



Who wants to be a DPP?

By N R Cowdery Q.C., Director of Public Prosecutions

After 13 months in office as the DPP of NSW I interviewed myself for an article in the 1995 edition of *Bar News* entitled 'Hot Seat – or Siberia?' I stated then: 'I don't mind the heat, but the cold can be a worry'. After more than seven years in office I can say that I have not been worried by the cold.

The job is not one for any person who relies upon praise and positive reinforcement; equally, it is not for any person with a belief in personal infallibility. All DPPs, like any competent professionals in any field of endeavour, recognise their limitations and the systems in place compensate for those and ensure that, whoever is the incumbent, the best possible job is done according to the appropriate objective standards.

In this State the DPP is appointed on terms similar in some respects to those of a Supreme Court judge. That includes salary, pension and tenure. (There may be a mandatory maximum retirement age; but whatever it is, I do not plan to be here when/if it arrives.) The *Director of Public Prosecutions Act 1986* is the relevant

legislation. As a statutory officer the DPP is not subject to the *Public Sector Management Act 1988* and therefore not a 'public servant' in the strict sense – although everything the DPP does must be in the general public interest.

The DPP is responsible to the Attorney General for the due exercise of his or her functions (s4 of the DPP Act). The Attorney General, in turn, is answerable to Parliament. The Attorney General retains his common law powers. The present Attorney General has adopted a clear position on when and in what circumstances he may exercise his powers to override any decision of the DPP. That has not occurred in the nearly 15 years of the existence of the office; nor has it occurred in the history of any other Australian DPP.

The DPP's decisions must be based upon the law, the evidence available in particular cases and the *Prosecution policy and guidelines*. There will often be an element of judgment required. Regard must be had at all times also to the efficient and effective conduct of the operations of the

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Office of the DPP – the resources available with which to prosecute are finite and must be carefully husbanded. Public funds must not be spent on empty gestures (for example, prosecutions or appeals that are judged as not likely to succeed). Many decisions are made under delegation by other members of the Office.

The independence of the Office in prosecutorial decision making is crucial. Decisions must be made objectively, impartially and consistently. That means that decisions must not be swayed by extraneous influences such as the voices of

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Personal injuries: the new fallacies

By Bret Walker S.C., President of the New South Wales Bar Association

Important areas of work for the Bar have been reduced over the years. Culminating last year, most notably the socially vital area of personal injuries litigation has been transformed. In some respects, it is no exaggeration to speak of the Bar being eliminated from the resolution of disputes between ordinary people injured as a result of motor vehicle accidents or occurrences at (or on the way to or from) work. The Bar Council has the consequences of these changes firmly in mind as a concern of major priority this year.

It is consistent with those changes, and perhaps even more dubious as a matter of social merit, that politicians of all stripes

and at all levels have now turned to what they call the crisis of public liability insurance claims. It seems we are still at the stage of talking about how to talk about the issue, and so the Bar Council has yet to formulate its detailed position - at present, there is nothing even half-baked to consider. But what follow are some ideas about the dominant fallacies which the Bar must combat.

One thing is clear, and familiar. We and our colleague solicitors who work in personal injuries litigation are convenient scapegoats - the 'greedy lawyers' jibe is used over and over again.

The Bar Association can be forgiven a sense of grim irony at the latest expressions of horror by those inveighing against personal injuries litigation. Under the banner of Access to Justice, the Legal Profession Act 1987 was amended in 1983 to prevent any regulation, let alone prohibition, by the Bar Association and the Law Society of advertising by lawyers. The provisions of sec 38J were praised on all sides of the political debate, not just by economic rationalists, as an aid to competition in the interests of what were called consumers. Then, as now,

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Continuing Professional Development Scheme (CPDS)

By Robert Hayes, Director of Studies

Bulletin One:

The Continuing Professional Development Scheme commences in July of this year. Through a series of regular bulletins for *Bar Brief*, the Director of Studies will reveal further information about CPD and invite feedback and expressions of interest from members of the Bar.

The Bar Association will be seeking to provide an education and professional development service to barristers which will be readily accessible and helpful to them in conducting their practices. Engagement in programmes to be offered by the Bar Association will of course be one of the principal ways in which barristers may go about meeting the requirements of the CPDS. But more of that later. In this Bulletin I am seeking an urgent response in the two areas.

- The first issue is when and where should the inaugural regional CPDS conference be conducted; and what should be its content?
- The second area for response is in relation to my thought that there should be teams of barristers responsible for curriculum development and teaching in the four key areas of the overall education programme:

1. Ethics and professional regulation;
2. Practice and risk management
3. Legal doctrine and procedure
4. Advocacy and other barrister skills

It is my tentative view, on which I now seek feedback, that:

- the education and professional development programmes offered by the Bar should be part of a structured integrated curriculum; and that
- groups of barristers should be recruited to work in each discipline area over a sustained period, taking responsibility with the other barristers in their discipline team for:
- Planning and development of courses, programmes, seminars and activities in their particular discipline;
- Development of teaching and other materials and exercises;
- Teaching, or at least consulting on who should teach in the programmes on offer

Thus, for example, there would be a group of barristers responsible for programmes aimed at developing advocacy skills; a group responsible for instruction in the area of evidence; groups responsible for commercial law, criminal law and so forth. Each discipline group would be supported

in its work by the Bar Association Education Team.

One thing should be made clear about the CPDS at this stage:

The Bar Council recognises the value of barrister' involvement in development, teaching and other aspects of the education programmes of the Bar. They will receive points for that involvement through the CPDS.

Obviously, I will be seeking a high level of involvement from sections, interest groups and other stakeholders in the recruitment of the discipline teams which I envisage.

I would welcome any communication, at any time, on any aspect of the above. To this end; My mobile, on which you can phone me at any time, is 0419 600 385; My direct line is (02) 9229 1722. My email is rhayes@nswbar.asn.au. My fax number is (02) 9221 1149 looking forward to hearing from you.

The Bar Association's CPD programme will be conducted on the first Wednesday of each month, except January / February, commencing 3 July 2002 from 5.00pm - 7.00pm, meeting rooms 1 - 4, Basement, 174 Phillip Street.



Robert Hayes: a career profile

Dr Robert Hayes been given the challenging task of establishing the new Continuing Professional Development Scheme and engaging in continuing discussions with members of the Bar about its implementation. *Bar Brief* provides this profile.

Dr Hayes brings to the new post many years of valuable experience in areas encompassing law reform, tribunals, academia and private practise at the Bar.

He has just finished a two year stint teaching law at University of New England, a role which he believes will add considerable value to his new role at the Bar Association.

Between 1990 and 2000 he served as President of the Mental Health Review Tribunal, and during the past two years he has been a consultant to the New South Wales Attorney General on criminal justice matters affecting people with intellectual disabilities and mental illness. He worked there, first with Andrew Haesler, then with

Chrissa Loukas, and finally, with Mark Marien.

'I believe that this will prove to have been a valuable experience, given the need of the legal system and its practitioners to see the perspectives of people with disabilities', he said. 'It also showed me that barristers need to develop expertise in representing clients effectively before quasi-judicial bodies, inquiries and commissions, an enterprise in which Mervyn Finlay has promised to assist. I also saw the stringent professional development requirements imposed on other professions, particularly psychiatry.'

Robert will continue to serve as a member of the Disability Council of NSW.

Between 1987 and 1990 Robert served as a senior member of the Federal Administrative Appeals Tribunal.

Before that he spent three years with Michael Kirby at the Australian Law Reform Commission. Robert recalls

making a courtesy call to Justice Kirby recently and ran into Justice McHugh in the process. 'They both expressed delight and excitement at, and preparedness to be involved in, the Continuing Professional Development Scheme' said Robert.

Prior to that he was in the group which moved with Ted St John Q.C. into Wardell Chambers, and shared a room with Wayne Haylen (as he then was). Prior to that he read with David Hunt as (he then was), and worked with Jack Mater at Stephen Jaques and Stephen.

Dr Hayes acknowledges the concerns held by some members of the Bar about the way the new scheme will operate.

'One of my primary objectives will be to demonstrate all of the benefits of continuing professional development. It will raise and maintain the professional reputation of the Bar, improve risk management techniques, and support the efficient administration of justice'.

Bar Council business for December 2001

President's report

Courts Legislation Amendment (Civil Juries) Bill 2001

The Senior Vice President and the Executive Director briefed Upper House crossbenchers on 4 December. The Executive Director had also spoken with a number of members of parliament about the Bill. The *Courts Legislation Amendment (Civil Juries) Bill 2001* was one further step in the erosion of juries for civil matters. The attainment of quicker, and thus cheaper, adjudication (cheaper for both the parties and the court administration) could be significantly enhanced by more (not less) frequent decisions by juries.

The President advised that in 2002 he wished the Bar Council to consider in detail the Association's position on the use of civil juries. This was a fundamental issue of principal that warranted careful consideration by the Bar Council and then the members of the Association.

Local Court Practice Notes and Rules

Practice Notes No.s 1 - 4 and the Case Management Rule are seen by the Court as critical to developing uniform case management procedures, including time standards, and improving the control of

listing processes. The Association believed such management issues should be dealt with by discussions between the associations and the courts, and welcomed the experiment.

Sentencing legislation

The President referred to the recent decision of the High Court, *Wong v The Queen* [2001] HCA 64 (15 November 2001), in which the Court might on one reading be thought to have indicated that aspects of the NSW sentencing guidelines legislation may not be valid. The Government had introduced legislation to ensure that the Court of Criminal Appeal has the power and jurisdiction to give guideline judgements on its own motion and to retrospectively validate guideline judgments previously given.

The President had responded on radio to comments by the Premier and radio commentators critical of the High Court.

Female university students visit to the Bar - 12 October 2001

Slattery Q.C. advised the Bar Council that the Equal Opportunity Committee and 14 volunteer female barristers had hosted a visit to the Bar by female law students from Macquarie University on 12 October

2001. Four judges had participated in the program.

The visit had been organised as a pilot project to test the reaction of students interested specifically in the Bar as a career and the feasibility of running such a program on a regular basis. The purpose of the program is to overcome at least one obstacle that prevents many women from coming to the Bar: lack of knowledge about life at the Bar.

There had been a very positive response to the program. A number of the students had stated they would remain in contact with the barristers.

Bar Council resolved that the visit be an annual event - and extended if possible so that more students could participate.

Bar Council congratulated Slattery Q.C. and those who had worked with him to make the visit so successful.

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.



Parental leave and waiver of practising certificate fee

It is the Bar Council's policy that members leaving the Bar for parental reasons are not required to hold a practising certificate for the period during which they will be absent

from the Bar. An application for a fee waiver due to parental reasons should be addressed to the Executive Director.



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Papers to note

Australasian Faculty of Occupational Medicine and Royal Australasian College of Physicians, Health Policy Unit: Compensable Injuries and Health Outcomes, August 2001. This report, the result of research undertaken by the above bodies, found good evidence that a greater percentage of people with compensable injuries have poorer health outcomes than those with non-compensable injuries. It discusses the complex potential causes for such outcomes, the problem points in medico-legal effects on illness in claimants, and recommends that the insurance industry and the medical and legal professions work together to develop workable solutions. On the legal side, it suggests a revision of Federal Court guidelines for expert witnesses and the education of judges in medical testimony. A copy of the report is held in the Bar Library.

Queensland Department of Justice and Attorney-General: National Competition Policy Review of Legal Practice Legislation, Issues Paper, November 2001. Prepared as a discussion and submissions paper for the mandatory review of this issue by the Queensland Government, the paper discusses the basic policy objectives for regulating the state's legal profession, the current restrictions on competition, the proposed amendments and alternatives to these and the likely costs of same, and the appropriate balance between regulation by the legal profession and the government. A copy of the paper may be obtained from the

Bar Library or from <http://www.justice.qld.gov.au>

Local Court of NSW: Strategic Plan 2002-2005, effective 1 January, 2002. Evolved from extensive consultative processes with magistrates and staff of the Local Court, the legal profession and court user groups, the Plan focuses on court and caseload management in the Court's civil and criminal jurisdictions. Intended to be reviewed annually, this first Plan includes specific Time Standards for such management, relevant new Practice Notes and Best Practice Standards, recommendations for Court Officer standards and assessment of same and for magisterial administrative support required, and improvements in review and resource allocations within the Court. A copy of the report is held in the Bar Library.

Administrative Review Council: A Guide to Standards of Conduct for Tribunal Members, September 2001. The Guide suggests principles of conduct against which the professional conduct of tribunals and their members may be measured, thus encouraging public respect and the confidence that tribunals are upholding the basic values of lawfulness, fairness, openness and efficiency. It aims to promote consideration of the parameters of acceptable conduct and potential problems, particularly under the current demand for greater public accountability. A copy of the paper may be obtained from the Bar Library or from <http://www.law.gov.au/arc>



Bar Association staff

Professional Conduct Department

Helen Barrett has decided to step down to a deputy position within the Professional Conduct Department, to enable her to spend more time with her family.

The Bar Association has appointed Ms Terrie Gibson to the role of Director, Professional Conduct.

Terrie's legal career spans more than 10 years, and includes practise in the areas of commercial law, banking & finance, litigation and dispute resolution. She is currently employed as a Senior Associate with Cutler Hughes & Harris in its Dispute Resolution Division. During 1995 -1996 Terrie was the Acting Professional Conduct Director for the Bar Association.

In addition to her work with the Professional Conduct Department, Terrie will also be working with the Legal

Assistance Department. Terrie will commence duties at the Bar Association on 25 February 2002.

Education Department

The Bar Association has appointed Mr Chris D'Aeth to an Education role to provide administrative and curriculum development assistance with the CPD program.

Chris has a Bachelor of Laws from the University of Wales, United Kingdom, and has just completed his MBA at MGSM (Macquarie University).

Chris has worked at the Mental Health Review Tribunal for five years. Part of his role as Acting Registrar required him to coordinate the development and implementation of computerised services and develop policies and procedures for the Tribunal.

Chris will be starting at the Bar Association from 13 February 2002.

Bar Councillors, 1902 – 2002

A list of Bar Councillors for 1902-2002 has been compiled for inclusion in the forthcoming *Bar Association centenary essays collection*. The *collection* is due to be published in mid-2002, to coincide with the Association's centenary celebration. The list was prepared by Robert Lovas (4 Selborne Chambers) and Tahlia Gordon (Legal Policy Officer, NSW Bar Association). Assistance from Lisa Allen, Bar Association Librarian, is gratefully acknowledged.

The full list may be viewed on the Bar Association's web site at www.nswbar.asn.au. Simply click on 'About us' followed by 'Bar Councillors 1902-2002'.

The list has been compiled using the Bar Council minutes, the Association's annual reports and the *Law Almanac*. However, record keeping in the early years of the Association was aberrant and some errors or omissions may have occurred. Anyone with knowledge of errors in this list is encouraged to contact Chris Winslow, the Bar Association's Public Affairs Officer, on ph: (02) 9229 1732 or via e-mail: cwinslow@nswbar.asn.au

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Professional conduct update

Andrew Hamilton Young

On 31 January 2002 the Bar Council resolved, pursuant to s38FC of the *Legal Profession Act 1987*, to cancel the practising certificate of **Andrew Hamilton Young** with effect from midnight on Wednesday 6 March 2002 to enable the proper arrangement of the barrister's affairs

Glenn Noel Whitehead

On 1 November 2001, pursuant to section 38FC of the *Legal Profession Act 1987*, the Bar Council of the New South Wales Bar Association cancelled the practising certificate of **Glenn Noel Whitehead**. Pursuant to s38 FC (5)(b) of the Act, the cancellation of the certificate was deferred to take effect from midnight on Friday, 9 November to enable the proper arrangements of the barrister's affairs.

Glenn Noel Whitehead has appealed against the cancellation of his practising certificate.

On 18 December 2001 Justice Whealy ordered that the Bar Council issue a practising certificate to **Glenn Noel Whitehead** for the period up to 5pm on 4 February 2002.

On 4 February 2002 Justice Whealy ordered that the period of Mr Whitehead's practising certificate be extended until further order of the Court. Mr Whitehead is entitled appear and practise as a barrister until further order of the Court.

The full list of cancelled practising certificates is held on the Bar Association's web site at www.nswbar.asn.au and is updated whenever developments occur.



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Who wants to be a DPP?

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sections of the media or of some politicians and such influences must be consciously evaluated and put to one side. That can be difficult, but any independent decision maker in society is destined to be in conflict with some politicians and some media commentators. That is as inevitable as crime itself.

Why is independence so important? In his Second Reading speech for the DPP Act then Labor attorney general (now Justice) Terry Sheahan referred to independence from political influences in prosecutorial decision making. The powers of the DPP previously resided only in the attorney general and, as Mr Sheahan said, '... because the power is exercised by a person who has a position of political significance, it is easy to assert that on some occasions it might be exercised improperly for political reasons'. Such political reasons might result from pressures of varying kinds and origins, direct and indirect. The independence of the office of DPP requires and ensures that inappropriate pressures not be influential and, just as importantly, that there not be a perception that decisions might be made for improper reasons.

In relation to the terms of appointment of the DPP Mr Sheahan said:

To ensure that the community will be confident that the decisions of the director will be independent from political considerations, it is provided that the director will be appointed until the age of 65 years [since deleted], with similar pension entitlements as those enjoyed by judges of this State. It is intended also that the director will be paid the same salary and allowances as a Supreme Court judge. The high status of the director's position, and the security of tenure provided, will ensure that the director is freed from any suggestion or appearance that he or she is open to political pressure. There will be no reason to fear that the director may make decisions to curry favour with the Government of the day, in order to secure reappointment or advancement.

The statement of the Leader of the Opposition on 25 January 2002 should be considered against that background.

The full text of the opposition's media release may be obtained from www.liberal.con.au under 'Media Centre'.

It proposed, in summary, the establishment of a parliamentary oversight committee with powers to require the DPP to explain and justify his/her decisions, to veto the appointment of a person as DPP [a power already possessed by the Parliamentary

Committee on the Office of the Ombudsman – s4A of the DPP Act], comment on the DPP's budget management [there is already an Executive Board with external membership] and report to Parliament on the DPP's performance [the DPP reports annually to Parliament]. The Opposition would also establish a fixed term of appointment for seven years, to 'ensure and enhance the independence and integrity of the DPP'! (The Leader of the Opposition, reportedly, has 'left open the possibility of extending the fixed-term principle to the State judiciary' – *SMH* Editorial, 29 January 2002.)

As the media release by the Australian Bar Association on 25 January 2002 pointed out, the proposal to establish a parliamentary committee of oversight was not new. The Opposition has trotted it out in October 1995, September 1997, August 2000 and April 2001 and in statements on other occasions.

It is said that if it is good enough for the ICAC, the Ombudsman and the State Crime Commission to be superintended in such a way, then the DPP should also be subject to such oversight. But these bodies have investigatory and compulsive powers that can impinge upon the rights of any citizen and it may be argued that the exercise of such powers should be accountable to Parliament in this way. The DPP has no such powers and operates, in effect, simply as a legal firm. The DPP does not investigate and has no coercive powers at all.

It has been suggested that there is a precedent for such a committee in England and Wales. That is not so. There is a Home Affairs Select Committee attended from time to time by the DPP; but it is clearly established, in theory and in practice (confirmed by my English counterpart), that the DPP is in no sense accountable to the Select Committee (or to the Public Accounts Committee) and any attempt by a member to explore a prosecutorial decision would be (and has been) firmly curtailed.

The Premier has said on radio that the Government is reviewing the term of the appointment of the DPP. That was news to me. It is true that only in NSW and Tasmania, among the nine Australian DPPs, does the DPP have tenure. However, the words of Terry Sheahan in 1986 hold true today. If a limited term is introduced it creates the risk of decision making

calculated to promote personal advancement in the future. After all, if not to the bench or another position in the gift of the Government, where is a DPP likely to go at the end of a fixed term and before retirement? (A few have, in fact, returned to the Bar.)

The Opposition proposal of this year comes in the wake of my having declined to institute a Crown appeal against sentence by the Supreme Court in a manslaughter (not murder) of a young girl. The most controversial decisions made by the DPP seem to be decisions not to appeal against allegedly inadequate sentences; but let us keep them in perspective. These are cases in which a court has heard all the facts of a matter and delivered remarks on sentence that are available to be (but are seldom) read by anyone expressing a view. I do not impose sentences and I do not have the power to change them. The only course open to me is to institute an appeal to a higher court and the law and guidelines governing the commencement of such expensive action are clear. It is not an easy row for the Crown to hoe. It would be an easy course to ignore those rules and to institute appeals just to end the public hysteria and personal criticism and to please the political agitators of the day; but life as DPP was not meant to be easy, whether I make the decision or it is made by one of the deputy directors pursuant to delegation. It is not personal and commentators should not make it so, although some do.

There was a particularly torrid example of this last month following the manslaughter sentence when an apprentice shock-jock on one radio station, apparently filling in during the silly season, decided to make me his project for the week. The less said about that rubbish the better; but I really don't enjoy much the consequential death threats (fielded by my secretary, it should be noted, who doesn't enjoy them much, either), the calls to resign, to buy a razor, the criticism of my lopsided face. I don't like being used as a tool with which to attack the government of the day. During last month's fracas a sample of members of the public, spurred on by some of the (to borrow Chief Justice Spigelman's phrase) 'electronic lynch mob of talkback radio', claimed amongst other things:

- I should be sacked and Michael Costa appointed in my place
- I am not popular with the people [but being popular is nowhere in my duty

statement – and popular with which ‘people’?]

- I am setting myself up as a director of public policy [no, merely commenting, where appropriate, on aspects of the administration of criminal justice]
- I am usurping the role of the courts by deciding what evidence will be used in court [we rely upon all available relevant and admissible evidence and are subject to court rulings]
- I have sympathy with the wrongdoers, not the victims, and make excuses for crime [but we attempt to respect and protect the rights of all involved in the criminal justice process, work extensively with victims and prosecute, not excuse, crime]
- I should be sacked because I don't listen to the people [I do – but ‘listening to the people’ is only one aspect of the process of gauging the general public interest: which is a different concept from what happens to be of interest to the public]
- I am accountable to no-one [not so]

- I am arrogant and flying in the face of public opinion [but decisions cannot be made in accordance with the demands of those who shout loudest and longest and perhaps a certain measure of detachment is needed to survive the onslaught].

There has been no suggestion in all of this that I am not discharging my office competently. If that were to be suggested, then I am sure that the proposition could be explored in the defamation jurisdiction.

The provision of reasons for decisions is a vexed question, in this and other jurisdictions. In one sense it would be the easier course to give full explanations to anyone who asked (although the resource implications would be immense). But there are privacy considerations involved. Respect must be paid to the presumption of innocence. There are often sensitive personal considerations behind the final decision not to proceed with a prosecution, for example. The workings of the appeal process cannot be explained shortly to non-lawyers. There is no statutory obligation to provide detailed reasons to the public and judgment must be exercised in each case.

The better course, it seems to me, is to keep trying to put factual, general information before the public about the way in which the criminal justice process works, so that people are better able to make their own assessments of situations and are less vulnerable to the unhelpful hysteria whipped up in the heat of the moment. This means writing, talking to groups and to journalists, going on radio and on TV. There is always the risk of selective reporting, misrepresentation and personal attack, but that is a price that must be paid.


The Opposition has never, in seven years, approached me or (to my knowledge) my senior officers for information about the Office or my functions. One wonders how they can be so sure that change is required and that their proposals are for the best.

I am grateful to the NSW Bar Association and its officers for their support on matters of principle and for the opportunity to place these matters on the public record. I am proud to be a member.



Bar Association circulars to members, January-February 2002

11 January 2002	2002 Bar Council Professional Conduct Committees
14 January 2002	Vale The Hon. Acting Justice Jeremy Badgery Parker
15 January 2002	Reminder: Terence Buddin S.C. - Supreme Court swearing-in ceremony on 30 January 2002
25 January 2002	Ian Gzell Q.C. - appointment to the NSW Supreme Court
29 January 2002	Ian Gzell Q.C. - Supreme Court swearing-in ceremony on 4 February 2002 Alastair Macdonald - NSW Industrial Relations Commission swearing-in ceremony on 4 February 2002
31 January 2002	Vale Joseph K Ford Q.C.
1 February 2002	Nigel Rein S.C. - District Court swearing-in ceremony on 4 March 2002
	2002 Bar Council Committees
	15 Bobber - The Hon. Justice Joseph Campbell on 1 March 2002
5 February 2002	Vale Penny Wines
6 February 2002	Vale Peter Sheldon
8 February 2002	Wake - Peter Sheldon, 14 February 2002



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The International Criminal Bar

On 6-7 December 2001 a meeting of lawyers took place in Paris to explore the establishment of an International Criminal Bar for representatives before the coming International Criminal Court and other international tribunals.

Over 300 participants from more than 60 countries with different legal traditions attended. (The proceedings were in French and English.) There were plenary sessions and workshops on organisation, ethics, training and legal aid.

The organisers are now forming a Preparatory Committee, to be representative of the various regions of the world and of its principal legal systems.

In my capacity as President of the International Association of Prosecutors (which supports the creation of such a body) I have been asked to nominate two persons (a delegate and a substitute) for appointment to the Preparatory Committee and/or the proposed General Assembly which will supervise the work of the Preparatory Committee.

A second general meeting is planned before July on a continent other than Europe.

If you would like to be considered for nomination to either the Preparatory Committee or the General Assembly, please send me a CV within one week of distribution of this *Bar Brief*.

Australia should not miss out on making a significant contribution to this initiative.

N R Cowdery Q.C.
DX 11525 Sydney Downtown
E-mail: NCowdery@odpp.nsw.gov.au



Speeches

'Speech delivered at announcement of appointments of Queen's Counsel and Senior Counsel', by The Chief Justice of Australia, The Hon. AM Gleeson AC, 4 February 2002. In his speech before the newly appointed silks, the Chief Justice commented on the nature of the adversarial system and the reliance which the system places upon the skill and integrity of the professional representatives of the parties. 'The capacity of courts to do justice depends on the capacity of lawyers to assist the court. The acceptance of an obligation to assist the court, an obligation that may override even a duty to the client, is the fundamental condition on which barristers are given a right of audience. It is the foundation of the adversarial system of justice. The services of barristers are provided to courts as well as to clients; a matter that is sometimes left out of account in considering how those services are best arranged', he said. A copy of the speech is held in the Bar Library.



'Development of the Federal Court over 25 years', by The Hon. Daryl Williams AM Q.C. MP, 7 February 2002. In this speech, delivered at the Federal Court's 25th anniversary sitting, the Attorney-General praised the Court for developing 'a well deserved reputation throughout the common law world as a world class civil court'. He noted the Court's 'intellectual vigour' and dedication, particularly in areas such as native title as well as its flexible and an innovative approach to operational efficiency. A copy of the speech is available at www.ag.gov.au/ministers/attorney-general and also from the Bar Library.

'Portfolio priorities in the Howard Government's third term', by The Hon. Daryl Williams AM Q.C. MP, 5 February 2002. In this address, the Attorney-General provided senior officers of his department with an outline of the Government's priorities for the third term. National security, native title, age discrimination, privacy laws and the Administrative Review Tribunal were some of the priorities listed by the Attorney. A copy of the speech is available at www.ag.gov.au/ministers/attorney-general and also from the Bar Library.



Address at the Opening of Law Term Dinner, by The Hon. J J Spigelman AC, Chief Justice of New South Wales, 29 January 2002. The Chief Justice spoke on crime and punishment, its controversial place in the public mind, and the need for consistency of sentencing. He also summed up the improvements in the operations of the courts and reduction of backlogs and urged practitioners to expedite cases accordingly. A copy of the speech is available at www.lawlink.nsw.gov.au/sc, and also from the Bar Library.



Address at the farewell ceremony for the Honourable Justice Priestley, on his retirement as a Judge of the Supreme Court of New South Wales, by The Hon. J J Spigelman AC, Chief Justice of New South Wales, 11 December 2001. The Chief Justice praised His Honour's 'unremitting intellectual energy and curiosity' and his broad perspective and learning, and touched on some of the notable judgments for which he will be remembered, as well

as for his wider administrative and educative contributions. A copy of the speech is available at www.lawlink.nsw.gov.au/sc and also from the Bar Library.



Address to the Administrative Review Council's 25th Anniversary Dinner, by The Hon. Daryl Williams AM Q.C. MP, 6 December 2001. The Attorney-General reviewed the function and work of the Council and reiterated the Government's appreciation of the Council's contributions to our developing administrative system, affirming that such contributions are always considered, whether ultimately implemented or not. 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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Counter terrorism legislation

At its meeting on 8 December 2001, the Law Council of Australia considered its position on proposed counter terrorism legislation.

The Commonwealth Attorney General, The Hon. Daryl Williams AM Q.C. MP, had told the media that the proposed legislation would relate to the power of ASIO to interrogate people who could only provide information about suspected offences. Warrants for interrogation, it was suggested, would be sought by the Director-General for Security and would be given with the Attorney-General's consent.

The President of the Law Council, Mr Tony Abbott outlined the issues for consideration, including:

- whether ASIO should have the power to interrogate compulsorily (particularly where the person interrogated was not a suspect);
- whether there should be an abrogation of the right to silence;
- whether it was appropriate that the right to legal representation be abrogated; and
- retrospective criminal law and federal-state issues relating to the National Crime Authority.

Mr. Abbott noted that if the legislative package were to be considered by a parliamentary committee, it would give the Law Council an opportunity to make submissions.

Bret Walker S.C., President of the New South Wales Bar Association, moved that the Council request the Criminal Law National Liaison Committee to take carriage of developing submissions/representations in relation to this issue. Walker S.C., and Game S.C. are Joint Chairmen of that committee. The motion was carried unanimously.

Walker S.C. also cautioned that the Law Council should take care to frame any statement of principles quite precisely, given that the 'right to silence' had been abolished in many places and the right to representation was also not absolute. He said that the laws should not impose an obligation to speak potentially to one's own detriment without there being a 'use immunity' on the information given. The President of the NSW Bar reminded those present that legal professional privilege did not necessarily extend to all aspects of criminal matters, and the right to silence was only applicable if a person was about to incriminate him/herself.

The Law Council agreed to review the matter at its March 2002 meeting.



New South Wales Bar Association Court Liaison Members 2001

High Court

David Jackson Q.C.

NSW Court of Appeal

Donald Grieve Q.C.

Supreme Court of NSW - Common Law Division

Richard J Burbidge Q.C.

Supreme Court of NSW - Equity Division

Robert G Forster S.C.

Supreme Court of NSW - Possessions List

James Stevenson

Supreme Court of NSW - Defamation List

Steven Rares S.C.

Supreme Court of NSW - Criminal Matters

Tim Game S.C.

Supreme Court of NSW - Admiralty List

Sandy Street S.C.

Industrial Relations Commission of NSW

Max Kimber S.C.

Land and Environment Court

Malcolm G Craig Q.C.

Local Court

Kate Traill and Chris Millard
(Backup)

Federal Court

Malcolm Oakes S.C.

Family Court

Grahame Richardson S.C.

Media briefing

Media releases and letters to the editor issued by the New South Wales Bar Association

The NSW Bar Association has expressed grave concern at proposals announced today by the Leader of the State Opposition, [Re: DPP], 25 January 2002

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

Bar Association submissions

Submission in relation to a further review of complaints against lawyers, 19 December 2001.

Recent interviews given by the President and Senior Vice-President of the Bar Association

Bret Walker S.C., interviewed by John Stanley, regarding sentencing in NSW, 2UE, 1 February 2002 – Media Monitors Summary ID S00006033779.

Ian Harrison S.C., interviewed by 2GB News, regarding State Opposition plans to overhaul the role of the DPP, 25 January 2002 – Media Monitors Summary ID S00005986769.

Bret Walker S.C., interviewed by Emma Alberici, regarding tax evasion by barristers, 'A Current Affair', Channel Nine, 18 December 2001 – Media Monitors Summary ID S00005741879.

Transcripts of these interviews may be purchased from Media Monitors: (02) 9318 4000. Quote the Summary ID number.

Media releases issued by the Law Council of Australia

Law Council Seeks Meeting with Minister Regarding National Accident Compensation Scheme Proposal, 21 January 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

National Accident Compensation Scheme Proposal, 21 January 2002

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

Media releases issued by the Australian Bar Association

[Re: DPP], 25 January 2002

Bar Association backs 'robust and independent' DPP

The New South Wales Bar Association strenuously opposed suggestions by the Leader of the State Opposition that the Director of Public Prosecutions should be made accountable to a NSW Parliamentary Committee.

In a media release issued on 25 January, the Bar Association warned that the proposals, if implemented, would 'strike at the very heart of the administration of justice in this State'.

The Australian Bar Association too, condemned the proposals. The President of the ABA, Ruth McColl S.C. said that the proposal would undermine the community's confidence that the system of criminal justice in New South Wales was being administered 'in a manner which is impartial, efficient and free from political and personal interference'.

Both the ABA and the New South Wales Bar Association welcomed Premier Carr's public statements of support for the independence and integrity of the DPP.

The full text of the Bar Association's media release may be obtained from www.nswbar.asn.au

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Appointments

Supreme Court of New South Wales

Mr Ian Gzell Q.C., has been appointed as a Judge of the Supreme Court of NSW effective 4 February 2002.

The Hon. Acting Justice Peter Newman has been re-appointed as an Acting Judge of the Supreme Court, effective 8 February 2002 – 7 February 2003.

The Hon. Jerrold Cripps Q.C. has been appointed as an Acting Judge of the Supreme Court, effective 24 January 2002 – 23 January 2003.

Industrial Relations Commission of New South Wales

Alastair Macdonald has been appointed as a Member and Commissioner of the Industrial Relations Commission of NSW, effective 4 February 2002.

District Court of New South Wales

Nigel Rein S.C. has been appointed as a Judge of the District Court of New South Wales, effective 4 March 2002.

Anthony Blackmore, S.C., has been appointed as a Judge of the District Court of New South Wales effective 11 March 2002.

His Honour Judge Shillington Q.C. has been appointed as an Acting Judge of the District Court, effective 15 February 2002 – 30 June 2002 following his Honour's retirement on 14 February 2002.

Local Court of New South Wales

Malcolm Beveridge has been reappointed as an Acting Magistrate, effective 1 July 2002 – 31 December 2002. Mr Beveridge has also been appointed as a Licensing Magistrate, effective 4 February 2002 to 30 June 2002 and 1 July 2002 to 31 December 2002.

Mr Gregory John McCarry has been appointed as an Acting Magistrate, Mining Warden and Licensing Magistrate for the

period commencing on 4 February 2002 and expiring on 31 December 2002.

Public Defenders

Christopher Craigie S.C. has been appointed Deputy Senior Public Defender, effective 24 January 2002 – 23 January 2007.

Crown Prosecutors

The following persons have been appointed as Crown Prosecutors, effective as of the date shown:

Jeffery McLennan	18 February 2002
Mark Sherring	24 January 2002
Gregory Fatches	24 January 2002
David Degnan	24 January 2002
Sarah Huggett	24 January 2002
Paul Cattini	4 February 2002
Siobhan Herbert	11 February 2002
Alex Clout	29 January 2002
Kenneth McKay	24 January 2002
Tanya Bright	24 January 2002
Trevor Bailey	29 January 2002
Mark Hobart	29 January 2002
Lee Carr	25 February 2002

Acting Crown Prosecutors

Natalie Adams and Paul Leask have been appointed as Acting Crown Prosecutors, effective 4 February 2002 – 30 June 2002 and 29 January 2002 – 30 June 2002 respectively.

Virginia Lydiard has been reappointed as an Acting Crown Prosecutor, effective 24 January 2002 to 23 January 2003.

Council of Law Reporting

Tim Castle has been appointed as a member of the Council of Law Reporting, effective 30 January 2002 – 15 April 2003.



Visit the Public Defenders' web site

The Bar Association web site now has a link to the NSW Public Defenders' Office. The PDO web site includes 'Defender Bank': a collection of resources, precedents, sentencing tables and papers

prepared by Public Defenders. The PDO web site is located at www.lawlink.nsw.gov.au under 'List of Agencies'.

Volunteers sought for pro bono schemes in 2002

A message from the President

Dear Colleagues,

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

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

Supreme Court Legal Assistance Scheme

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

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

This year, again, I urge all members of the Bar with expertise in the areas of practice covered by the scheme to offer their services. If the Scheme is to succeed, it requires the co-operation of sufficient numbers of members of the Bar to ensure that the burden of providing pro bono assistance under it does not fall unfairly on only a few of our members.

The Hon. Acting Justice Jeremy Badgery-Parker (1937-2002) of the Supreme Court died on 12 January 2002.

A Mass of Thanksgiving for his life was held on Wednesday, 16 January 2002 at St Mary's Cathedral, Sydney.

Retired District Court Judge Joseph Kevin Ford Q.C. died on Monday 28 January 2002.

Federal Magistrates Legal Assistance Scheme Bono Scheme

I would like to encourage members to volunteer their services for a pro bono scheme established by the Federal Magistrates Service. Volunteers will usually be approached directly by solicitors on the Court's pro bono panel, although there may be occasions when the Court will approach a barrister direct. Volunteers are being sought for the following jurisdictions: family law, migration, bankruptcy, human rights, judicial review, including Administrative Decisions Tribunal appeals, trade practices and privacy.

Part 12 of the Federal Magistrates Court Rules establishes a scheme to facilitate the provision of legal assistance to parties who are otherwise unable to attain assistance if to do so is in the interests of the administration of justice.

Federal Court Legal Assistance Scheme

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

District Court Legal Assistance Scheme

I would like to encourage members to volunteer their services for the pro bono scheme established by the District Court

and which operates along lines similar to those operated by the Supreme Court of NSW and the Federal Court. The central aspects of the District Court scheme are contained in Part 28C of the NSW District Court Rules.

Bar Association Legal Assistance Referral Scheme (LARS)

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

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

If you are willing to offer your services to assist the scheme, please complete the detachable form on page 19 and 20 of this edition of *Bar Brief* and return it as soon as possible. The information will be used to prepare the 2002 list that will be provided to all courts involved in the scheme.

Bret Walker S.C.

President



Vale

A Requiem Mass was held on Monday, 4 February 2002 at St Martha's Catholic Church, 70 Homebush Road (Cnr Churchill Avenue) Strathfield.

Obituaries will be published in the forthcoming edition of *Bar News*.

FOR SALE

Wig for junior counsel (Ede & Ravenscroft)

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Contact Ms Robyn Bennett on

9232 3953

Conferences

The Bar Brief guide to forthcoming conferences is not intended to be comprehensive. For a more extensive list, visit www.lawlink.nsw.gov.au/conference or the Law Council's web site at www.lawcouncil.asn.au/events.html. The information provided below is regularly updated on the Bar Association's web site at www.nswbar.asn.au under 'Conferences'.

Superannuation 2002: A national conference for lawyers, Adelaide, 21-23 February 2002.

The Law Council of Australia, in conjunction with Leo Cussen Institute, is conducting the annual National Superannuation Conference for Lawyers in February 2002. For further information, contact Dianne Rooney on ph: (03) 9602 3111, fax: (03) 9670 3242 or e-mail: dirooney@leocussen.vic.edu.au

Drugs, rehabilitation and the criminal justice system, Wentworth Hotel, Sydney, 28 February - 1 March 2002.

A conference designed to promote awareness and discussion about the way in which the criminal justice, health and corrections systems should deal with sentencing, imprisonment, drug dependency and mental health issues affecting offenders. Speakers will include the Senior Drug Court Judge Gay Murrell S.C. and the Attorney General, The Hon. Bob Debus MP. A conference registration brochure is held at the Bar Association's Reception. For further details regarding registration, contact the Conference Co-ordinator on ph: 02 9895 4515, fax: 02 9895 4545 or e-mail: John_Castellan@agd.nsw.gov.au

10th National Family Law Conference, Crown Complex, Melbourne, 16-20 March 2002.

Speakers include The Hon. Justice William Gummow AC, The Commonwealth Attorney -General, The Hon. Daryl Williams AM QC MP, the Chief Justice of the Family Court The Hon. Alastair Nicholson AO and the Chief Federal Magistrate Diana Bryant Q.C. For information about the conference programme, venue and online registration, visit the secretariat's web site at <http://www.familylawsection.org.au/> A conference information and registration brochure is held at the Bar Association's Reception.

APLA NSW State Conference 2002, Manly Pacific ParkRoyal, 15-16 March 2002.

Speakers include The Hon. Bob Debus MP,

NSW Attorney General, The Hon. Della Bosca MLC, Special Minister of State, The Hon. Chris Hartcher MP, NSW Shadow Attorney General and Nicholas Cowdery Q.C. For further information, contact Marian Ibrahim and Associates Pty Ltd on ph: (02) 9879 3290, fax: (02) 9879 5139 or e-mail: apla@miaevents.com.au. A conference registration brochure is held at the Bar Association's Reception.

9th Annual Wills & Probate Conference, Melbourne, 18 March 2002.

Enquiries about this conference, organised by the Leo Cussen Institute, may be directed to Patricia Palman, ph: (03) 9602 3111, fax: (03) 9670 3242 or e-mail: ppalman@leocussen.vic.edu.au

Inter-Pacific Bar Association 12th Annual Meeting and Conference, Hong Kong, 3-7 May 2002.

A conference information and registration brochure is held at the Bar Association's reception. For more information about the conference, or about membership of the IPBA, visit their web site at www.ipba.org

16th International Symposium on the Forensic Sciences, National Convention Centre, Canberra, 13-17 May 2002.

The Australian and New Zealand Forensic Science Society in affiliation with the Australian and New Zealand Forensic Medicine Society and the Australian Society of Forensic Dentistry presents 'Forensic Sciences: Outcomes for Society'. Registration brochures and calls for papers may be obtained from the conference web site at www.nifs.com.au/ANZFSS/Symposium2002.html. A conference information and registration brochure is held at the Bar Association's Reception.

6th Annual Family Law Intensive, Leo Cussen Institute, Melbourne, 1 June 2002.

Enquiries may be directed to Anita Kwong, ph: (03) 9602 3111, fax: (03) 9670 3242 or e-mail: akwong@leocussen.vic.edu.au.

5th AIJA Tribunals Conference, 6-7 June 2002 (Melbourne).

Inaugural World Conference of Barristers and Advocates, Edinburgh, 27-29 June 2002.

Registrations for his conference are now the subject of a waiting list. Deposit forms will be processed but only so as to place them on the waiting list in order of receipt. Information may be obtained from the Conference 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, Freemantle, 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 Q.C. 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

Australian Bar Association Conference, Paris, 7-10 July 2002.

Registrations for his conference are now the subject of a waiting list. Deposit forms will be processed but only so as to place them on the waiting list in order of receipt. For further information on registration and conference programmes, contact the Australian Bar Association on ph: (07) 3236 2477.

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 the 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

2nd AIJA Magistrates' Conference, 13-14 September 2002 (Brisbane).

AIJA Technology for Justice 2002 Conference, 20-22 October 2002 (Sydney).

Union Internationale Des Avocats / International Association of Lawyers, 46th Congress, Sydney 2002, 27-31 October 2002.

Download a preliminary programme in PDF from the UIA web site at www.uianet.org

13th Commonwealth Law Conference 2003, Melbourne, 13-17 April 2003.



The programme for the conference will encompass areas of broad contemporary concern in Commonwealth jurisdictions, and in particular, on matters in which one Commonwealth jurisdiction may be able to draw from the experience of another. In addition to matters of social concern, the agenda will also include items on e-commerce, the

admission of lawyers to other jurisdictions and legal education. Visit the conference web site at <http://www.mcigroup.com/commonwealthlaw2003.htm> to obtain an expression of interest brochure.

Alternatively, contact the CLC 2003 Conference Secretariat on ph: (03) 9820 9115; fax: (03) 9820 3581; e-mail comlaw@mcigroup.com

18th Biennial Conference of LawAsia / 10th Conference of the Chief Justices of Asia and the Pacific, Hotel New Otani, Tokyo, 1-5 September 2003.

Asia-Pacific Courts Conference, 1-3 October 2003 (Melbourne).



Requirement to notify change of address to the Bar Association

Members are reminded of the need to notify a change of address of chambers to the Bar Association's Membership Officer.

Regulation 12(1) of the *Legal Profession Regulation 1994 (NSW)* provides:

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

It is most important that the Bar Association be kept informed when you

change your chamber address, in particular. This is even more so at the time of renewal of practising certificates.

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



Divorce and the role of lawyers

The President of the St Thomas More Society, John McCarthy Q.C., has responded to media reports that Pope John Paul II had effectively instructed Catholic lawyers to avoid being involved in divorce proceedings.

The St Thomas More Society, the guild of Catholic lawyers in NSW, issued a media release which insisted that the Pope's remarks had been misinterpreted or mistranslated.

'Family Law judges act for the common good in matters involving, in particular, the care of children as well as the property and other rights of the parties to a marriage.

Barristers and solicitors participate on behalf of the parties as officers of the Court. All of them are required by Australian law to seek reconciliation between the parties and the settlement of their differences – too often this is not possible', Mr McCarthy said.

'Since judges and lawyers in Family Law proceedings have proper and grave moral reasons for their professional participation, they are not being criticised by the Holy Father. They are certainly not being told to withdraw from such professional activity or judicial roles.'

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Personal injury a major concern in 2002

continued from page...1

'consumers' of legal services include people claiming compensation for personal injuries.

As it happens, barristers have scarcely advertised at all. We compete internally and externally for personal injuries work quite adequately without commercials. Virtually all advertising of the kind now sneered at by politicians and pundits has been by firms of personal injuries litigation solicitors. But the point is the same - what has been done (by those solicitors) is what Parliament intended to be done, namely advertising by litigation lawyers to attract the business of would-be litigants.

The same unapologetic flip by New South Wales' politicians is displayed in their unprincipled attack on spec briefs. Their lips curl, nowadays, at what they call 'no-win-no-pay' arrangements. How quickly things must change for them on the fundamentals of the administration of justice. In 1993, over the protest of the Bar Association, Parliament insisted that there be specifically allowed an uplift addition or supplement to our ordinary fees in so-called conditional costs agreements - what the public know as contingent fee arrangements. It was a deliberate step in a direction contrary to the traditional prohibition against champerty (a tort Parliament also abolished). If it were only inconsistency by ignorant or unfair public commentators, this history would not much matter now. But there is a deal more to the incorrect criticisms of spec briefs.

Our profession has nothing to be ashamed of in the long tradition of counsel arranging to be paid their ordinary fee only if and when their client succeeds in obtaining monetary remedy. Long before legal aid, and after its effective collapse for civil claims, this was and remains the way ordinary people, and poor people, could sue the largest government authorities, employers, insurers and corporations. In *Clyne v New South Wales Bar Association* (1960) 104 CLR 186 at 203-205, the High Court (comprising Dixon CJ and McTiernan, Fullagar, Menzies and Windeyer JJ) stressed, by citation of established and high common law authority, that it was consistent with 'the highest professional honour' and in the public interest that solicitors be prepared to take on speculative actions. Their Honours pointedly quoted Lord Russell

LCJ to the effect that justice would otherwise 'very often not be done'. I am not aware of any change to the judge-made law in this regard. I have seen nothing in legislation to overturn this obviously benevolent common law. As recently as 1993 in New South Wales, it was part of Access to Justice.

Of course, the speculation must be confined to the contested outcome and thus to the receipt of a fee - it must not include punting on unsubstantiated allegations or hopeless argument. So much was made clear in the same passage in *Clyne's Case*, which applies equally to barristers. But no-one in the recent press and broadcasting slanders of our profession points up any specific case where the lawyers are supposed not to have conscientiously satisfied themselves that there was a bona fide claim to be made.

The Bar Council has long supported spec briefs, and will continue to do so. How conscientious politicians could blackguard us for those arrangements and praise us for completely gratuitous work (so-called pro-bono) escapes me - unless they insist that we should never be paid at all, which is childish.

So long as barristers observe basic ethical requirements, illustrated in Barristers' Rules 18, 19, 21, 22, 23, 25, and especially 35, 36, 37 and 38, attacks like the current attacks on speculative actions will remain merely captious.

State and Commonwealth Parliaments have enacted, and show no signs of repealing, copious legislation to give ordinary people claims - usually for compensatory damages - in a wide range of personal and financial circumstances. Unfair dismissal, misleading and deceptive trading conduct, breaches of company directors' duties - the list is a long one. Does anyone seriously suggest that providing remedies for wrongs, in these ways, is all just a horrible mistake by our elected legislators?

One awful implication of the current nonsense is that personal ie physical injuries are somehow less socially important than financial loss. This is monstrous, especially when those without capital often need their health in order to work so as to derive a basic income.

Now is not the time or place to question the good faith or sound policy of those who urge that the injured minority should lose common law rights to be compensated so as to permit election-time boasts that insurance premiums have not increased in line with the need for compensation. But the advocates of this pro-business, anti-populace approach have delayed too long in articulating the principle upon which they rely.

At the heart of any conception of justice, especially so-called lay conceptions of it, is the notion that a recognised wrong should be remedied so that so far as possible the perpetrator rather than the victim carries the burden of making it good. The notion of the remedy being measured by the extent of the damage is basal to our legal system. Commensurate remedies are at the heart of the law of contract, fiduciary and trust obligations, and restitution. At common law, they are still the mainspring of the law of tort. How can a legal system which is forced to abandon that principle in a wholesale fashion long attract essential public trust?

If non-profit community organizations cannot afford risk-rated commercially justified premiums, and the people and Parliament think it would be a pity for their risky activities to be stopped, then Consolidated Revenue to which all taxpayers contribute should subsidise deserving community or charitable insurance. But what is the public policy which chooses artificially to deflate the true social cost of risky commercial activities by sparing the business from paying premiums and denying injured victims a right to compensation?

◆ ◆ ◆ ◆

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In brief

Workers Compensation Commission

On 1 January 2002, the new Workers Compensation Commission was established to determine disputes on worker's compensation claims (where the claim was made on or after 1 January 2002) and deal with some other matters.

The Workers Compensation Commission will replace the Workers Compensation Resolution Service (WCRS). The Compensation Court will continue to deal with disputes in relation to claims made prior to 1 January 2002.

The new commission is located at Level 21, 1 Oxford Street, Darlinghurst NSW 2010. Opening hours are 8.30am to 5pm Monday to Friday. The web site is located at www.wcc.nsw.gov.au. Other contact details for the Commission are as follows:

Phone

Sydney: (02) 9243 8800
NSW Country & Outer Metropolitan:
1300 368 040

Fax

Sydney: (02) 9243 8801
Country & Outer Metropolitan: 1300 368
018

Mail

PO Box 594,
Darlinghurst
NSW 1300

Document Exchange

DX 11524,
Sydney Downtown

Email

registry@wcc.nsw.gov.au

Order of Australia

Officer of the General Division (AO)

The Hon. Justice Terry Sheahan: for service to the law, particularly in the area

of alternative dispute resolution, to the New South Wales Parliament and to the community through organisations concerned with health, care of the aged, human rights and the environment.

Member of the General Division (AM)

His Honour Judge O'Meally: for service to the judiciary, particularly through the Dust Diseases Tribunal of New South Wales and to the community through overseas humanitarian aid projects and membership of a range of charitable and education groups.

Hon Peter Nygh for service to international law, particularly through honorary assistance to The Hague Conference and to Australian law through the Family Court of Australia and the Refugee Review Tribunal.

ABA Life Membership

The Hon. Sir Gerard Brennan AC KBE has been appointed the first Life Member of the Australian Bar Association.



The Prostate Cancer Fund

Bar Charity 2001 - 2002

The New South Wales Breast Cancer Institute at Westmead Hospital and the University of New South Wales Prostate Cancer Research Project at the Prince of Wales Hospital were jointly selected as the Bar Association Charity for 2001-2002. An appeal on behalf the Breast Cancer Institute appeared in the December 2001 edition of *Bar Brief*.

The Oncology Research Centre is part of the Institute of Oncology at Prince of Wales Hospital and is affiliated with the University of New South Wales Department of Medicine. The major focus is prostate cancer, the second highest cause of cancer death in men from Western society and which claims the lives of 3,000 Australian men each year. Accurate diagnosis of prostate cancer is currently very difficult.

The UNSW Prostate Cancer Research Project aims to develop new and complementary methods for early diagnosis of prostate cancer and to investigate mechanisms underlying how

prostate cancer progresses. Given the impact of this disease on the quality of men's lives, the Prostate Cancer Research Project is dedicated to performing directed, high class research to understand what causes prostate cancer and to develop more effective methods for early detection and treatment.

An information brochure may be obtained from the Bar Association web site at www.nswbar.asn.au.

Please send your cheques to the address on the cover slip below and not to the Bar Association. This will identify you as a member of the New South Wales Bar Association and will enable us to calculate the sum of funds raised by this initiative.

**Prostate Cancer Research Fund
C/o Office of the Dean
UNSW Medicine
SYDNEY NSW 2052**

Please find attached a donation for the Prostate Cancer Fund. I am a member of the New South Wales Bar Association.

Please send a receipt to:

Name: _____

Address: _____

Coming Up

For an up to date listing of all CLEs and social functions, visit the Bar Association's web site at www.nswbar.asn.au and click on 'Calendar of events'.

Swearings-in

On Monday 4 March 2002, at 9.30 am, Nigel Rein S.C. of 11 St James Hall Chambers will be sworn in as a Judge of the District Court of New South Wales. Ian Harrison S.C. will speak on behalf of the Bar.

15 Bobbers

Friday, 1 March 2002: to celebrate the appointment of **The Hon. Justice Joseph Campbell**.

Friday, 15 March 2002: to celebrate the appointments of **His Honour Judge John Nicholson S.C.** and **The Hon Justice Wayne Haylen**.

Friday, 12 April 2002: to celebrate the appointments of **The Hon. Justice Buddin** and **His Honour Judge Stephen Walmsley S.C.**

All 15 Bobbers will begin at 5.00 pm in the Bar Association Common Room. The cost of entry is \$15 in advance or \$25 at the door.



CLE seminars

'BarCare': Monday, 18 February 2002, Bar Association Common Room at 5.15 pm. Chair: Anna Katzmann S.C. Speaker: David Goldman

'Whispers in equity' and 'Industrial employment' (CLE unfamiliar jurisdiction series) Thursday 28 February 2002, Bar Association Common Room at 5.15 pm. Speakers for 'Whispers in equity': Philip Hallen S.C. and Craig Leggat. Speakers for 'Industrial employment': Peter Kite S.C. and Ingmar Taylor

'Settlement of plaintiff's personal injury matters' (CLE Monday night series) Monday, 4 March 2002, Bar Association Common Room at 5.15 pm. Chair: Peter Garling S.C. Speakers: Ian Harrison S.C. and Mark Williams S.C.

'The Land & Environment Court' and 'The Family Court' (CLE unfamiliar jurisdiction series) Thursday, 21 March 2002, Bar Association Common Room at 5.15 pm. Chair / Speaker for 'The Land and Environment Court': Malcolm Craig Q.C. Co-speaker: Louise Byrne. Speakers for 'The Family Court': Graeme Richardson S.C. and Richard Bell.

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Rob O'Neill	Lachlan Macquarie Chambers 16 George Street Parramatta NSW 2150	ph: (02) 9635 1000 fax: (02) 9891 1989	ro'neill@lacmac.com.au
Bill Walsh	William Owen Chambers 121A Byng Street Orange NSW 2800	ph: (02) 6361 7959 fax: (02) 6361 7921	
Geoff Radburn	Lismore Chambers 32 Molesworth Street Lismore NSW 2480	ph: (02) 6621 2854 fax: (02) 6621 3898	radburn@nor.com.au
Stewart Austin	Chambers 30 Church Street Newcastle NSW 2300	ph: (02) 4926 2844 fax: (02) 4926 2841	

Pro Bono assistance

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

Members who enlisted in a legal assistance scheme last year are asked to re-enlist this year.

EXPRESSION OF WILLINGNESS TO PARTICIPATE

NAME:

(Please print name in full)

PHONE:

CHAMBERS:

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

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| <input type="checkbox"/> Family law and child support | <input type="checkbox"/> Privacy law |

FEDERAL COURT OF AUSTRALIA LEGAL ASSISTANCE SCHEME

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|--|--|
| <input type="checkbox"/> Migration | <input type="checkbox"/> Industrial Relations |
| <input type="checkbox"/> Administrative Law | <input type="checkbox"/> Trade Practices and Consumer Protection |
| <input type="checkbox"/> Veterans and Social Security Entitlements | <input type="checkbox"/> Native Title |
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| <input type="checkbox"/> Commerical matters | <input type="checkbox"/> Equity (General) | |

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relationships | <input type="checkbox"/> Defamation |

NEW SOUTH WALES BAR ASSOCIATION'S LEGAL ASSISTANCE REFERRAL SCHEME

Please tick the boxes below which represent the practice areas in which you would like to volunteer –

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| <input type="checkbox"/> Building and Construction | <input type="checkbox"/> Local Courts |
| <input type="checkbox"/> Civil & Human Rights/Discrimination | <input type="checkbox"/> Medical Negligence |
| <input type="checkbox"/> Commercial | <input type="checkbox"/> Migration |
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| <input type="checkbox"/> Conflict of Laws | <input type="checkbox"/> Native Title |
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| <input type="checkbox"/> Criminal | <input type="checkbox"/> Property |
| <input type="checkbox"/> Customs | <input type="checkbox"/> Tax |
| <input type="checkbox"/> Defamation | <input type="checkbox"/> Trade Practices and Competition |
| <input type="checkbox"/> Dust Diseases | <input type="checkbox"/> Transportation Law (Aviation/Maritime) |
| <input type="checkbox"/> Equity | <input type="checkbox"/> Wills and Probate |
| <input type="checkbox"/> Family Law | <input type="checkbox"/> Workers' Compensation |
| <input type="checkbox"/> Industrial/Employment | |

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

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

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