwealth proposed terrorism legislation.

Tort law reform

On 10 April 2002 the Junior Vice-President and the Executive Director met with the Minister for Revenue and Assistant Treasurer, Senator the Hon Helen Coonan.

The meeting discussed the public liability crisis in general terms, with various suggestions being made.

After the meeting had concluded, the Executive Director had again raised with the Minister the Bar Association's concerns about the HIH Support Scheme's inadequate provision for barristers.

Meeting of the Council of the Australian Bar Association

The Senior Vice President informed the Bar Council that he and the Executive Director attended a meeting of the Council of the Australian Bar Association in Adelaide on 22 April 2002. Issues discussed included the ABA's Model Rules, the proposed 'High Court Art Prize', professional indemnity insurance and tort law reform.

Meeting with the Attorney General of New Zealand

The President and the Executive Director met with the Attorney General of New Zealand on 23 April 2002.

Legal Profession Amendment (National Competition Policy Review) Bill 2002

The President informed Bar Council that the *Legal Profession Amendment (National Competition Policy Review) Bill 2002* includes a number of significant changes for the legal profession and the Bar Association. Separate practising and membership fees will take effect from 1 July 2004. The Bill provides for the submission of budgets to the Attorney General in connection with the charging of

the practising certificate fee, and for the audit of those activities in respect of which a practising certificate fee may be charged.

The Bill also requires the Bar Council, the Law Society Council and the Legal Services Commissioner to publicise disciplinary action taken against legal practitioners. The councils may comply with the requirements placed on them by providing sufficient information to enable the Legal Services Commissioner to keep a register of disciplinary action. The register is to be made available on the Internet. The Executive Director noted that the Bar Association already posts all public discipline-related judgments on its web site immediately after they are handed down.

Advocates' Immunity

The President noted that the Premier had raised for consideration the continuance of advocates' immunity in its present form. While there were arguments for changing the present form of the immunity, there were compelling arguments for the immunity to continue in some form. The President would be discussing the issue with the Attorney General.

Civil Liability Bill 2002

The President outlined discussions he had had with the Government. He noted that the Government had taken the relevant *New South Wales Barristers' Rules* as its point of reference. The Government had indicated that it was open to other suggestions from the Bar.

The Council discussed provisions of the Bill and changes that needed to be made. The Council noted that the cost provisions needed considerable revision.

The President noted that the time available to respond to the Government's invitation for comments was limited. Widespread consultation was not possible. Given this, the comments being provided by members of the Bar was particularly helpful – and appreciated.

Commonwealth terrorism legislation

The President noted that the Senate Legal and Constitutional Committee had handed down its report on the proposed 'anti-terrorism' legislation. The Committee had very largely accepted the arguments against the legislation set out in the Law Council of Australia's submission. This submission was substantially the work of members of the NSW Bar, with assistance from the Queensland and Victorian Bars.

Items for consideration

Report to Bar Council – Continuing Professional Development (CPD), April 2002

The Director of Studies spoke to his report which outlined a proposed scheme of CPD and which gave details of the 2002 Winter Conference to be held in the Hunter Valley on 14-16 June 2002.

Bar Council endorsed generally the thrust of the report and the recommendations contained in it. The Director of Studies was asked to prepare for the next meeting of the Bar Council a draft resolution to formally establish the CPD programme; a protocol setting out in detail how the 'points scheme' will operate; and a draft article for publication in *Bar Brief* that explains the points scheme's operation.

Bar Council noted that a list would be maintained on the Association's web site of externally provided courses, seminars, conferences and the like attendance at which would qualify barristers for CPD points.

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.



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Speeches

“Living with Risk in Our Society,” address to the Australian Academy of Technological Sciences and Engineering Symposium, by the Rt Hon Sir Harry Gibbs GCMG KBE, 14 May 2002.¹ Sir Harry noted that whilst modern living itself is no riskier, the risk of litigation is greater, due to changes in public attitudes and thus in application of the law of negligence as well as in statute law. This has led to unnecessary precautions, inhibited risk taking and therefore inhibited innovation, and extreme insurance cover. ‘Professional rules have been relaxed in the mistaken belief that it was more important to encourage competition than to maintain long established ethical standards’ and lawyers have ridden on the ‘bandwagon’ of society’s entrenched ‘culture of blame’. Judicial difficulties of dealing with duty of care and assessing damages for personal injuries have led to the law of negligence favouring ‘generosity to the plaintiff at the expense (in many cases) of justice to the defendant’ and failing to satisfy its dual aims of deterring negligence and providing fair compensation. Under current insurance crises, governments are proposing piecemeal reforms, but Sir Harry advocates a combined law reform body to carefully examine the whole question. He proposes an injury compensation scheme not based on fault, despite the likely resistance of vested interests, and legislative action to redefine the principles of the law of negligence. Suggesting the community needs to change its ‘present unhealthy culture of blame, with its emphasis on rights rather than responsibilities’ he concludes that ‘An unwillingness to accept risk is inconsistent with progress.’ A copy of the speech is held in the Bar Library.

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‘Forensic Sciences from the Judicial Perspective’, speech to the 16th International Symposium on Forensic Sciences, by the Hon Justice Wood, 13-17 May, 2002. Justice Wood examined in great detail DNA profiling, treating it as a vehicle for the examination of ‘justice outcomes which are associated with developing forensic science and of the need to ensure that it does not capture the justice system, to the exclusion of the human element.’ He deals with the problems of the expert witness process in general, then with the forensic expert in particular, and makes some suggestions

for future measures if self-regulation for greater impartiality does not work. A copy of the speech is available at www.lawlink.nsw.gov.au/sc, and also from the Bar Library.

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Address to seminar of the Institute of Engineers (WA) Business Development Panel, by the Hon Daryl Williams AM QC MP, 21 May 2002. The main theme of the Attorney-General’s speech was the Government’s new privacy legislation and how that affects engineering and other professions, already highly involved with standards of practice. He elaborated on the community concerns about privacy and their potential impact on the uptake of electronic commerce as the drivers behind the *Privacy Act 1988*, and how, as minimum standards, the National Privacy Principles give people some control over how their personal information is collected, used and disclosed. Emphasising the ‘light-touch’ nature of the regulations, where small businesses are exempt but may ‘opt in’ and voluntary compliance is the preferred implementation, he touched on the role of the Federal Privacy Commissioner, and also on the compliance requirements of government contracts. A copy of the speech is available at www.ag.gov.au/ministers/attorney-general and also from the Bar Library.

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‘Use of expert assessors in the hearing of environmental cases’; address to the Queensland Planning and Environmental Court Annual Conference, by the Hon Justice Paul L Stein AM, 26 March 2002. In Queensland, only judicial personnel are used in this Court, so Justice Stein’s speech summarised what he considers is the successful role of appointed commissioners, the non-judicial personnel, in the NSW Land and Environment Court. He also dealt with the role the latter plays in the development of environmental law and gave examples of the wider implications it often has for the law in general. A copy of the speech is available at www.lawlink.nsw.gov.au/sc, and also from the Bar Library.

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‘Human rights and industrial relations’; the Kingsley Laffer Industrial Relations Memorial Lecture, University of Sydney, by the Hon Justice Michael Kirby AC CMG, 23 April 2002. Justice Kirby spoke of his experience with the Arbitration

Commission and the ILO, and the significance of ILO conventions and universal human rights in Australia’s changing industrial relations law and practice: ‘...with global markets come global forces of basic rights.’ A copy of the speech is available from the High Court’s web site at www.hcourt.gov.au/speeches and also from the Bar Library.

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‘Public confidence in the judiciary’; a speech to the Judicial Conference of Australia, Launceston, by the Hon Justice A M Gleeson AC, 27 April 2002. Chief Justice Gleeson emphasised that such confidence, or lack of it, goes deeper than public reaction to newsworthy legal issues, and that peaceful acceptance of the rule of law depends on public confidence in the independence and impartiality, the integrity and professionalism of the justice system and the judiciary. Conventions for relations between government and the judiciary ‘exist for the public good’ and breaking them does great harm. Maintaining high standards is ‘a personal and collective responsibility,’ which will be greatly aided by the planned National Judicial College of Australia. A copy of the speech is available from the High Court’s web site at www.hcourt.gov.au/speeches, and also from the Bar Library.

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‘Negligence: The last outpost of the welfare state’; a speech to the Judicial Conference of Australia, Launceston, by the Hon J J Spigelman AC, 27 April 2002. Summarising the changes since 1960 in judicial decisions on liability and damages, Chief Justice Spigelman described the three NSW legislative schemes limiting common law actions – for motor vehicles, industrial accidents and medical negligence – as ‘underwriter driven’ and difficult to be perceived as fair. He suggests ‘principle driven’ alternative reforms that could better achieve the apparent aim of reducing required compensation resources. A copy of the speech is available at www.lawlink.nsw.gov.au/sc, and also from the Bar Library.

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‘Media and the courts: The dilemma’: an address at the Southern Cross University graduation ceremony, by the Hon Justice Michael Kirby AC CMG, 27 April 2002. Affirming his support for new universities

and the right of ability to succeed, Justice Kirby exhorted graduates to remember that privileges in life bring attendant duties towards the less fortunate. The ceremony involved graduates from both the School of Law and Justice and the School of Multimedia and Information Technology, 'a natural combination' he said, as the explosion of modern media has the potential to reinforce law and strengthen justice. He regretted that the High Court now receives too little media attention for their decisions to reach the public, although at least its decisions can be read on the Internet. Justice Kirby warned that 'if the law serves only the rich and media and its technology are the new opiate of the poor, civilisation will be in danger.' A copy of the speech is available from the High Court's web site at www.hcourt.gov.au/speeches, and also from the Bar Library.

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'Judicial Independence,' address to the Annual Conference of the Industrial Relations Commission of New South Wales, by the Hon Justice C S C Sheller, 3 May 2002. Justice Sheller expressed concern at the growing practice, by media, politicians and public commentators, of denigrating

judges, dealing in detail with the assault on Justice Michael Kirby. Giving historical examples of why and how judicial independence must be preserved, as 'a privilege of the people,' he discusses the problem of tribunals and independence and insists the courts must be able to do justice, lamenting that in Australia we have witnessed at a federal level 'retrospective exoneration of the government and its offices from the operation of the rule of law.' A copy of the speech is available at www.lawlink.nsw.gov.au/sc, and also from the Bar Library.

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Opening address at the Globalising Terror, Political Violence in the New Millennium Conference, Hobart, by the Hon Daryl Williams AM QC MP, 8 May 2002. Affirming Australia's support for the US war against terrorism, the Attorney-General noted that September 11 has changed forever our security environment. A review of counter-terrorism arrangements has resulted in increased resources for security agencies, new anti-hoax laws, and proposed legislation 'to allow us to identify terrorist plots, to prevent terrorist acts and to prosecute those involved', which he defended in the light of recent debate. He

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Appointments

Federal Court of Australia

Peter Jacobson QC has been appointed as a judge of the Federal Court of Australia, effective 17 June 2002.

Supreme Court of New South Wales

The Hon Justice M D Ireland has been re-appointed as an acting judge of the Supreme Court of New South Wales, effective 14 June 2002 – 13 June 2003.

The Hon Justice R O Blanch has been appointed as an acting judge of the Supreme Court of New South Wales, effective 3 June 2002 – 28 June 2002.

The Hon Justice M W Campbell has been appointed as an acting judge of the Supreme Court of New South Wales, and as an acting judge of appeal, effective 3 June 2002 – 28 June 2002.

The Hon Justice Pearlman AM, has been appointed as an acting judge of the Supreme Court of New South Wales, and as an acting judge of appeal, effective 6 May 2002 – 31 May 2002

The Hon Justice Brownie has been appointed as an acting judge of the Supreme Court of New South Wales, and as an acting judge of appeal, effective 3 May 2002 – 2 May 2003.

The Hon Justice Davies has been appointed as an acting judge of the Supreme Court of New South Wales, and as an acting judge of appeal, effective 31 May 2002 – 30 May 2003.

The Hon Justice Foster has been appointed as an acting judge of the Supreme Court of New South Wales, and as an acting judge of appeal, effective 31 May 2002 – 30 May 2003.

The Hon Justice Carruthers has been appointed as an acting judge of the Supreme Court of New South Wales, effective 10 May 2002 – 9 May 2003.

Drug Court of New South Wales

His Honour Acting Judge Milson has been appointed as Acting Senior Judge of the Drug Court of New South Wales, effective 3 June 2002 - 20 January 2003.

Local Court of New South Wales

Howard Hamilton, barrister, has been appointed as a magistrate, effective 6 May 2002.

Douglas Simpson has been appointed as an acting magistrate and as a mining warden, effective 13 May 2002 – 30 June 2003.

applauded the agreements reached between State and Federal leaders on terrorism management. A copy of the speech is available from the Attorney General's web site at www.ag.gov.au/ministers/attorney-general and also from the Bar Library.

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'The role of an Australian attorney-general: Antipodean developments from the British foundations,' address to the Anglo-Australasian Lawyers Society, London, by the Hon Daryl Williams AM QC MP, 9 May 2002. The Attorney-General discussed his role as compared to that of the UK Attorney-General, and the separation of powers built into the Australian Constitution. In particular he dealt with the issue of representing the judiciary in public debate, concluding that, since his role was also that of a politician and member of the elected government, 'the preservation of the principle of separation of judicial powers requires that the courts speak for themselves.' A copy of the speech is available at www.ag.gov.au/ministers/attorney-general and also from the Bar Library.

Public prosecutors

Gregory Smith has been appointed as a deputy director of public prosecutions, effective 18 April 2002.

New South Wales Law Reform Commission

Professor Michael Tilbury has been appointed as a full-time commissioner of the NSW Law Reform Commission, effective 1 July 2002 – 30 June 2007.

Vale

His Honour Judge C A Luland QC of the New South Wales District Court died on 16 May 2002. A funeral service was held at the Eastern Suburbs Crematorium on 21 May 2002.

The Hon Raymond Reynolds, formerly a judge of the New South Wales Court of Appeal, died on Monday 8 April 2002.

Tim Ostini-Fitzgerald (formerly of Culwalla Chambers) died on 3 June 2002.

John Poole died on 1 March 2002 in Hampshire, England.

Civil Liability Bill 2002

The following is the text of a message sent by Bret Walker SC to all members on 28 May 2002. The Civil Liability Bill 2002 was passed by the Legislative Council on 6 June 2002.

The Bar Association has been consulted by the Government about the Consultation Draft of the *Civil Liability Bill 2002* released on 7 May. We have been able to advance a number of substantial suggestions.

The Premier introduced the revised Bill into the Parliament earlier today (28 May). The Bill is posted on the Bar Association's web site at www.nswbar.asn.au

The principal features of the Bill now before the Legislative Assembly which have been amended following the consultation round are noted below.

Section 198D of the *Legal Profession Act 1987* will provide for the capping of costs for legal services in personal injury claims not exceeding \$100,000 at 20 per cent of the amount recovered or \$10,000, whichever is the greater, in the case of legal services provided to a plaintiff and at 20 per cent of the amount sought to be recovered by the plaintiff or \$10,000, whichever is the greater, in the case of legal services provided to a defendant.

The costs which are capped do not include disbursements.

The capping is both for party/party purposes and solicitor/own client costs unless there is a costs agreement under sec 198E, in which case it will not apply to solicitor/own client costs; that is, for the Bar, to the amount chargeable to a solicitor or a direct access client. There are provisions in sec 198F to ensure that costs are not capped so as to deprive a party of the benefit of making compromise offers. Further, under sec 198G the court will have a capacity to exclude from the cap costs due to unreasonable conduct on the other side.

In relation to professional standards, the most important provisions are the proposed new Division 5C of the *Legal Profession Act 1987*, which have the overall purpose of imposing disciplinary and cost sanctions on the provision of legal services in circumstances described as lacking reasonable prospects of success. They apply to claims for damages, not just personal injury.

Critically, the test applies to services to support a claim and also to services to defend a claim. It is therefore an extremely

important addition to the articulation of our ethical standards.

The Government has accepted that the prediction that a claim was 'more likely than not to succeed' was inappropriate. In the key sec 198J, the Bill now provides a test of a reasonable belief on the basis of provable facts and a reasonably arguable view of the law. This is a test which accords well with established ethical requirements, such as Rule 36 of the *New South Wales Barristers' Rules*. See also the well known statement of Barwick CJ, McTiernan and Mason JJ in *Richardson v The Queen* (1974) 131 CLR 116 at 123: 'It needs to be stated clearly and explicitly that counsel have a responsibility to the court not to use public time in the pursuit of submissions which are really unarguable.'

The February 2000 special edition of Bar Brief which discusses the new rules, including Rule 36, which took effect on 6 March 2000. The full set of the *New South Wales Barristers' Rules* are also available on the Bar Association's web site.

'Provable facts' are described in terms materially identical with Rule 36, namely available material providing a proper basis for alleging a fact.

An unintended absurdity in the Consultation Draft of the Bill has been eliminated in sec 198K by ensuring the prohibition does not apply to the preliminary matters necessary to reach the stage of deciding whether the claim has reasonable prospects of success.

Section 198L will render breach of the reasonable prospects provisions not an offence but capable of being unsatisfactory professional conduct or professional misconduct. This is the same regime as under the *New South Wales Barristers' Rules*, in particular Rule 36; see sec 57D of the *Legal Profession Act 1987*.

Section 198M introduces a sanction of costs which is in itself not novel, although the procedure is an innovation. It is not novel given, for example, the provisions of Part 52A, rule 43A of the Supreme Court Rules which already include a provision for the Court to direct a barrister to indemnify any other party against costs as well as to repay to the client the costs the client has been ordered to pay where costs 'are incurred improperly or without reasonable cause, or are wasted by undue delay or by any other misconduct or default'. When these provisions were introduced early in 2000 it could be seen as a specific case of the already well established jurisdiction of the

Court over its own officers. It is to be remembered that barristers were made officers of the Supreme Court in 1993.

The new procedure includes the sec 198N presumption, which has the effect that if the trial court or Supreme Court finds the claim or defence did not have reasonable prospects of success, then the relevant legal services were prima facie provided without such prospects. Importantly, that presumption is rebuttable, the onus being on the lawyer. The lawyer may be permitted to disclose privileged material in defence of his or her professional conduct.

The initial draft of the provision about abolishing exemplary damages has been appropriately altered, leaving exemplary damages available where they are most salutary, the intentional torts (see cl 21 of the Bill).

The Bill also includes important provisions, which are self-explanatory, concerning there being a 15 per cent threshold for non-economic loss damages, with claims above 15 per cent determined according to a sliding scale (see cl 16).

The redrafted Bill represents a great improvement on the original version and does not threaten the capacity of counsel to provide their services in a proper way. Indeed, the key concepts are traditional, well established and well observed at the New South Wales Bar.



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Criminal law update

By Stephen J Odgers SC (Chair, Criminal Law Committee)

Court of Criminal Appeal

New procedures will begin operation on 1 July 2002 whereby, with some qualifications, a convicted person must give notice of an intention to appeal (or an intention to apply for leave to appeal) within 28 days of conviction or sentence, although that time may be extended on application. Once notice is given, the Registrar of the Court of Criminal Appeal will send a copy of the notice to the 'proper officer of the Court of Trial' who is required to obtain a copy of the transcript and exhibits and 'on request, supply a copy' to the appellant. The appellant has six months from giving notice of intention to file a notice of appeal against conviction or a notice seeking leave to appeal against sentence. These notices must be accompanied by, among other documents, the grounds of appeal and written submissions in support of the appeal (Rule 23C). For further information, see Practice Note 123 and the amended Criminal Appeal Rules.

Custodial conditions

The Criminal Law Committee is concerned about prison conditions, particularly in terms of overcrowding, access to basic services and effective legal assistance. It is also concerned about reports of people being held in Corrective Services custody in cells such as the Sydney Police Centre and Penrith cells, where access to basic facilities such as showers, psychological and medical treatment is non-existent. However, the Committee needs detailed information. Members of the Association are invited to write to the Committee through the Bar Association with relevant information on this issue.

Legal Aid

The NSW Legal Aid Commission has adopted a new scale of fees whereby solicitors and barristers in criminal matters will be paid 175 per cent of standard fee rates where an order for costs is made in favour of the defendant or a certificate granted under the *Costs in Criminal Cases Act 1967*.

Criminal Procedure Amendment (Sexual Assault Communications Privilege) Act 2002

The NSW Government has amended Part 7 of the *Criminal Procedure Act 1986* in

order to overcome the decision in *R v Norman Lee* [2000] NSWCCA 444. The Bar Association made submissions in respect of the amendments, suggesting that they were too wide and proposing a more restrictive definition of 'counselling'. These submissions were not adopted. The Bar Association has also proposed that a system of limited disclosure of the contents of counselling communications be introduced, so as to permit full argument before the privilege issue is determined. Apart from fair trial considerations, an argument advanced by the Association was that the present situation makes it likely that there will be an appeal to the Court of Criminal Appeal in every case where a judge declines production and there has been a conviction, since the accused's legal representatives do not know what was in the documentation not produced. The Government did not adopt the submissions from the Association, pointing out that there have to date been very few appeals in respect of the operation of this privilege. However, the Attorney General has directed his Department to closely monitor decisions made in relation to the privilege.

Bail Amendment (Repeat Offenders) Act 2002

This Act has removed the presumption in favour of bail for a large number of persons, including persons who allegedly committed the offence while on bail, on parole or on a bond, persons charged with an indictable offence who have previously been convicted of failing to appear and persons who have previously been convicted of an indictable offence (whether dealt with on indictment or summarily). The Bar Association made a submission opposing this legislation and particularly the last category noted above, without success.

Victims Support and Rehabilitation Act 1996

A review of this Act is being conducted. The Association has made a submission.

Police Powers (Drug Detection Dogs) Regulation 2002

The NSW Government has made new Regulations allowing police with sniffer dogs to carry out random drug searches on public transport, entertainment venues and other public places.

In brief

Jeremy Gormly SC has been appointed to the Legal Profession Advisory Council, effective 3 June 2002 - 6 December 2006.

Ross Letherbarrow SC has been reappointed as the Bar Association's representative on the District Court Rule Committee for three years, effective 11 June 2002.

Mark Buscombe has been appointed as the Bar Association's representative on the reference group to review the *Criminal Assets Recovery Act 1990* and the *Confiscation of Proceeds of Crime Act 1989*.

Malcolm Oakes SC has been appointed as the Bar Association's representative on the Federal Court User Committee.

Tina Moisisdis has been nominated by the Bar Association to become a member of the Podiatrists Registration Board.



The Donald McCredie Fellowship

The Donald McCredie Fellowship Fund was established in 1994 to commemorate the memory of Judge Donald McCredie who died tragically in an aircraft accident in the United States in July 1993.

The Award

The award has a value of up to \$10,000. The Committee of Sponsors has determined that the project for which the award is made must be completed by no later than 31 December 2003.

Goals

The Fellowships are provided to support studies, preferably outside Australia, into the theory and practical application of legal systems elsewhere and to determine the application or relevance of these studies to the improvement of the legal system in New South Wales.

Eligibility and application process

The eligibility criteria and details of the application process may be obtained from the Bar Association's web site at www.nswbar.asn.au

The Law Council of Australia

The New South Wales Bar Association is a constituent body of the Law Council of Australia, the peak national body representing the legal profession.

Since 1933 the Law Council has been speaking on the legal aspects of national and international issues, on federal law and on the operation of federal courts and tribunals. The Council advises governments, courts and other federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. This is done by promoting the administration of justice, access to justice and the general improvement of the law.

Also, through its membership of the Law Council, the Bar is represented overseas and maintains relations with other legal professional bodies throughout the world, including LAWASIA, the International Bar Association and the *Union Internationale des Avocats* (UIA).

The Law Council has specialist sections, which prepare technical submissions to Government and other bodies. These sections specialise in the areas of business law, family law, federal litigation, general practice and international law.

In cooperation with its constituent bodies and through its sections, the Law Council also presents major events such as the biennial Australian Legal Convention and organises specialised seminars, workshops and conferences on a wide range of legal issues.

For more information, visit the Law Council's web site at www.lawcouncil.asn.au



2002 Sir Maurice Byers Address

This year's address will be given by Emeritus Professor Leslie Zines, Visiting Fellow, Research School of Social Sciences, ANU

Wednesday, 16 October 2002 at 5.00pm

Bar Association Common Room

Ticket price: \$22

RSVP: Wednesday, 9 October 2002

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2002 Centenary Bench and Bar Dinner

This year's Bench and Bar Dinner was held on Friday, 31 May 2002 at the Westin Hotel, Sydney.

Guest of Honour was the Hon Murray Gleeson AC, Chief Justice of Australia. David Jackson QC was 'Mr Senior' and Andrew Bell was 'Mr Junior'.

More than 880 members and guests, a record attendance for the annual event, were treated to fine food and memorable speeches.

The dinner would not have been such a success without the dedication of the Bar Association's Denise Fleming, for whom no detail was too small or trivial.



Bret Walker SC



Andrew Bell



David Jackson QC



Chief Justice Gleeson



Hunter Valley conference a great success

The Winter Conference at Peppers Guest House, Hunter Valley was held on 14-16 June 2002.

More than 80 people attended the conference, with a strong show of support from the Parramatta, Newcastle and Lismore bars. Megan Greenwood, Registrar of the Land and Environment Court, delivered the keynote address on the electronic courtroom. The conference covered the four areas of continuing professional development: ethics; management; advocacy and substantive law.

A diverse array of speakers and presenters from academia, commerce and the Bar spoke on topics ranging from 'Litigating in



Australia matters concerned with Taiwan' to 'Whispers in equity for the young at heart'.

On the Saturday evening, Paul Bowen from Willis Australia delivered the after-dinner address to more than a hundred guests.

At the close of proceeding on the Sunday the President of the New South Wales Bar Association, Bret Walker SC, indicated his strong support for the

Continuing Professional Development Programme. He indicated that the diversity of the programme was a way of ensuring that the Bar continued to look beyond individual specialisation and adapt and embrace changes into the future.



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Bar Library Bulletin

New Books

A26/FRE/2002 Freckelton & Mendelson (eds) *Causation in law and medicine*, Dartmouth : Ashgate, 2002

C200/HUS/2002 Huscroft & Rishworth, *Litigating rights : perspectives from domestic and international law*, Oxford : Hart Publishing, 2002

C2026/NYG/2002 Nygh & Davies, *Conflict of laws in Australia*, 7th ed, Chatswood : Butterworths, 2002

C2026/TIL/2002 Tilbury, Davis & Opeskin, *Conflict of laws in Australia*, Oxford : Oxford University Press, 2002

N33.33/HAR/2001 Harpwood, *Negligence in healthcare : clinical claims and risk in context*, London : Informa, 2001

N38.1.LI/CAM/1996 Campbell, *Compensation for personal injury in New Zealand : its rise and fall*, Auckland, NZ : Auckland University Press, 1996

N56.5.K1/FIS/2002 Fisher and Lightwood's *law of mortgage*, 11th ed, London : Butterworths, 2002

N125/WIL/2002 *Williams on wills*, 8th ed, London : Butterworths, 2002

N192/MAC/2002 Macken, O'Grady, Sappideen & Warburton, *Law of employment*, 5th ed, Pyrmont, NSW : LAWBOOK Co, 2002

N198.1.A1/MUN/2001 *Munkman on employer's liability*, 13th ed, London : Butterworths, 2001

N312/KEA/2002 Keay, *Insolvency : personal and corporate law and practice*, 4th ed, Pyrmont, NSW : LAWBOOK Co, 2002

N388.3/FOS/2002 *Foskett Law and practice of compromise*, 5th ed, London : Sweet & Maxwell, 2002

New Papers

CLEC01/32, *Motor accidents : legal and medical aspects*, Sydney : The CLE Centre, 2001

CLEC01/29.1, *Building law - documentation and legislation*, Sydney : The CLE Centre, 2002

CLEC01/30.1, *Assessment of damages*, Sydney : The CLE Centre, 2001

CLEC02/7.2, *Powers of attorney and guardianship*, Sydney : The CLE Centre, 2002

CLEC02/09.1, *Pleadings and particulars*, Sydney : The CLE Centre, 2002

CLEC02/09.2, *Conduct of the hearing*, Sydney : The CLE Centre, 2002

CLEC02/10.1, *New workers compensation laws*, Sydney : The CLE Centre, 2002

CLEC02/10.2, *Update on motor accidents claims*, Sydney : The CLE Centre, 2002

CLEC02/12, *Creditors' remedies in corporate insolvency*, Sydney : The CLE Centre, 2002

CLEC02/13, *Affidavit evidence*, Sydney : The CLE Centre, 2002

CLEC02/16.2, *Family provision and contested estate cases*, Sydney : The CLE Centre, 2002

CLEC02/17.1, *Seven pillars of forensic advocacy*, Sydney : The CLE Centre, 2002

CLEC02/17.2, *Cross-examination on credit*, Sydney : The CLE Centre, 2002

Web watch

Australian Drug Information Online <http://www.adin.com.au/> This site includes links to a comprehensive range of web sites and information resources on drugs and alcohol. It has been funded by the Department of Health and Aged Care under the National Illicit Drug Strategy.

Another gem from <http://wordsmith.org/awad/> where this contribution appeared in response to a definition for 'red herring'.

'Another meaning of red herring that I hadn't heard of until I entered theWall Street world, refers to the preliminary IPO (initial public offering) registration statement. That's quite ironic considering all that we are learning about Wall Street. The Red Herring is the preliminary registration statement describing the issue and prospectus of the company that must be filed with the SEC (Security Exchange Commission). The Red Herring is sometimes updated several times before it becomes the final prospectus. The reason that it is called the Red Herring is because it contains a statement in red and sort of in the shape of a herring that the company is not attempting to sell its shares before the registration is approved by the SEC. I wonder if Enron took that seriously.'

Sheldon S. Hender; Ph.D., M.D.

Clinical Professor, University of California; Chairman, Vyrex Corporation

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

Practice rights before completing the Bar Practice Course

On 14 March 2002 Bar Council considered a recommendation to abolish cl 4(b) of the standard practising conditions:

4. Practice rights before completing the Bar Practice Course

After starting the reading period and before completing the Bar Practice Course, the holder must not appear in any court or tribunal except,

- (a) if led by a barrister who holds a current unrestricted practising certificate; or
- (b) if the Bar Council has approved of the application of this provision to the Holder, with the tutor's approval for the particular appearance'.

The recommendation was not adopted.

Bar Council resolved that discussion on the recommendation to abolish cl 4(b) of the standard practising conditions be deferred until more information is obtained as to whether the tutor's written approval alone might not be sufficient given the need for flexibility to cover the wide range of experience and reasons a barrister might advance as to why he or she was qualified to appear alone.

The recommendation to abolish cl 4(b) was put forward because the system of granting cl 4(b) dispensation's to readers is convoluted and time consuming. It is a two stage process.

Currently, at the first stage, applications are considered by the Education Committee. In considering whether to grant a cl 4(b) dispensation the Education Committee must consider a number of interests such as the interests of the applicant's prospective clients and the extent of any risk that they may be inadequately represented and the interests of the court or tribunals before whom the applicant is expected to appear, and his or her opposing parties.

Once an application has been granted the next stage falls to the tutor to monitor the reader in the following recommended manner:

1. both tutor and reader must understand that any approval relates only to a specific appearance;
2. both tutor and reader must discuss in advance the situations in which they would regard the grant of approval by the tutor as appropriate;

3. both tutor and reader must agree upon the kind of information that would be provided to the tutor in relation to the particular application for the tutor's approval;
4. both tutor and reader must agree upon the mean (for example, either by a pro forma consent form or by personal letter, by which the tutor will provide written approval for each particular appearance; and
5. both tutor and reader must ensure that the reader maintains a file recording approvals given by the tutor and that this is available to be produced if and when required by, for example, the Education Committee.

Problems

The two-stage application as stated above is both convoluted and time-consuming.

A dispensation application can therefore only be considered once a month. The Committee does not convene especially to hear an application, thus applications which are received after the Education Committee meets must wait another month before they can be considered. On some occasions meetings are cancelled delaying consideration of the application further. Applications are therefore not actioned promptly.

Further problems exist with the consideration of the applications themselves. Each application requires the Committee to determine the application on its own merits according to the individual circumstances of the case. Where the application is incomplete the applicant will be asked to provide more information. The request for further information also delays the application process.

Lastly, the Committee must obtain the tutor's consent to the dispensation.

The appropriate solution to this problem is for either the Executive Director or the Director of Studies to consider each application for dispensation rather than the Committee or the tutors. The change would result in applications being considered promptly, rather than the application having to wait until the Committee meets or the tutor receives the application.

Independent of these procedural problems there are further problems in governing the applications once they have been granted.

Despite advising tutors and readers of the recommended procedure to be followed once a cl 4(b) dispensation has been approved there is no way of policing the approvals system. The Committee has no way of knowing whether the reader has been seeking the approval of his/her tutor for each and every appearance. Nor does the Committee have any way of knowing whether the reader has been maintaining a file of recording approvals given by a tutor.

On 23 May 2002 Bar Council considered the issued and resolved:

1. That all cl 4(b) dispensations now be considered by the Executive Director or the Director of Studies.
2. An article be written in *Bar Brief* about cl 4(b) dispensations and the duty of pupils to follow the procedures and that if procedures are not followed, disciplinary action may follow.



Free backdates!

The Bar Association is clearing out surplus issues of Bar News (Spring 1999 Winter 2001), Bar Brief (2000, 2001) and the Practical GST and PAYG overview.

Members may obtain free copies of these publications from the Bar Association's Reception while stocks last!



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Expressions of interest are sought for members wishing to be on the lists:

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- recommended by the Bar Association for appointment to the 2003 arbitrators lists maintained by the Local Court and/or District Court.

Recommendations for appointment will, if possible, be made for two years and will be reviewed annually. If you are on the current New South Wales Bar Association or court lists, it is *not necessary to re-apply* as you will be automatically reconsidered for the 2003/04 lists to be recommended to the courts. To see whether you are on the current list, refer to the Bar Association's web site, located at www.nswbar.asn.au and go to the link headed 'Appointments'.

The criteria used for selection and application forms are available from the Bar Association Reception and are also available on the web site: www.nswbar.asn.au under the link 'Appointments'.

Completed application forms must be returned to the Bar Association by midday Friday 21 June 2002. Please note it will not be possible to process late applications. All applications will be acknowledged in writing. If you do not receive an acknowledgment of your application within 48 hours of sending the application, please contact us as soon as possible.

All inquiries and the application forms should be addressed to:

Projects Officer
NSW Bar Association
174 Phillip Street, Sydney, NSW 2000
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CLOSING DATE IS: MIDDAY FRIDAY 21 JUNE



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Peter Bruckner	5 Wentworth Chambers
Dominique Burns	Church St, Newcastle
Pierre de Dassel	4 Selborne Chambers
Dominic Villa	6 Selborne Chambers
Mark Gibian	HB Higgins Chambers
Sarah Huggett	Crown Prosecutors' Chambers
Naomi Sharp	6 Wentworth Chambers
Michael Simpson	Ayres Road, St Ives
Dominic Villa	6 Selborne Chambers
Robert Zikmann	8 Garfield Barwick Chambers

Legal practitioner other than local practising practitioner

Steven Whybrow	Blackburn Chambers, Canberra
Svetlana Todoroski	ACT Bar Association, Canberra



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Photocopying in the Library – reminder to 'top up'


In the October 2000 edition of *Bar Brief*, information was given about the introduction of a new system for paying for photocopying and printing of material in the Association's Library.

The system operates on the basis that members prepay for usage. An account is opened for a minimum of \$20. Once this amount is run down, further top ups are required. These can be from a minimum of \$10, in \$10 increments.

Accounts cannot run into debit. Members are thus not able to photocopy or print material unless there are sufficient funds in the account.

Members who are unsure as to how much money remains in their account may check at the Bar Association's Reception or with Library staff at any time.





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Stay in touch

It is now imperative that practising members, floor clerks, judges, academics and other recipients advise the Bar Association of any change of e-mail address.

In July 2002 the Bar Association will cease production and distribution of *Bar Brief* in hard copy. Current recipients of *Bar Brief* will receive from the Association a text-based e-mail alerting them to the publication of a new edition, together with a list of contents. Users simply click on a hyperlink to access the newsletter.

Electronic distribution of *Bar Brief* is the latest move by the Bar Association to distribute time-critical information to its members via e-mail. In early March 2002, the Association ceased the distribution of circulars by fax.

Members can check the Association's e-mail record of their address by looking at their entry using the 'Find a barrister' search facility on the Association's web site (www.nswbar.asn.au).

Those who do not have a clerk or access to e-mail will still be able to obtain printed copies at the Bar Association's Library and Reception. Unfortunately, the prohibitive cost means that it will not be possible for the Association to mail or DX individual copies.

To notify the Association of a change of e-mail address, please contact the Membership Officer on ph: (02) 9229 1740 or e-mail membership@nswbar.asn.au



Professional conduct update

On 18 April 2002, Trevor Small applied to the Bar Council for the issue of a practising certificate for the year ended 30 June 2002.

On 9 May 2002, the Bar Council resolved that, having regard to the changed factual circumstances since its original decision of 1 November 2001 to cancel his practising certificate, and the conditions agreed to by Mr Small, it would issue a practising certificate to Mr Small for the period up to and including 30 June 2002.



Downing Centre entry

The Chief Judge of the District Court and the Chief Magistrate have made arrangements with the Sheriff that members of the legal profession will be able to gain entry to the Downing Centre through a designated entry point, without having to go through the public security checks. To do so, members will be required to show a Bar Association photo identification card. For more information on how to acquire an ID card, contact the Bar Association Reception on ph: (02) 9232 4055.

Robing in the ACT

In late April 2002, the Chief Minister and Attorney General of the ACT, Jon Stanhope, announced that the practice of wearing robes in the ACT Supreme Court would continue, including wigs, except for civil proceedings where the judges and the master remove their wigs.

At its meeting on Monday, 29 April 2002, the Council of the ACT Bar Association resolved to adopt the following policy in relation to robing in the Supreme Court of the Australian Capital Territory: 'When the Court robes, counsel will robe, except that when the judge or master removes his or her wig, counsel will do likewise'.

Previously, it had been the practice to continue to wear a wig in civil proceedings, even when the judge or master removed his or her wig. The Council considered that it was appropriate that counsel should follow the lead of the Court and robe in Court consistently with the judges and the master. The change took effect from Wednesday, 1 May 2002.

On 27 May 2002 the Chief Justice of the Family Court of Australia announced that the Family Court would follow the practice of the Supreme Court of the ACT in relation to robing. Counsel are expected to wear robes but not wigs in Full Court proceedings in the Australian Capital Territory. At first instance, counsel are required to wear robes as before. Wigs are only required where one is worn by the particular judge or judicial registrar.



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Conferences

2002 Bill of Rights conference, NSW Parliament House Theatre, Sydney, 21 June 2002.

Speakers include Justice Sir Kenneth Keith KBE, New Zealand Court of Appeal, the Commonwealth Attorney-General, the Hon Daryl Williams AM QC MP, and the President of the New South Wales Bar Association, Bret Walker SC. For further information contact Belinda McDonald, UNSW, on ph: (02) 9385 2257; e-mail: gtcentre@unsw.edu.au or visit the conference web site at www.gtcentre.unsw.edu.au

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

LawAsia legal perspectives on biotechnology, Parliament House, Darwin, NT, 22 June 2002.

The conference will examine issues such as intellectual property and biotechnology, regulation of biotechnology and fundamentals of biotechnology licence agreements. For further information contact Convention Catalysts on ph: (08) 9811 1875 or e-mail: convention.catalysts@norgate.com.au

Inaugural world conference of barristers and advocates, Edinburgh, 27-29 June 2002.

Members of the independent referral bars are invited to gather at a conference designed to examine and discuss current issues affecting barristers. Matters such as competition policy, direct access, regulation of the profession and specialisation will be on the agenda.

For further information, visit the conference web site at <http://www.worldbaronline.com/> or contact the Secretariat on ph: (07) 3236 2477, fax: (07) 3236 1180 or e-mail mail@austbar.asn.au

2002 national administrative law forum, Notre Dame University, Fremantle, Western Australia, 4-5 July 2002.

The conference, organised by the Australian Institute of Administrative Law, will examine the performance of regulatory agencies, the question of damages claims against regulators, as well as the effectiveness of FOI, judicial review and oversight by ombudsmen. For further information about the conference programme, contact the Conference Director, Michael Barker QC on ph: (08) 9220 0517, fax: (08) 9325 9894 or e-mail:

chooper@inet.net.au. For registration and other enquiries, contact Kathy Malcolm at the AIAL secretariat on ph: (02) 6251 6060, fax: (02) 6251 16324 or e-mail: ipaa@bigpond.com

Competition and consumer protection law enforcement, The Regent Hotel, Sydney, 4-5 July 2002.

The conference programme includes discussion on outcomes, trends and developments in the public enforcement of Australian, US and UK competition and consumer protection laws. Keynote speakers include Professor Allan Fels AO, Chairman of the ACCC, Peter Cashman, of Maurice Blackburn Cashman, Jim Griffin from the US Department of Justice and Adrian Walker Smith, Office of Fair Trading, UK. A conference information and registration brochure is available at the Bar Association's Reception.

20th AIJA annual conference, Stamford Plaza, Brisbane, 12-14 July 2002.

The conference will feature presentations and workshops in a wide range of areas relevant to the improvement of access to justice. It will have as its objective the development of a plan for further action in this important area of administration of justice. For further information, contact the Conference Secretariat at Intermedia Convention and Event Management, PO Box 1280 Milton QLD 4064, ph: (07) 3858 5582, fax: (07) 3858 5510 or via e-mail: aija02@im.com.au. Alternatively, visit AIJA web site at www.aija.org.au

XVIth congress of the International Academy of Comparative Law, University of Queensland, Brisbane, 14-20 July 2002.

Confirmed speakers include His Excellency Gilbert Guillaume, President of the International Court of Justice, The Chief Justice of France, The Hon. Professor Guy Canivet and the Chief Justice of Queensland, the Hon. Paul de Jersey. Further information regarding the congress, including the academic programme and the registration brochure, may be obtained from the Congress Secretariat, C/- Brumfield Bird and Sandford (BBS) Public Relations, ph: (07) 3221 6711, fax: (07) 3229 8704 or via e-mail: info@bbscom.com.au. Information may also be obtained from the conference web site at www.law.uq.edu.au/congress.

Eighth international criminal law congress, Sofitel Hotel, Melbourne, 2-6 October 2002.

This congress, organised by the Victorian

Criminal Bar Association, the Criminal Law Section of the Law Institute of Victoria, will cover a wide range of topics, including: video evidence, DNA, anti-terrorism laws and streamlining appeals. For further information, contact the Congress Secretariat, ICMS Pty Ltd, on ph: (03) 9682 0244 or via e-mail: crimlaw@icms.com.au

2002 International Institute for Public Ethics biennial conference, Brisbane, Sheraton Brisbane Hotel and Towers, 4-7 October 2002.

The theme of the conference is 'Globalising the public interest' and delegates will discuss responses to asylum seekers, international terrorism and east/west dialogue on the public interest. Confirmed speakers include Justice Christie Weeramantry, Vice-President, International Court of Justice, The Hague, Tunku Abdul Aziz, Transparency International and The Hon. Justice Paul de Jersey AC, Chief Justice of Queensland. For further information, contact the IIPE Conference Secretary, Douglas Magendanz on (07) 3875 5301, fax: (07) 3875 6634, e-mail: d.magendanz@mailbox.gu.edu.au or visit the conference web site at www.iipe.org. A conference information and registration brochure is held at the Bar Association's Reception.

Environment and Planning Law Association (NSW) conference, Wildfire Restaurant, Overseas Passenger Terminal, Sydney, 10-11 October 2002.

The topics to be covered include private certification, existing use rights, salinity and clearing issues for rural Australia, SEPP 65 and issues affecting the Land and Environment Court. For further information, contact Michele Kearns on ph: (02) 9221 3527 ; fax: (02) 9221 8686; e-mail: kearns@stjames.net.au or visit the EPLA web site at www.epla.org.au



Fees payable in federal courts and tribunals

Fees payable in federal courts and tribunals will increase from 1 July 2002. The full schedule of biennial fee increases is available from the Bar Library.

Media briefing

Media releases issued by the New South Wales Bar Association

'Advocates' immunity from suit', Letter to the Editor, *Sydney Morning Herald*, 8 May 2002

'Regulation of the legal profession', Letter to the Editor (unpublished), *Sydney Morning Herald*, 7 May 2002

Visit the Bar Association's web site at www.nswbar.asn.au to obtain the full text of all media releases and letters to the editor.

Excerpts from recent interviews given by members of Bar Council

'Crime and punishment are often unrelated, notwithstanding what the public press and radio jocks would like to suggest. The two are historically and anthropologically unrelated, unfortunately', Ian Harrison SC, regarding increased use by Police of on-the-spot fines, 'The World Today', 2BL, 4 June 2002

'Doctors and lawyers are not similar cases at all and it's not good enough for doctors who are simply resentful about their premiums in order to make themselves feel better to suggest that it's all lawyers' fault and lawyers should be made to feel just as bad', Bret Walker SC, regarding advocates' immunity, Chris Smith, 2GB, 7 May 2002.

'What we're doing is participating in the administration of justice and we're simply not allowed as a matter of law to go in to represent only our clients' interests. We have to do things with which our clients disagree from time to time because the law requires us to as advocates,' Bret Walker SC, regarding advocates' immunity, 'The John Laws Show' 2UE, 7 May 2002

'The problem with suing barristers or solicitors acting as advocates is that the very people who might best be able to give evidence about whether or not they made the correct decision in respect of which they're being sued may well be the judge and maybe the jurors...and these people, as you would expect for policy reasons, could not be called as witnesses', Ian Harrison SC, regarding advocates' immunity, 'The Howard Sattler Show', 2SM, 7 May 2002

'The type of judgements that call for criticism and which attract the attention of shows such as this are often at the outer extreme', Ian Harrison SC, regarding public liability insurance and tort reform, 'Willesee Across Australia', Sky, 6 May 2002

'Litigation about litigation, that is fighting cases about the way other cases have been fought, is seen as a relatively unfortunate expenditure of public resources and court systems', Bret Walker SC, regarding advocates immunity, 2BL News, 6 May 2002

'We don't want to see a small minority destroy the system for people who are genuinely in need of compensation', Ian Harrison SC, regarding the *Civil Liability Bill 2002* and tort reform, 'The Sally Loane programme', 2BL, 3 May 2002

'It's an absurd accusation to say that the legal system is responsible for people resorting to it', Bret Walker SC, regarding medical indemnity insurance, ABC TV, 7.30 Report, 22 April 2002

Media releases by the Law Council of Australia

Asylum Seekers Detained Too Long, 7 June 2002

Structured Settlements Bill – An Insurance Success Story, 7 June 2002

ASIO Bill Still Under Scrutiny, 6 June 2002

Law Council Supports Federal Court's Integrity, 3 June 2002

Public Liability Proposals: Not the Right Solution, 30 May 2002

National Care Proposal for Public Liability Cases, 22 May 2002

Law Council Throws Serious Doubt on Public Liability Debate, 16 May 2002

Law Council Calls for No Compromise on Counter-Terrorism Bills, 14 May 2002

Fundamental Rights Removed, 30 April 2002

Visit the Law Council's web site at www.lawcouncil.asn.au to obtain the full text of all media releases and letters to the editor.

Law Council submissions

Human Rights and Equal Opportunity Commission LCA National Inquiry into Children in Immigration Detention, 22 May 2002

Parliamentary Joint Committee on ASIO, ASIS and DSD and to the Senate Legal and Constitutional Legislation Committee, *LCA Inquiry into the Australia Security Intelligence Organisation Legislation Amendment (Terrorism) Bill 2002*, 29 April 2002

Visit the Law Council's web site at www.lawcouncil.asn.au to obtain the full text of all its submissions.



INAUGURAL WORLD BAR CONFERENCE, EDINBURGH, 27 – 29 JUNE 2002

AUSTRALIAN BAR ASSOCIATION CONFERENCE, PARIS, 7-10 JULY 2002

Extra places available at both conferences

Waiting lists have been cleared and extra places have become available at both the Inaugural World Bar Conference in Edinburgh and the ABA Conference in Paris.

The World Bar Conference will be the first time that members of the independent referral bars have been invited to gather at a conference designed to examine and discuss issues affecting barristers. Matters such as competition policy, direct access, regulation of the profession, independence of the profession and specialisation will be on the agenda.

The Australian Bar Association Conference in Paris will discuss issues such as globalisation and the law, the *Human Rights Act* (UK), the question of convergence between code and common law countries, as well as the media and the courts.

If you require further information about either conference please contact Mr Dan O'Connor at the ABA Conference Secretariat, Ph: (07) 3236 2477, Fax: (07) 3236 1180 or via e-mail: Mail@austbar.asn.au or visit the ABA web site at www.austbar.asn.au and the World Bar Conference web site at www.worldbaronline.com

Attorney General opens new floor for crown prosecutors



The Attorney General of NSW, The Hon Bob Debus MP.

A new floor of the Crown Prosecutors Chambers was officially opened by the Attorney General, the Hon Bob Debus MP on 10 May 2002. It will accommodate 20 crown prosecutors, and is adjacent to the DPP offices near the Downing Centre.

The new floor became necessary following a large number of new appointments to handle the extra work required by the pre-trial disclosure legislation.

The 94 crown prosecutors in New South Wales are by far the largest 'floor' of barristers in the State.

Bret Walker SC, Ian Harrison SC, Michael Slattery QC and Philip Selth represented the Bar Association at the opening. Mark Tedeschi QC, the Senior Crown Prosecutor, thanked the Director of Public Prosecutions, Nick Cowdery QC, for providing them with accommodation of such a high standard.

The Attorney General spoke of his appreciation for the importance of the work which the crown prosecutors do in representing the community in criminal jury trials and appeals.



Mark Tedeschi QC.



Left to right: Peter Dare, Philip Selth, Ian Harrison SC, and Nick Cowdery QC.



Aid for the Solomon Islands

Since late 1998 the tiny South Pacific nation of the Solomon Islands has been engulfed by inter-tribal conflict, political instability and a progressive deterioration in essential government services. The largely subsistence economy was further crippled when the deteriorating security situation forced the shutdown of vital mining and agribusiness operations.

The nation's justice system has been seriously affected by the breakdown of economic and political stability. Geoffrey McDonald, barrister, recently appeared in the High Court of the Solomon Islands and gives a first hand account of the situation.

'There were no tape recorders, so the only transcript available comes from the judge's handwritten notes. He personally writes down every question and answer for the whole day', said McDonald.

'I tried to obtain a company search but the Registrar of Companies could not supply a copy because there was no paper for the photocopier and if there was any paper there was no electricity to run the copier.'

McDonald's case was adjourned until mid June 2002. The Registrar, however, could not guarantee that the judge would be available on that day, because the judge would be on another island hearing a case

and he could not be assured that there would be sufficient funds to pay for the judge's return boat trip.

McDonald has returned to Sydney determined to give whatever assistance he can for the court system in the Solomon Islands. He has called upon members of the New South Wales Bar to assist by donating obsolete office equipment, law reports or stationery, which would otherwise be discarded.

For further information, contact Geoffrey McDonald on ph: 02 9263 2633, fax 9263 2800 gmcdonald@hallchadwick.com.au



NO MERE MOUTHPIECE:



Servants of All — Yet of None

The title to this book of essays, edited by Geoff Lindsay SC and Carol Webster, is taken from the leading essay of Chief Justice Murray Gleeson. In that essay the Chief Justice reminds us that a barrister is not a mere agent, or mouthpiece, of his or her client. The book is a collection of essays on the history of the New South Wales Bar Association, published to commemorate the Bar's centenary as a voluntary association with public interest functions.

Most of the essayists have lived through the times they describe, thereby adding a flavour of primary authority to secondary sources. The essays are entertaining and contain information not otherwise conveniently available.

The book will be of interest to members of the legal profession throughout Australia, especially (but not only) in New South Wales.

Contents

- Foreword: **Chief Justice J J Spigelman AC**
- Preface: **Bret Walker SC**, President, NSW Bar Association
- **Chief Justice Murray Gleeson AC**: Bench and Bar
- **L G Glanfield AM**: The Bar – In the Public Interest
- **Captain W F Cook**: Recollections
- **Dr J M Bennett**: Some Reflections on A History of the New South Wales Bar (1969)
- **Justice J D Heydon**: The Role of the Equity Bar in the Judicature Era
- **Justice Keith Mason**: Public Barristers
- **M G Sexton SG, SC**: The Role of the Solicitor General
- **Mark Tedeschi QC**: History of the New South Wales Crown Prosecutors 1830-1901
- **Professor Rosalind Atherton**: Early Women Barristers in NSW
- **Justice K E Lindgren** and **Professor George Hampel**: Education and Advocacy Training
- **Dr J M Bennett & N J Haxton**: Law Reporting and Legal Authoring
- **Peter Taylor SC**: Three Decades of Change in the Supreme Court
- **Mary Walker**: Alternative Dispute Resolution and the Bar
- **Ian Barker QC** and others: Chambers
- Religion and the Bar: The Thomas More Society, The NSW Lawyers' Christian Fellowship and The New South Wales Society of Jewish Jurists and Lawyers
- **David Bennett AO, SG, QC** (on Justice Mary Gaudron), and essays by **Wendy Robinson QC**, **Jane Needham**, **Paul Daley** and **Malcolm Brown**: Reminiscences.
- Litigants in Person
- Schedules, including lists of the Presidents of the Bar Association (1936-2002), Bar Councillors (1902-2002), Chief Executives and Honorary Life Members of the Association, and Nineteenth Century Barristers.

Price: \$135, \$121 for members of the New South Wales Bar Association

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Request for details of fees owed to counsel

In May 2002, pursuant to sec 114B of the *Legal Profession Act 1987 (NSW)*, Andrew Brown was appointed Manager of the following solicitors' practices, all of which have been closed:

- Roman Alexander Dechnicz, Solicitor, practising as R A Dechnicz and Associates
- Jan Catherine Robinson, Solicitor, practising as Robinsons Solicitors

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



Papers to note

Review of the New South Wales Director of Public Prosecutions' policy and guidelines for charge bargaining and tendering of agreed facts, by the Hon Gordon Samuels AC CVO QC, 29 May 2002.

Copies of this report are held in the Bar Library.

Land and Environment Court Amendment Bill 2002.

Civil Liability Bill 2002.

Compensation Court Repeal Bill 2002.

Copies of these Bills may be obtained from Parliament's web site at www.parliament.nsw.gov.au



BARRISTER SURVEY – GUARANTEEING SOMEONE ELSE'S DEBTS

The NSW Law Reform Commission, in collaboration with the University of Sydney, seek responses from barristers who have acted for guarantors, borrowers or lenders in matters concerning the enforcement of third party guarantees. We are particularly interested in sexually transmitted debts.

Information collected will help us assess problems with the law in this area, and make appropriate suggestions for reform. The survey will take approximately 15 minutes to complete. All your answers will remain strictly confidential.

The survey can be downloaded from the Commission's website at www.lawlink.nsw.gov.au/lrc, or obtained by contacting us at the NSW Law Reform Commission on (02) 9228 8230.

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