



## The Workers Compensation Commission

by **The Hon. Justice Terry Sheahan AO,**  
**President of the Workers Compensation Commission**

Significant changes were made to dispute resolution in the workers compensation scheme in New South Wales in 2001 through amendments passed to the *Workplace Injury Management and Compensation Act 1998* and *Workers Compensation Act 1987*. The thrust of these reforms is ensuring that weekly compensation payments and injury management commence for injured workers without the need for expensive and time-consuming litigation; and that where disputes occur, these are resolved in an expeditious manner. The legislation provides for alternative dispute resolution, rather than litigation, and establishes a framework that encourages early settlement of disputes, rather than protracted Court proceedings.

While the legislation continues to provide for legal representation of parties, the legislation and the *Interim Workers Compensation Commission Rules 2001* (the 'Rules') are directed toward enabling

resolution of the dispute to occur at the earliest possible opportunity, and encouraging parties to reach their own settlement. The new cost regulations (*Workers Compensation (General) Amendment (Costs) Regulation 2001*) are similarly geared toward encouraging early settlement of disputes.

One of the most significant changes in practice for legal representatives of parties is the requirement for information exchange and service. The information exchange provisions require each party to the dispute to proceed on the basis of the full and frank exchange of information upon which they intend to rely. This exchange occurs at the commencement of proceedings.

Failure to comply with the information exchange provisions will prevent documents or information being admitted into proceedings subsequently, except under particular circumstances.

*continued on page...8*



## Towards national legal practice

State and Commonwealth attorneys-general (SCAG) have adopted an ambitious timeframe to achieve a national legal services market.

At their meeting on 8 March 2002 the attorneys-general committed to a process of developing policy options in consultation with the Law Council of Australia. The agreed timeframe should produce model provisions for ministerial consideration by November 2002.

The Law Council of Australia (LCA) will liaise with departmental officers to develop and comment on policy options prior to their presentation to ministers. The New South Wales Bar Association will play an active part in this process.

The LCA has established nine working parties, responsible for examining the

following aspects of national practice:

- Professional indemnity insurance
- Fidelity funds
- Admissions and legal education
- Reservation of legal work
- Trust accounts
- Complaints and discipline
- Regulation of the profession
- Cost disclosure
- Business structures

The President, Bret Walker S.C., will serve on the LCA's reference group, which will examine and approve proposals developed by the Law Council's expert working groups. The Executive Director of the Bar Association, Philip Selth, will be working with all groups, with particular emphasis on admissions and legal education.

## contents

- 2 Continuing Professional Development
- 4 Bar Council business
- 5 Professional conduct update
- 10 Bar Library Bulletin
- 13 Fee recoveries

## Current controversies

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

Not only good things come in threes. As I write, a trio of controversies are of concern to us. The first is Senator Heffernan's speech about Justice Kirby, and the associated question of how the Attorney-General and the Prime Minister addressed the matter. The Bar's position has been well publicised, as the details of press and broadcasting spots attest. It may be this is one matter which can conclude with an apology given and accepted, and in many ways it is in the interests of the administration of justice that it could be so.

On the other hand, there are aspects of the governmental response to Senator Heffernan's speech which plainly leave a strong sense of dissatisfaction. It is to be hoped that the Attorney-General, who I know has conscientiously reached the position he takes on the limited spokespersonship of the Attorney-General for the judiciary, will reconsider that position in light of this unhappy last week. Mr Williams' approach deserves better than some of the angry complaints made against him, but in my opinion its deficiencies were obvious during this affair.

Part of the senator's attack alleged the judge's unfitness to sit on the basis of public statements made well in the past including

*continued on page...12*

# Continuing Professional Development Scheme (CPDS)

By Robert Hayes, Director of Studies

## Bulletin Two:

This issue of *Bar Brief* carries an advertisement for the inaugural CPD conference.

In Bulletin One, I flagged the idea that there should be teams of barristers responsible for curriculum development and teaching in the four key strands of the overall CPD programme. There has been a very high level of interest in membership of these discipline teams. I wrote recently to those who have nominated or been nominated for involvement in the development of the CPD curriculum, and in the next Bulletin, I should be able to announce the outcome of the work of the various discipline teams over the four CPD strands.

The particular focus of the CPD discipline

teams will be the development of a Wednesday evening, fortnightly seminar programme. Involvement in this programme, whether as a chair, a teacher or a learner, may attract one CPD point per hour (depending on the overall requirements). However, as subsequent Bulletins will make clear, there will be many alternate avenues to the ten CPD points required each year.

I will be setting out full details of the CPD programme and requirements, and all of the various avenues for attracting CPD points, in the fourth of my Bulletins, scheduled for the May 2002 *Bar Brief*.

In Bulletin One, I published my contact points, and welcomed communication at any time, on any aspect of CPD. I repeat that invitation. My mobile, on which you can phone me at any time is 0419 600 385,

my direct line is (02) 9229 1722, my e-mail is rhayes@nswbar.asn.au, my fax number is (02) 9221 1149.

I close this Bulletin by urging all members of the Bar to consider seriously the advantages of the inaugural CPD conference. It will be held in a very attractive location. A broad range of highly talented contributors has been secured. You would not have to stay at Peppers Guest House, which is the conference venue. The Hunter Valley has a wide range of accommodation available. As detailed in the advertisement in these pages, the conference organiser is Mr Chris D'Aeth, of the Bar Association's Education Department. Think about contacting Chris now to secure the best possible arrangements for your attendance at what will be an interesting and rewarding conference.



## No mere mouthpiece: Servants of all, yet of none

Join the list of financial supporters

Dear Colleagues

This year the New South Wales Bar Association will celebrate the centenary of its foundation.

To mark this important and historic occasion the Association, in cooperation with Butterworths, will be publishing a collection of essays entitled *No Mere Mouthpiece: Servants of All, Yet of None*.

The title is an adaptation of the Bar Association's logo used by one of the essayists, The Hon. Chief Justice AM Gleeson AC, to convey a central concept of the Bar: that 'a barrister is not a mere mouthpiece for his or her client'.

### Become a financial supporter

In order to raise funds for further study of the history of the Bar, and legal history generally, a list of the names of people who made a financial contribution to the publication will be published as an advertisement in an appendix to *No Mere Mouthpiece*.

Accordingly, the Bar History Committee has resolved that it will publish the names

of contributors by reference to a scale of contributions:

- 'Platinum' contributors will be those who contribute \$2,500 or more.
- 'Gold' contributors will be those who contribute \$1,000 or more.
- 'Silver' contributors will be those who contribute \$150 or more.

Contributions, of any amount, will be gratefully received from any individual or chambers. For example, the generous donation to the Committee's work by the silks of 1998 will be recognised as a 'platinum' contribution.

All money raised goes towards history projects run by the Bar Association.

Members of the Association who seek to be recognised as contributors to the project should send their contributions to the Secretary of the History Committee, Chris Winslow (the Public Affairs Officer of the Association).

For further information, contact Chris (ph: 9229 1732), or Geoff Lindsay S.C.,

Chairman of the History Committee (ph: 9232 6003), or Carol Webster, Assistant Secretary of the Committee (ph: 9224 1550).

Bret Walker S.C.  
President

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Ivan Shearer, Challis Professor of International Law,  
University of Sydney;

Trevor Stacey, Director of IT Services, NSW  
Attorney-General's Department;

Julian Van Aalst

Bret Walker S.C.

Raymond Warouw, Information Architect, Bossa

**For further information contact:**

**conference@nswbar.asn.au • Education staff at the NSW Bar Association on (02) 9229 1721  
and visit the website and follow the conference links: [www.nswbar.asn.au](http://www.nswbar.asn.au)**

# Bar Council business for January and February 2002

## January

### Business arising

#### Legal costs in the calculation of social security preclusion periods

Bar Council noted that the Law Council was pursuing with the Commonwealth Government changes to the way in which the social security preclusion periods are calculated in relation to compensation claims settled on a 'cost plus' basis.

### President's report

#### Independence of the Director of Public Prosecutions

The President referred to the array of media attention in relation to the Opposition Leader's policy on 'accountability' of the DPP and the fixing of terms for judges. He thanked Harrison S.C. and the Executive Director for their work in responding to the Opposition's policy statement.

#### National accident compensation scheme proposal

The President advised that despite the considerable media attention given to Mr Hockey's comments, neither the Commonwealth nor State Governments had yet advanced any proposal for consideration.

The President asked Bar Councillors to give consideration to what the Bar Association might propose in respect of tort liability and the widespread massive increases in indemnity insurance premiums. The Bar Association should bring forward constructive proposals to eliminate any real abuses in the system. He noted recent amendments to the Supreme Court and NSW Barristers' Rules that imposed sanctions for frivolous claims. The President also noted criticism of advertising by lawyers, which was said to have led to a substantial increase in damages and so insurance premiums. Fairly obviously, if there was no merit to a claim, damages were not awarded. The President was not aware of barristers advertising for work.

#### HIH collapse

The President noted that there were a few barristers who faced having claims successfully made against them yet have no professional indemnity cover because

they had held AON PII through the now defunct HIH.

Despite efforts by McColl S.C., when President, to persuade the various authorities to extend support to barristers, neither the Commonwealth nor State was providing assistance.

The President would again raise the matter with the NSW Attorney General, and proposed to also raise the matter with the Commonwealth Minister for Revenue.

### Items for consideration

#### Professional Indemnity Insurance

The Executive Director advised that he had written to insurers regarding their offers of professional indemnity insurance in 2002-2003 and advising of the Association's intention to make an application under the *Professional Standards Act 1994*.

He also advised that insurers had been asked to provide anonymous claims information to the Bar Association so that the Association would be better able to develop risk management strategies and training.

#### Adoption of Scheme under the Professional Standards Act 1994 (NSW).

The President advised that a formal application for approval of a scheme under the legislation would be lodged as quickly as possible. However, this could not be done before professional indemnity insurance renewals for 2002-2003 would need to be effected.

## February

### Business arising

#### Public Liability

The President advised that he would be meeting with Senator The Hon. Helen Coonan, Minister for Revenue and Assistant Treasurer to discuss the escalating cost of public liability insurance and claims that lawyers are substantially to blame because of, for example, their advertising and running unmeritorious claims.

### President's report

#### Meeting with The Hon. Justice Terry Sheahan AO, President of the Workers Compensation Commission

The President informed Bar Council that he

and the Executive Director had met with Justice Sheahan to discuss relations between the Workers Compensation Commission and the New South Wales Bar Association. A seminar was being arranged at which officers of the Commission and members of the Bar could discuss both the new Commission's administrative arrangements and the role of barristers before the Commission.

### Items for consideration

#### The Mum Shirl Fund

Bar Council noted that the Australian Taxation Office had disallowed the Bar Association's objection against the refusal of the Commissioner to endorse The Indigenous Barristers Fund – The Mum Shirl Fund as a Deductible Gift Recipient. Consideration was being given to an appeal being lodged against the decision.

**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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# Professional conduct update

Robert William Cameron

On 1 November 2001 the Bar Council resolved, pursuant to s38FC of the Legal Profession Act 1987, to cancel the practising certificate of Robert William Cameron, with effect from midnight on Saturday 1 December 2001. Robert William Cameron appealed against the cancellation of his practising certificate. On 12 December 2001 Justice McClellan granted Mr Cameron leave to discontinue his appeal. The court further ordered that Mr Cameron pay the Bar Association's costs.

On 8 March 2002, Mr Cameron commenced fresh proceedings in the Supreme Court of NSW seeking orders which provided for the restoration of his practising certificate, which had been cancelled on 1 November 2001. Those proceedings were heard by Justice Simpson on that day. On 20 March 2002, Justice Simpson delivered judgment and declined to uphold Mr Cameron's claims for the restoration of his practising certificate. The formal orders of the Court were that the summons be dismissed and that Mr Cameron pay the costs of the Bar Association.

The position remains that Mr Cameron does not hold a practising certificate entitling him to practise as a barrister.

## Indefinite suspension of practising certificate

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



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# Conferences

## **2nd Australasian Christian Legal Convention, Bond University, Gold Coast, 2-5 May 2002.**

For further information, contact the Christian Lawyers Society on ph: (07) 3211 4366, fax: (07) 3211 4446, e-mail: christianlawyers@qldbar.asn.au or visit their web site at [www.christianlawyers.asn.au](http://www.christianlawyers.asn.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](http://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](http://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](mailto:akwong@leocussen.vic.edu.au).

## **5th AIJA Tribunals Conference, The Chifley on Flemington, Melbourne, 6-7 June 2002.**

The theme of the conference is 'Developing a best practice' and topics will include: 'The establishment of a Council of Australian Tribunals', 'The current status of judicial review' and 'Apprehended bias by reason of pre-judgment and other conduct - pitfalls for tribunals and tribunal members'. For further information, contact the AIJA Secretariat on ph: (03) 9347 6600, fax: (03) 9347 2980, e-mail: [c.crawford@unimelb.edu.au](mailto:c.crawford@unimelb.edu.au) or visit the AIJA web site at [www.aija.org.au](http://www.aija.org.au).

## **Australasian Law Reform Agencies Conference, Darwin, 19-21 June 2002.**

The conference will examine the role of law reform agencies in providing recommendations and how they should be differentiated from proposals provided by academics, the bureaucracy and members

of parliament. For further information contact the conference secretariat, Convention Catalysts International on ph: (08) 8981 1875, fax: (08) 8941 1639 or e-mail: [convention.catalysts@norgate.com.au](mailto:convention.catalysts@norgate.com.au)

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

Registrations for this conference are now the subject of a waiting list. Deposit forms will now be processed but only so as to place them on the waiting list in order for receipt. 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](mailto: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@iinet.net.au](mailto:chooper@iinet.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](mailto:ipaa@bigpond.com).

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

Registrations for this conference are now the subject of a waiting list. Deposit forms will now be processed but only so as to place them on the waiting list in order for receipt.

Visit the ABA Paris Conference web site at [www.austbar.asn.au/](http://www.austbar.asn.au/) for information about conference papers, registration, accommodation and social functions.

## **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](mailto:aija02@im.com.au). Alternatively, visit AIJA web site at [www.aija.org.au](http://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](mailto:info@bbscom.com.au). Information may also be obtained from the conference web site at [www.law.uq.edu.au/congress](http://www.law.uq.edu.au/congress).

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

## **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](mailto:d.magendanz@mailbox.gu.edu.au) or visit the conference web site at [www.iipe.org](http://www.iipe.org). A conference information and registration brochure is held at the Bar Association's Reception.

## **3rd AIJA Technology for Justice Conference, Sydney Convention and Exhibition Centre, Darling Harbour, 20-22 October 2002.**

The theme of the conference is using technology - what can it do for you? Confirmed speakers include Justice David Hunt, who will talk on the role of IT in the work of the International Criminal Tribunal for the former Yugoslavia, The Hague. For further information, contact the Conference Secretariat at GPO Box 2609, Sydney NSW 2001, ph: (02) 9241 1478,

*continued on page...7*

fax: (02) 9251 3552, e-mail:  
techjust@icmsaust.com.au or visit the ALJA  
web site at [www.ajja.org.au](http://www.ajja.org.au)

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

Visit the UIA web site at [www.uanet.org](http://www.uanet.org) to  
download a conference information and  
registration brochure.

**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  
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# Workshop Program March – Dec 2002



An initiative of the Law Council of Australia	March	22-24 Brisbane	General Advocacy Skills
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Australian Advocacy Institute <i>Dedicated to excellence in Advocacy</i>	June	28 - 30 Darwin	General Advocacy Skills
	July	26 - 28 Nth Qld	General Advocacy Skills
	August	9 - 11 Hobart	General Advocacy Skills
		16 - 18 Brisbane	General Advocacy Skills
	September	27 - 29 Sydney	General Advocacy Skills
	October	11 - 13 Melbourne	General Advocacy Skills

## Workshop Method

The workshops consist of instruction,  
performance and review of skills,  
disciplines and techniques of advocacy.  
Participants will perform a number of  
advocacy tasks in small groups.  
Instructors, who are skilled advocates and  
trained teachers, will give individual  
reviews using videos of the training  
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Case Analysis, effective performance  
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## Workshop Materials

Case studies are designed to teach the  
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# The Workers Compensation Commission

continued from page...1

The timeframes for lodging and service, and the penalties for non-complying, mean that both applicant and respondent must be ready to proceed with their respective cases at the time that an application for dispute resolution is lodged.

The manner of dispute resolution has also changed, with dispute resolution being undertaken by Arbitrators, who are legally qualified, or have skills, experience and qualifications in the resolution of workplace injury management disputes. The *Workplace Injury Management and Workers Compensation Act 1998* provides broad and flexible powers for Arbitrators to determine the best way to resolve a dispute and requires that Arbitrators use their best endeavors to bring to the parties to the dispute a settlement acceptable to all of them, prior to determining a dispute. It is anticipated that most disputes will be resolved through mediation, rather than proceeding to a determination of the dispute.

The reforms arose from a need to change a system of litigation in the statutory workers compensation scheme that had resulted in New South Wales having the highest rate of disputed claims in Australia. Approximately 25,000 or 45 per cent of major claims were disputed in the 2000 calendar year. Only 10 per cent of disputes were settled through conciliation, with over 20,000 disputes being lodged with the Compensation Court. Of those disputes lodged with the Court, less than 10 per cent proceeded to a judgement, with over 90 per cent of disputes being settled between the parties on the 'steps of the Court'. The effect of this process for injured workers has been to prolong their injury status and delay the commencement of effective injury management.

The Workers Compensation Commission commenced on 1 January 2002. In addition to its role for dispute resolution under the Statutory Scheme, it also has responsibility for pre-filing mediation processes associated with work injury damages claims.

The Commission is comprised of myself as President; two Deputy Presidents, Mr Gary Byron and Ms Gabriel Fleming; a Registrar, Ms Helen Walker, and appointed Arbitrators. The Minister appoints all

members of the Commission, other than the Arbitrators who are appointed by the President.

The Commission has exclusive jurisdiction to hear and determine all disputes arising from claims made on or after 1 January 2002. For the time being the Compensation Court of New South Wales still deals with disputes in claims made prior to 1 January 2002. In addition to resolving disputes the Commission also registers agreements between the parties for permanent impairment loss (s66A of the *Workers Compensation Act 1987*) and commutation of liability (s87H of the *Workers Compensation Act 1987*).

The *Interim Workers Compensation Commission Rules 2001* set out the practices and procedures of the Commission, including the manner of lodgment of applications, responses and information exchange between the parties. Any party to a disputed workers compensation claim can make an application to the Commission to resolve a dispute about weekly compensation, medical expenses, damage to property, management of the worker's injury in the workplace or compensation for the death of a worker. Disputes concerning permanent impairment can only be lodged by the claimant.

An application for an Interim Payment Direction may be made when an insurer neither commences provisional payments, nor provides a reasonable excuse, nor makes a decision on a claim within the prescribed time period. The Interim Payment Direction provides for payment of weekly compensation for the period supported by the medical certificate (up to 12 weeks) and/or medical and related expenses (not exceeding \$5000) that arise from a work related injury or illness.

Arbitrators, who are required to be legally qualified, or have skills, experience and qualifications in the resolution of workplace injury management disputes, undertake resolution of disputes governed by the statutory compensation scheme. The Act provides broad, flexible powers for Arbitrators to determine the best way to resolve a dispute and requires that Arbitrators use their best endeavors to bring to the parties to the dispute a

settlement acceptable to all of them, prior to proceeding to a determination of a dispute. A question of law, which is novel and complex, arising in proceedings before an Arbitrator may, with the leave of the President, be referred to the President for an opinion.

Decisions of Arbitrators may be appealed by leave if the additional amount of compensation at issue is at least \$5000 and 20 per cent of the claim. All Presidential members can hear appeals.

Approved Medical Specialists, appointed by the President, undertake assessments of medical disputes as to the worker's condition or impairment. The assessment made on a permanent impairment dispute is binding, subject to limited appeal provided under s327 of the Act.

Mediators, appointed by the President, undertake mediations in relation to work injury damages claims.

Comprehensive cost provisions for statutory compensation and work injury damages claims are contained in the *Workers Compensation (General) Amendment (Costs) Regulation 2001*.

Further information, including the legislation, regulations, rules and application forms, may be obtained from the Workers Compensation Commission web site [www.wcc.nsw.gov.au](http://www.wcc.nsw.gov.au) or by phoning (02) 9243 8800 or (toll free) 1300 368 040.



## 5 Selborne Chambers

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Ros Sallows/ Bernadette Nolan

02 9235 1155

# New members of the Bar Association

## Local practising practitioner

Keith Alder  
Stefan Balafoutis  
Joan Baptie  
Jenny Baxter  
Timothy Bland  
Anthony Bowen  
Charles Carroll  
John Carty  
Jeffrey Collins  
Michael Dawson  
Caroline Dick  
Michael Elliott  
Jane Jagôt  
Andrew Justice  
Terence Keaney  
Jeremy Kirk  
Paul Leask  
Paul Marr  
James Miller  
Andrew Naylor  
Christopher Norton  
Simon Philips  
Jane Rawlings  
David Roberts  
Katherine Sainsbury  
Jodi Steele  
Karen Thompson  
Alastair Vincent  
John Weir  
Adam Williams  
Raymond Willis

DPP Chambers, Penrith  
10 Selborne Chambers  
Trust Chambers  
Frederick Jordan Chambers  
Edmund Barton Chambers  
43 Edmund Barton Chambers  
Frederick Jordan Chambers  
Bellingen NSW  
Edmund Barton Chambers  
Ground Floor Wentworth Chambers  
5 Selborne Chambers  
8 Selborne Chambers  
11 St James Hall Chambers  
7 Selborne Chambers  
Frederick Jordan Chambers  
11 Selborne/Wentworth Chambers  
DPP Chambers, Sydney  
Church Street Newcastle  
Hollingsford Crescent, Carrington  
Maurice Byers Chambers  
Crows Nest Road, Wollstonecraft  
12 Selborne Chambers  
Blackstone Chambers  
Larkin Street Roseville  
6 Selborne Chambers  
7 Wentworth Chambers  
Chalfont Chambers  
State Chambers  
McIntyre's Lane Wagga Wagga  
Elizabeth Street Chambers  
DPP Chambers, Wollongong

## Legal practitioner other than a local practising practitioner

Marc Deegan  
Gary Levin  
Abingdon Oxford (UK)  
New South Head Road, Double Bay



# Motor accidents – CIC/FAI

The December 2001 edition of *Bar Brief* advised members that the Motor Accidents Authority (MAA) was close to reaching agreement with the Liquidators of HIH to take over responsibility for outstanding accounts from the CIC and FAI CTP Divisions. These outstanding accounts are for work performed before 16 March 2001. The Nominal Defendant assumed responsibility for claim processing after that date.

The MAA is using Allianz as its claims handling agent.

There is now a concluded agreement between the MAA and the HIH liquidators, under which, barristers who are owed fees for work performed on behalf of CIC and FAI prior to 16 March 2001 are to be paid

the outstanding fees by the Nominal Defendant. In return, the barrister executes a Deed of Release, which allows the MAA to stand in the shoes of the barrister and recover what it can from the liquidation of HIH.

Deeds of Release should have been forwarded to barristers with outstanding fees by Allianz in their capacity as agent for the Nominal Defendant. Please note that Allianz require one completed deed per account. Any barristers who are owed fees for work performed for CIC and FAI prior to 16 March 2001 who have not received a copy of the Deed can obtain a copy of the Deed from the Bar Association reception, ph: (02) 9232 4055, fax 9221 1149 or e-mail reception@nswbar.asn.au.

# Upcoming

## 15 Bobbers

The Hon. Justice Ian Gzell & His Hon. Judge Nigel Rein S.C.

Date: Friday, 12 April 2002

Time: 5:15 PM

Location: Bar Association Common Room

The Hon. Justice Mark Le Poer Trench & Magistrate John Andrews

Date: Friday, 26 April 2002

Time: 5:15 PM

Location: Bar Association Common Room


The Hon. Justice Terence Buddin & His Hon. Judge Stephen Walmsley S.C.

Date: Friday, 3 May 2002

Time: 5:15 PM

Location: Bar Association Common Room





**BRAINWAVES:**  
A Step Ahead Pty Ltd  
A.B.N. 87 084 754 576

**Forensic Sound Laboratory**

Dr Jo Tibbitts of Brainwaves: A Step Ahead Pty Ltd offers the legal profession the best of Engineering services in the high technology area of Forensic Sound. Using the latest Digital Signal Processing (DSP) techniques ensures you have the highest quality and reliability possible with audio evidence and ensures you are confident that the audio evidence in your case has full scientific credibility.	<b>FSL Services</b> <b>Noise Removal</b> <b>Speech Enhancement</b> <b>Speaker Verification</b> <b>Sound Identification</b> <b>Media Credibility</b> <b>Speech Analysis</b> <b>Verified Transcript</b>
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**Dr Jo Tibbitts (PhD, BE Hons)**

P.O. Box 740 Katoomba, NSW, 2780

Phone: 02 4787 6555 Fax: 02 4787 6556

Mobile: 0421 638 595

Email: brainwaves@pnc.com.au

Website: www.pnc.com.au/~brainwaves/

# Bar Library Bulletin

## New Books

**D18.1/HIL/2001** Hill *Ecclesiastical law*, 2<sup>nd</sup> ed, Oxford : Oxford University Press, 2001

**M31/LUM/2001** Lumb & Moens' *Constitution of the Commonwealth of Australia Annotated*, 6<sup>th</sup> ed, Chatswood : Butterworths, 2001

**M31.K1/BLA/2002** Blackshield & Williams, *Australian constitutional law and theory : commentary and materials*, Annandale : Federation Press, 2002

**N20.2/JON/1999** Jones, Swadling (eds), *Search for principle : essays in honour of Lord Goff of Chieveley*, Oxford : OUP, 1999.

**N37.1/LUN/2002** Luntz, *Assessment of damages for personal injury and death*, 4<sup>th</sup> ed, Sydney : Butterworths, 2002

**N112/COP/2002** Copinger and Skone James on copyright, first supplement to the fourteenth edition, London : Sweet & Maxwell, 2002

**N112.6/BAI/2001** Baird, *Copyright and the Internet*, Pyrmont : LAWBOOK Co, 2001

## Electronic Legal Research Quiz

Last month we asked 'who or what is "thalweg"?'. And got some very interesting replies. Yes, 'Thalweg is a French band created in January 2000 that plays a fusion of Celtic and Berber music.' but sometimes there is (or purports to be) an element of *legal* in this quiz.

Irene Nemes went to the OED and found: thalweg 'The line in the bottom of a valley in which the slopes of the two sides meet, and which forms a natural watercourse; also the line following the deepest part of the bed or channel of a river or lake.' But when is anything that simple in law?

Those of you who subscribe to the International Law list would have read this e-mail recently in response to the same question:

Geoffrey Marston's 'Boundary Waters' in *The Encyclopedia of Public International Law*, vol. 1, pp.481-484 at 482 (1992):

International tribunals have not pronounced definitively on the meaning of the term thalweg. The Permanent Court of Arbitration in the *Grisbadarna* Case seemed to equate it with "the most important channel". The Award of the King of Italy in the boundary dispute between Britain and Brazil (RIAA, vol. 11 (1904) p.21) stipulated that some

portions of the boundary should be the thalweg but did not define it. The Award of the King of Spain in the Honduras-Nicaragua Boundary Dispute in 1906 used the expression "watercourse or thalweg" but neither it nor the Arbitral Award of 1906 Case (Honduras v. Nicaragua) defined its meaning. The Supreme Court of the United States, however, stating itself to be applying international law, has frequently considered the meaning of thalweg in boundary disputes between states of the Union. In *Iowa v. Illinois* (147 U.S. 1 (1893)), it considered that as a general rule "the middle of the main channel of the stream" was the boundary. In *Louisiana v. Mississippi* (202 U.S. 1 (1906)), it held that this description was indeed "the rule of the thalweg" and applicable in the dispute before it. In *Minnesota v. Wisconsin* (252 U.S. 273 (1920)), the same Court defined thalweg to be "the middle of the principal channel of navigation" and distinguished it from the line of deepest water. In *New Jersey v. Delaware* (291 U.S. 361 (1934)), thalweg was defined as "the track taken by boats in their course down the stream, which is that of the strongest current.

Also of interest, the same article provides the following re definitions found in treaties:

Definitions in treaties—although many give none—fall into one of at least four types:

- (i) The line of deepest soundings, e.g. the 1808 Treaty between Baden and Aargau (CTS, vol. 60, p. 217), the 1936 Treaty between the United Kingdom and Portugal (LNTS, vol. 185, p. 205).
- (ii) The median line of the main navigational channel, e.g. the 1908 Treaty between Great Britain and the United States (CTS, Vol. 206, p. 377), the 1961 Treaty between Argentina and Uruguay (UNTS, Vol. 709, p. 338). The Peace treaties after World War I mentioned above describe the boundary in navigable rivers as "the median line of the principal channel of navigation" without mentioning the term thalweg, an omission due perhaps to political considerations.
- (iii) The median line of the main navigational channel for downstream navigation, e.g. the 1827 and 1840 Treaties between

France and Baden (CTS, Vol. 77, p. 97 and Vol. 90, p. 31).

- (iv) The navigational channel itself, e.g. the 1811 Treaty between Prussia and Westphalia (CTS, Vol. 61, p. 327). The thalweg here is a zone, so the boundary line will have to be demarcated by further provision, usually by following the centre of the channel."

So, now you know. And there is also a very recent case out there that discusses the meaning of 'thalweg', but we'll leave you to find that on your own (if you can't, just e-mail Mark Robinson 3/Wentworth (marobinson@wentworthchambers.com.au) and he'll tell you.

The editors have to confess to confusing their Bernards last month. Bernard Gross Q.C. was the winner of the quiz – green frogs and humble apologies to him!

This month's question (thanks to Richard Killalea, G/Windeyer) is : Where can you find a document comparing the Gregorian Calendar with the Iranian Calendar?

## WebWatch

### The Meaning of Liff

<http://www-personal.umd.umich.edu/~nhughes/dna/stories/liff.html>

This site is a dictionary gleaned from the mind of someone very strange, but we did find this word:

GLAZELEY (adj.)

The state of a barrister's flat greasy hair after wearing a wig all day.

**Overlawyered.com** <http://overlawyered.com/>

This site digests news stories on outrageous lawsuits (the fugitive who sued the police for not apprehending him before he got frostbite), intrusive regulations (bagpipes may violate European Union noise pollution rules), and insidious legal developments (new war powers for the President).

The website covers mostly US cases but Australia does get a look in. For example, 'a teacher's aide who was unaware cinema seats retracted has won her case against Hoyts cinemas'

And there is this suit from the UK: 'a high court lawsuit accuses the Ministry of Defence of "failing to adequately prepare service personnel for their inevitable exposure to the horrors of war".' Yes, there is an agenda, but it is very funny none the less.

# Open to change?



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# Current controversies *continued from page...1*

some from the Bench during argument: the attack was nonsensical, and the allegations of unfitness had obviously never occurred to anybody else - importantly, including the Attorney-General - who had heard or read the judge's public utterances. Given the Government's willingness in other respects to criticise Justice Kirby's speech-making, it follows that the only reasonable view to be taken of the Attorney-General's erstwhile silence about the speeches quoted by Senator Heffernan was that Mr Williams Q.C., for one, did not believe as a lawyer that those speeches cast any

adverse light on the judge's fitness. The Attorney-General should have promptly and plainly declared that view as soon as the content of Senator Heffernan's speech was known.

The second controversy will run on for some time. This is the difficult problem of tort law reform, as I prefer to label the converging issues described as public liability premiums and medical negligence litigation in the media. It is still too early to be definitive about the problem, as no clear governmental programme has been outlined. The Bar Council has progressed

its consideration of strategic responses in anticipation of some crucial debates.

The third controversy has just arrived, and will be difficult. The legislative package introduced by the Commonwealth Government to counter terrorism raises very serious questions for national security, effective policing, human rights, civil liberties and the rule of law. Of their nature, these issues involve balances and trade-offs. The Bar Council intends to contribute vigorously to the national profession's participation in the debate over these measures.



## Media Briefing

In late February and early March, the Bar Association responded to remarks about public liability insurance premiums, State Government restrictions on advertising by personal injury lawyers and allegations about Justice Michael Kirby by Senator Bill Heffernan. The President and Senior Vice-President briefed the print media and conducted numerous live and pre-record interviews on talkback radio and television.

### Articles written by the President of the Bar Association

'Blaming the advertisers', [Re: Advertising of personal injury litigation services] *Online Opinion* (www.onlineopinion.com.au), 18 March 2002

'The evidence points to grave errors of judgment' [Re: Senator Heffernan], *Australian Financial Review*, 15 March 2002, p.75

'Minister's plan threatens to undermine the rule of law' [Re: Public liability and advertising of personal injury litigation services], *Australian Financial Review*, 8 March 2002, p.53.

### Recent interviews given by the President and Senior Vice-President of the Bar Association regarding Senator Haffernan's allegations about Justice Kirby.

Bret Walker S.C., interview with Vivien Schenker, Radio National, 20 March 2002.

Bret Walker S.C., interview with Mark Colvin, 2CN, 20 March 2002.

Bret Walker S.C. interview with Howard Sattler, 2SM, 19 March 2002.

Alan Jones, 2GB, 19 March 2002.

John Laws, 2UE, 19 March 2002.

Bret Walker S.C., interview with Australia talks back', Radio National, 18 March 2002

Bret Walker S.C., comments on 2GB News, 2GB, 15 March 2002

Bret Walker S.C., interview with Philip Clark, 2GB, 14 March 2002

Ian Harrison S.C., interview with 'Sunrise', Channel 7, 14 March

Bret Walker S.C., interview with John Laws, 2UE, 14 March 2001

Ian Harrison S.C., interview with 'The 7.30 Report', ABC TV, 13 March 2001

Ian Harrison S.C., interview with Mike Carlton, 2GB, 13 March 2002

Ian Harrison S.C., comments on 'The world today', 2BL, 13 March 2002

Ian Harrison S.C., interview with Chris Smith, 2GB, 13 March 2002

Ian Harrison S.C., interview with Howard Sattler, 2SM, 13 March 2002

Ian Harrison S.C., interview with Sally Loane, 2BL, 13 March 2002

### Other interviews

Bret Walker S.C., interview with Sally Loane, 2BL, 8 March 2002

Bret Walker S.C., interview with Chris Coleman, advertising of personal injury litigation services, 'Afternoon Show', ABC Radio New England, 1 March 2002

Bret Walker S.C., interview regarding advertising by lawyers, 'Today Tonight', Channel Seven, 28 February 2002

Transcripts of these interviews may be viewed in the Bar Association Library.

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

*Justice Michael Kirby*, 13 March 2002

*Counter Terrorism Laws Must Pass Tests*, 17 February 2002

### Law Council submissions

*Inquiry into absolute and strict liability offences*, 8 March 2002

*Electronic Transactions Acts & Regulations*, 25 February 2002

*Review of the Guidelines for Expert Witnesses in the Federal Court*, 25 February 2002

*Practice Note and Guidelines on Expert Evidence*, 22 February 2002

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

### Media releases issued by the Australian Bar Association

[Re: Heffernan allegations against Justice Michael Kirby], 13 March 2002



## 50<sup>th</sup> anniversary dinner

The Women Lawyers Association of NSW, founded in 1952, will celebrate its fiftieth anniversary with a gala dinner at NSW Parliament House on Thursday 13 June 2002. The guest of honour and speaker will be The Hon. Justice Mary Gaudron.

Tickets cost \$105 members, \$125 for non-members and can be booked by contacting the Executive Officer Anne Stewart on ph: (02) 9264 3611, DX 11563 Sydney Downtown or via e-mail: [nswwla@ozemail.com.au](mailto:nswwla@ozemail.com.au).

# Changes in fee recovery assistance for members

Since 1 July 1994, Part 11 of the *Legal Profession Act, 1987* (the Act) requires barristers to make proper fee disclosure in respect of fees they propose to charge either to solicitors or directly to the client (when undertaking direct access work).

Part 11 of the Act also provides remedies available to barristers in respect of recovery of their fees. Those remedies, which were not previously available before the introduction of that Part, have caused the Bar Council to recently decide not to continue publication of the Rule 92 list. The Rule 92 list (being Circular No. 69/98) should now be destroyed if remaining in the possession of members and/or clerks.

The Bar Association, however, will continue to assist members with recovery of their fees. Only members who have complied with the fee disclosure requirements of Part 11 of the Act can be given assistance.

The assistance will be provided in the following manner:

- (a) the Association will, upon being satisfied of the member's compliance with the Act, write to the solicitor requesting payment;
- (b) in the event that payment is not forthcoming we will suggest to members that they retain a solicitor of their choice to institute recovery proceedings. Such proceedings are usually commenced in the Local Court and commenced in the member's own name; or
- (c) we will suggest to the member that they are at liberty to retain one of the firms of solicitors the Association has placed on a list of solicitors who have indicated a willingness to undertake fee recovery work on behalf of members.

Those members who have not complied with the fee disclosure requirements of Part

11 of the Act (either in full or in part) will not be able to seek the Association's assistance and/or maintain an action for recovery of their fees in the absence of obtaining an assessment of fees and determination from the costs assessor. The cost of any such assessment must be borne by the member and cannot be passed onto the instructing solicitor or the client (as the case may be).

Individual members with matters in which we are currently giving assistance will be written to separately if the Association comes to a view that the matter has reached a stage in which the Association can no longer provide any benefit.

Similarly, members seeking assistance in the future will be advised in writing as to available options in the event that the Association's efforts have been unsuccessful and the Association is of the view that further correspondence to the solicitor will be fruitless.

Four firms of solicitors have provided information as to the manner in which they will charge if retained by members. The charging differs between those firms and in particular depending upon the seniority of the solicitor undertaking the work.

Details of the charging will be made available to clerks and also will be available from the Association's Professional Conduct Department.

Members will be required to contract directly with any firm of solicitors ultimately engaged whether that firm is one of the four included in the list referred to above or a firm of the member's own choice.

The Association will not be responsible for any legal fees incurred by members nor does the Association give any assurance in respect of the quality of the service provided.



## Introducing Catherine Hutchins

Catherine Hutchins is the inaugural recipient of the New South Wales Bar Association's post-graduate scholarship for the study of Australian legal history.

The purpose of the scholarship is to foster interest in the history of barristers in New South Wales and to support postgraduate research by law or history students enrolled at Macquarie University.

Catherine, who lives in South Australia, will be supervised by Professor Ros Atherton at Macquarie University, and by Alex Castles in Adelaide. To supplement the research on her thesis, Catherine has agreed to work with Ian Barker Q.C., Wendy Robinson Q.C. and Carol Webster in preparation for a lecture on 'The history of trial by jury', to be held later this year.

Catherine believes that an understanding of the history of demographic, political, economic and social influences on the Bar is fundamental in determining its future, not least with respect to judicial appointments, both Commonwealth and State. In her thesis proposal, she argued that 'the history of the organisation of the legal profession in New South Wales provides a crucial starting point for such an analysis - a basic measure for determining the future standing of the Bar in Australia'.

In 1997, Catherine graduated at the top of her class with first class honours, after reading history at Adelaide University. During her undergraduate career Catherine's studies concentrated on social, economic and political history in modern age Europe and Australia, culminating in an honours dissertation examining the cultural history of sport in Australia.

While studying history, she commenced her law degree and graduated with honours in 1999. After graduation Catherine worked in a number of public law positions. She has variously performed research work for several law journals, the legal faculties of Adelaide and Flinders University, and the SA Department of Industry and Trade. Most recently Catherine has served as an Associate for the Administrative Appeals Tribunal.

## Bar Association Liquor Bar

The liquor bar no longer runs a credit system.

A cash system and credit card/EFTPOS machine (Amex, VISA, Mastercard and Bankcard accepted) are available for your convenience.

# BarCare for members seminar

## 18 February 2002

### A balancing act: Surviving and thriving in private practise

By David Goldman

When you don't have any money, the problem is food. When you have money, it's sex. When you have both, it's health. If everything is simply dandy, then you're frightened of death.

J P Donleavy

I have a new philosophy. I'm only going to dread one day at a time.

Charles Schulz, *Peanuts*

I am talking to you today to provide a brief overview of the new BarCare scheme and to share some observations as a psychologist of the particular stresses that appear to relate to barristers as a group. BarCare arose out of the recognition that such stress issues need both to be acknowledged and acted on. I'll talk more about the BarCare scheme later in the paper.

I would like to share some selected case histories with you based on my work in therapy with a number of barristers over the years.

**Case study 1** \* My 51-year-old client Joseph proudly recited that all you need to achieve a balanced lifestyle is plenty of laughter, vegetables, sex and fish, in no particular order. Problem was there was nothing to laugh about because he was a male, middle-aged, bored barrister who hated all things vegetable and was too tired and/or anxious for sex or intimacy. He did like fish & chips but his cardiologist had threatened to sack him as a patient if he didn't lose 30kg. We discovered soon after the commencement of therapy that if health and balance was a rational thing, psychotherapists would not be required. As a defence against his powerlessness to fight his addictions, he wore his unhealthy lifestyle like a badge of honour.

His tongue was vicious and his wit mocking sometimes cruel. Heaven help the young vegetarian para-legal or the slim and muscular but tongue-tied young barrister he would mock in order to prove intellectual superiority. His envy of the ordinary and the unaffected escaped him completely until it gradually revealed itself during the course of therapy. He was competitive and driven in a self-defeating way due in part to self-acknowledged early insecurities and a fear of never 'measuring up'. His thinking gradually changed from

the combative 'take no prisoners' approach to recognising the prisoner he was himself becoming. His humour became more self-deprecating. He became more aware of his self-centredness [and /as??] the origins of his mood swings. He had long known of his self-contempt but it helped to admit it to himself. Moderation has entered his life because space has entered his rigid mind. He is losing weight and gaining strength slowly and steadily. He is getting good feedback, which spurs him on. He is genuinely proud of himself and people important to him are proud of him. And although he still never has time to go to the gym, he allows himself a walk to work most days and tries not to berate himself if he doesn't make it. And he is happy to bore anybody stupid with the virtues of his hard-fought-for regime that is not 'perfect'.

Fear of the consequences of unhealthy lifestyles alone does not appear to be a sufficient deterrent for the overstressed and vulnerable individual. I'm sure we have all seen or heard of the quadruple bypass patient 'living it up' with smoking and booze, invincible and contemptuous long after the operation.

*I don't fear death. I just don't want to be there when it happens.* Spike Milligan

**Case Study 2** – Senior barrister 60-odd, affable, confident, weary, self deprecating, believes emphatically there is no excuse for working 12 to 14 hour days. Court time is between 10.00 and 4.00pm with a conference one hour before and one hour after = eight hours. He said if you're silly enough to plan a conference between 5.00 and 7.00pm and then 'reward' all your hard efforts by an excessive dinner and too many wines, and cop misery on your return home, you only have yourself to blame. He believes time management or lack of it is one of the greatest bugbears of modern practice. If now he has to work 14-hour

days he doesn't do it too many days in a row. He has learned the hard way: two failed marriages, one nervous breakdown, bankruptcy, loss of referral base. The near loss the third marriage, a major health scare and dwindling credibility in practice was enough to dramatically change his lifestyle. He is now aggressively determined to survive.

**Case study 3:** Female barrister, Meredith, 41, extroverted, highly ambitious and successful, one son aged eight. Married 15 years to law school dropout turned musician/actor. Came to therapy feeling she has 'lost her edge', without which she fears she cannot effectively compete in what she regards as the 'man's world' of the Bar. The recent two-year anniversary of her mother's death affected her even more acutely than the first anniversary, and though she didn't understand what 'dealing with' her mother's death really meant, she sensed on some level that she hadn't dealt with it and felt she was slowly falling apart.

She had become increasingly resentful towards her husband for his freedom and envied his creativity, especially as she is a talented artist who has been unable to complete a single work for two years. Her husband is supportive with childcare and keeps the house in order but she still finds herself, despite her total exhaustion at the end of the day, frantically doing housework after coming home at night. Although a fine leader and a good and conscientious student, she always felt isolated, like she was 'in a world of her own'. She was an only child, her mother one of the country's first female surgeons and her father a frustrated but affable writer. It was not long before her father died when she was 26 that she admitted to herself he was an alcoholic. She was devastated by his death

*continued on page...15*

and was puzzled by her mother's apparent lack of sadness compared to her own. As professional women, she remembered her mother would say she 'floated above' any negative emotion or stress. 'You've got to survive' she would say; 'and don't think for a minute that your difficulties are comparable to when we went through. We paved the way for you women. You've been cruising along in our jet stream'.

Through therapy Meredith became aware of the link between her mother's death, her lost creativity, her crisis of identity as a successful female professional and her ability to survive in a man's world without her mother's living example. Instead of expressing her concerns to him directly, her anxiety regarding her son's possible retreat into his own world, as did she as a child, was expressed in her obsessive need to over-compensate with the housework to create the illusion of normalcy... that *her* house was in order. She had kept busy to avoid a reflective kind of thinking; to avoid the anxiety.

Gaining awareness of her buried anxieties led to a freeing-up of energy that she could now devote to her work, and this improved her confidence and concurrently reduced the unnecessary and exhausting repetition of domestic chores at night. She felt that her relationship with her partner, though always stable, improved in intimacy. She was able to see her husband and son more as they actually were and see how her image of them had gradually become influenced by her own experiences in her difficult younger life. Her self-criticism, linked to her inability to attain the ideal of perfection apparently modelled by her mother, was challenged in therapy and appears to be softening. The awareness, still in embryonic form, of positive and loving feelings her mother felt for her, sustains her and gives a sense of meaning and purpose to the notion of 'dealing with' her death.

I have chosen this case to illustrate that the personal experience of stress that becomes manifest in the context of the workplace is often related to hidden or not immediately apparent factors in an individual's inner and family life. What might be underlined is how the power of a critical life event (such as death of a parent, illness/death of spouse or child, financial crisis and others) can push an otherwise coping person quite suddenly into crisis and a breakdown in coping.

People present for therapy for many and varied reasons. Commonly, critical incidents or major life events are the catalysts but

nearly as often, nebulous or apparently minor events can trigger the individual to 'pick up the phone'.

'How men hate waiting while their wives shop for clothes & trinkets; how women hate waiting, often for much of their lives, while their husbands shop for fame and glory' – Thomas Szasz 1973.

I've heard from a number of barristers that financial pressures and insecurity, despite large incomes and thriving practices continue to weigh heavily, sometimes for whole careers. Barristers, as sole practitioners, are often not well trained in the practicalities of running a business. They spend their money before and after they have it, often achieving a net loss. And then there's tax to think (or not think) about. Indeed, with a two-hour investment in learning the esoterics of accounting software and a subsequent 10 minutes per daytime investment, one can make a huge difference to the ongoing struggle to stay on top of things. But who's got time? Procrastination can be an insidious force that weaves its way into almost every area of a person's life.

Now a few words about BarCare. I've been heartened to observe the positive response to this new scheme. Historically, according to members of the Bar Association with whom I spoke, the idea of a care scheme for barristers experiencing emotional difficulties was considered airy-fairy. In recent times the difficulties professionals face has reached mainstream public awareness, particularly in those professions at the high-pressure end of the spectrum. Barristers, doctors, lawyers, police, accountants and psychotherapists all have formal or quasi-formal support structures in place. In this and other schemes clients have put their hands up for help who otherwise would never have dreamed of doing so, simply because an 'offer' (in our case the introductory brochure) presented itself and something clicked in that individual.

BarCare is funding the initial counselling/assessment session for barristers and if appropriate their spouses and children. I am the clinical psychologist provider and there is a social worker specialising in family issues and two city based GPs, one male, one female. We all have networks of specialist colleagues for the purpose of referral, if required.

The BarCare scheme assures confidentiality. BarCare Counsellors are not required to submit clients' names to

the Bar Association at any point throughout the professional contact. The BarCare structure is based on lessons learnt from similar schemes but is also in a sense being created from the ground up. We will appreciate input from all of you as to how we can make the scheme as meaningful and user friendly as it can be.

Some barristers may feel they will be disadvantaged in some way if they seek formal counselling under the auspices of BarCare. It should be noted that the scheme has not been set up solely for the treatment of clinical (diagnosable) conditions such as manifest depression or anxiety disorder. Indeed, it is important that quality help is received before stress develops into a diagnosable illness.

'Increasingly, I believe the kind of 'physician heal thyself' approach. In my 20's I was involved in movements to change the world. Now I feel the best way for me to influence the world is to get myself in shape. I would like to see lawyers do more to change themselves. It's all about authenticity; living life by being true to who you are'. John Clark  
The Money or Your Life.

**How do we recognise symptoms in others?** Some barristers believe the senior barrister on the floor/mentoring system works well and some others regret that it doesn't work at all. I have received both types of feedback and believe there is a desire among many to institute such a scheme on a more formal/systematic basis. This is something for further thought and will be explored in a future paper.

\* In the service of confidentiality, case studies are hybrids of real clinical examples and are for discussion purposes only.



## Bar Association staff

Lorraine Haycock has been appointed to the position of Assistant to Terrie Gibson, the Bar Association's Professional Conduct Director. Lorraine worked at Cutler Hughes and has worked as a legal secretary at partner level for over 15 years. Lorraine commenced duties on 18 March.

# Appointments

## Acting judges

The Hon. Acting Justice Smart has been reappointed to act as a Judge of the Supreme Court, effective 4 March 2002 to 3 March 2003.

## NSW Land and Environment Court

Dr Nicola Pain has been appointed as a judge of the Land & Environment Court of NSW, effective 18 March 2002.

## NSW District Court

Anthony Blackmore S.C., Deputy Director of Public Prosecutions, has been appointed as a judge of the District Court of New South Wales, effective 11 March 2002.

Mr Nigel Rein S.C. of 11th Floor St James Hall Chambers, has been appointed as a judge of the District Court of New South Wales, effective 4 March 2002.

## NSW Local Court

Cecil Brahe has been appointed as an Acting Magistrate and Mining Warden effective 23 March 2002 to 22 March 2003. Mr Brahe has also been appointed as a part-time member and as Chairperson of the Victims Compensation Tribunal for the same period.

## Public defenders

Peter Berman, S.C., has been appointed as Deputy Senior Public Defender effective 4 March 2002 to 3 March 2007.

## Crown prosecutors

Jennie Girdham and Eric Balodis have been appointed Crown Prosecutors, effective 18 March 2002 and 25 February 2002 respectively.



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