



Professional Standards Scheme: an update

This article addresses a number of issues which may need to be taken into account in fee disclosures and agreements forwarded after 19 January 2005, and later in the year when members of the association are deciding upon levels of cover for professional indemnity policies. It also discusses some issues under the scheme which will affect interstate members and NSW members intending to practise interstate.

Treasury Legislation Amendment (Professional Standards) Act 2004 (Cth)

On 19 January 2005 the scheme will commence under New South Wales law. Application has been made by the Bar Association to the federal government to prescribe the scheme for the purposes of relevant federal legislation. Unless and until that occurs, barristers will not have

limited liability under s52 of the *Trade Practices Act 1974*, for any alleged misleading and deceptive conduct arising from, for example, incorrect advice. Similarly, only after prescription will there be protection from provisions similar to s52 in the *Australian Securities and Investment Commission Act 2001* and the *Corporations Act 2001*. We have no indication at present from the federal government about our request to have the scheme prescribed.

The \$1 million cap

In its submission to the Professional Standards Council, the Bar Association relied on the fact that, with one well-publicised exception (which was reversed on appeal), claims data provided by insurers for the last 10 years showed that there has not been a verdict against a New South Wales barrister, nor a paid claim, for more than \$1 million.

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Working with statutes

The New South Wales Bar Association will be hosting a seminar on statutory interpretation and related topics on **Friday March 18 and Saturday March 19, 2005**.

This event is planned to be one of the most useful and stimulating legal conferences of 2005. Attendance numbers will be limited.

Guest speakers at the event include Professor Philip P Frickey, the Richard W. Jennings Professor of Law, University of California at Berkeley, Professor Geoffrey Lindell, Adjunct Professor of Law, University of Adelaide, the Hon Justice W M C Gummow AC of the High Court of Australia, The Hon Justice F H Callaway of the Victorian Court of Appeal and The Hon Justice J L B Allsop of the Federal Court of Australia.

This intensive two day seminar aims to develop understanding and skills in the all important task of interpreting legislation in court and in advice.

Enacted law is clearly the pre-dominant

subject-matter of most contested litigation and reported cases, as a glance at most headnotes will reveal. Serious disputes which involve no element of statute law at their heart are rare to the point of vanishing. Yet law schools hardly ever teach statutory interpretation as a discrete skill.

The New South Wales Bar Association has arranged this seminar with the intention of bringing practitioners together with leading scholars and judges to discuss some of the current problems and issues of most importance in contemporary litigation.

The seminar will be preceded by the Sir Maurice Byers Address on the evening of 17 March 2005, to be delivered by the Hon Justice W M C Gummow AC, a judge of the High Court of Australia. Justice Gummow worked more closely on the most important cases argued by Sir Maurice as the Commonwealth solicitor-general than anyone else. Justice Gummow's Clarendon lectures, *Change and continuity: statute,*

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equity, and federalism, illustrate his abiding interest in the critical importance of working with statutes.

The seminar itself will occupy the Friday and Saturday, mornings and afternoons, 18 and 19 March 2005. Four main speakers with two commentators will address a range of topics.

The conference will be held at The Westin Sydney (a short stroll down from Martin Place from the legal precinct in Phillip Street) and will conclude with a dinner on Fort Denison.

New South Wales barristers will be able to claim 10 CPD points across the three strands: ethics, substantive law and advocacy.

For further information contact The New South Wales Bar Association's Event Co-Ordinator, Mr Travis Drummond on ph. 9229 1720 or tdrummond@nswbar.asn.au.

A conference registration form is on page 2.

Perimeter security in the Law Courts Building

From 31 January 2005, 'airport-style' perimeter security will be implemented in the Law Courts Building, Queens Square, Sydney. All people accessing the building will be security screened.

1. Entry to the building

All entry to the building will be through the northern Macquarie Street or Philip Street doors. Access will no longer be available through Wentworth Chambers or the southern Macquarie Street or Queens Square doors.

2. Hours of operation

The building will be open to the public between 7am and 6pm, Monday to Friday through the Philip Street entrance. The Macquarie Street entrance will be open from 8am to 5.30pm.

3. Security screening

Individuals will be required to walk through a magnetometer. Carried items such as briefcases or handbags will be placed on a conveyer belt and passed through an x-ray machine. To prevent lifting injuries, heavy bags may be carried through the Walk Through Metal Detector (WTMD) and will be physically checked by sheriffs officers. Book trolleys will pass through the WTMD and will not be unloaded for screening.

4. Assistance for people with specific needs

Special arrangements will be made for those building users with specific needs, such as those who use wheelchairs, those with pacemakers or people with strollers or prams.

5. Trolley access

Book trolleys are permitted into the building at any time except between 9.45am and 10.15am.

6. Surrendered items

Mobile and camera telephones will be allowed into the building, but the use of these telephones to make tape recordings or video or photographic images will not be permitted. Certain items, such as weapons (including firearms and prohibited weapons) and dangerous substances and articles, may not be brought into the building and they will be stored at the building entry area. Security staff will issue receipts to facilitate collection of surrendered items upon exit from the building, save and except for items the possession of which may constitute an offence. The police will be contacted in respect of any such item to determine whether they may be returned.

7. Deliveries

All parcels and mail will be screened and deliveries to the basement can only be made by prior arrangement.

8. Court start times

Some court starting times may change in the coming months. Please carefully check court lists.

9. Enquiries

All enquiries should be made to Law Courts Limited on ph: (02) 9230 8015.



WORKING WITH STATUTES

I/We wish to attend the Working with Statutes Conference on Friday 18 March & Saturday 19 March 2005

- Conference Attendance - \$700 (GST Inclusive)**
 Dinner, Fort Denison Saturday night - \$120 (GST Inclusive)

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Chambers / Firm: _____

Phone: _____

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Please note that due to catering arrangements, no refunds are possible.

Bar Council business for November 2004

Justice Jeff Shaw

The president referred to the avalanche of media reports concerning Justice Shaw's recent motor vehicle accident and the loss of his blood sample taken at the Royal Prince Alfred Hospital. The president had spoken on the Sally Loane programme on Wednesday 3 November 2004 where he had emphasised the need for Justice Shaw's legal rights to be no less than any other member of the public. The president and executive director had received a number of comments, including from the judiciary, supporting the president in that interview.

'Time to stop protecting boozy mates', *Sydney Morning Herald*, 4 November 2004

The executive director informed the council that he had written to the editor of the *Sydney Morning Herald* to 'set the record straight' about the inaccurate and offensive article which suggested that the Bar had done nothing to support barristers who 'worked in a high stress culture where alcohol often became part of every day life'.

The executive director had spoken to the editor of the *Herald* and pointed out the inaccuracies in the article and, in particular, the establishment of BarCare in 2001. The *Herald* would be publishing part of the executive director's letter, although he understood that the *Herald* was not prepared to publish those parts of the letter critical of the *Herald* and its reporter. The full letter would be published on the association's web page.

Valedictory

The president noted that tonight's meeting was the last for the 2004 Bar Council. He thanked the Bar councillors for all their work and support during what had been for many reasons a fairly tough year. The council had had to grapple with some complex and very divisive issues. He was indebted to the Bar councillors for the professional and harmonious way in which they had addressed these issues.

The president expressed his thanks to the members of the executive for all their help and support. The president also expressed his thanks to the executive director and

the staff of the Bar Association. He continued to be impressed with the staff's courtesy, hard work and cheerfulness, often under difficult circumstances.

Thank you to the president

The senior vice president, speaking both personally and on behalf of the Bar Council, expressed appreciation for the president's work over the past 12 months. The president had cheerfully devoted long hours to the interests of the association. The senior vice president noted in particular the president's deft handling of the media and willingness to publicly address contentious issues; his spirit of optimism and realism in his communications to the Bar particularly at this difficult time for many barristers; and the fact that he knew by name every member of the association's staff and went out of his way to support their work.

The Bar Council expressed their unanimous support of the senior vice president's remarks by acclamation.



Letters to the editor

New South Wales Law Reports

The *New South Wales Law Reports* are about to commence publication of Volume 60 and I have taken the liberty of using that occasion to remind readers of the independent publishing of the reports.

In 2001, commencing with Volume 51, the Council of Law Reporting, a body set up by statute, undertook the role of publisher rather than rely upon one of the major legal publishers. The history of the reports and background to that decision are contained in a brief summary at the front of that volume.

I fear that many lawyers in New South Wales still do not appreciate that the NSWLRs are wholly independent of the major publishing houses. It is for this reason that subscribers are separately billed for the reports. We hope they also appreciate that the recent introduction by the council of a strict policy on debtors was necessary to secure the income of the council and insure the long-term viability of the reports.

The council is also undertaking other important projects. A comprehensive index of the *State Reports: New South Wales* is being compiled. This has never been previously undertaken.

In the next few months the council hopes to release a new consolidated paper index to the reports in two volumes. It is hoped this will further enhance usefulness of the NSWLRs to the profession.

The council has also given assistance to the Francis Forbes Society for Australian Legal History which is about to publish *Dowling's select cases 1828-1844: Decisions of the Supreme Court of NSW*.

Comments or suggestions, addressed to the editor are always welcome.

Christopher Birch SC

Chairman

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Professional Standards Scheme: an update

Continued from page 1

Interstate work

The question of whether the scheme will provide protection for interstate work will need consideration, especially when members concerned are fixing levels of cover. There is no provision in the scheme specifically excluding interstate work, and until the matter is clarified by judicial decision, no concession that such work is not covered is likely to be made. The scheme itself requires only that the person be a member of the association, the holder of a New South Wales practising certificate and the holder of an appropriate insurance policy at the time of the act or omission giving rise to liability. The scheme adopts the Act's definition of 'occupational liability'. It is mainly in relation to the expressions used in that statutory definition that any question of limitation to New South Wales may arise. Section 12 of the Interpretation Act provides in effect that, inter alia, any matter or thing mentioned in a New South Wales statute will be presumed to be in and of New South Wales. Certain of the expressions in the definition of 'occupational liability'

(including the reference to act and omission) may arguably fall into that category.

The question may never arise because it is hoped by the Professional Standards Council that within several years there will be in place an integrated set of provisions in all States and Territories and that schemes which are in force under New South Wales law may then be recognised in all such places.

Disclosure to lay clients and disclosure in relation to interstate work

At one of the recent talks given on the topic, a question was asked about the disclosure provisions of the Professional Standards Act 1994 (NSW) (s33) and in particular whether disclosure to the lay client is required. Section 33 provides that if a person's occupational liability is limited in accordance with this part, all documents given by the person to a client or prospective client that promote or advertise the person or

person's occupation, including official correspondence ordinarily used by the person in the performance of the person's occupation and similar documents, must carry a statement to that effect. (A business card is specifically excluded by ss(5).) The effect of that section appears to be that unless the lay client is a person to whom such documents are directed, he or she need not receive (written) disclosure as such of the limitation of the barrister's liability. Nevertheless, of course, it will be desirable for the barrister, in fees agreements and disclosures, to request the solicitor to notify the lay client that the barrister's liability is limited in accordance with the scheme.

Interstate members who have a New South Wales practising certificate and a policy of insurance complying with the scheme will be subject to the same disclosure requirements of s33. For interstate members at least, prudence and candour may require it to be added to the disclosure provided by the section a statement to the effect that until the matter has been determined in the courts, it will not be certain that work done outside NSW is covered by the Professional Standards Act.

For all members who fulfil the conditions stated in the scheme (whether or not NSW residents) the Professional Standards Council has indicated that a disclosure should be made irrespective of the jurisdiction in which the service is provided.



Use of Bar Association logo on letterhead

The Bar Association has received a number of enquiries from members who would like to use the association's logo on their letterhead.

At its meeting on 29 July 1999, the Bar Council Executive resolved that members of the Bar Association would be able to include on their letterhead the statement 'Member of the NSW Bar Association', so long as they remained a member.

However, use of the association's logo is for use only by the Bar Association.

Appointments

Supreme Court

Peter Johnson SC has been appointed as a judge of the New South Wales Supreme Court. He will be sworn in at a formal ceremony in the Banco Court at 9.30 am on Tuesday, 1 February 2005.

Local Court

Michael Holmes has been appointed as a magistrate of the Local Court of New South Wales. He will be sworn in on Monday, 17 January 2005 at 9.00am, in Court 5.2, Downing Centre.

Retirements

A ceremonial sitting of the Federal Court will be held in Sydney on Thursday, 10 February 2005 to mark the retirement of the Hon Justice Bryan Beaumont as a judge of the Federal Court of Australia. The ceremony will be held at 9.30am in courtroom 21A, level 21, Queens Square, Sydney.



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**WE WOULD LOVE TO HEAR
FROM YOU**

The Faculty of Law is developing an ongoing and dynamic alumni program that will enable the Faculty to maintain contact with former students and staff. It will also provide an opportunity for former students and staff to maintain effective and enduring links with the Faculty of Law and with each other. Dr Rebecca Bradfield has taken on responsibility for the development of the program. Rebecca graduated from the University of Tasmania with a Bachelor of Arts/Law in 1994 and a PhD in 2002. Features of the program will include a website, newsletter and the organisation of social functions.

As a first step, the Faculty is working with the Alumni Office in a pilot project to locate as many law graduates as possible and to enter their contact details on the new Raiser's Edge database that has been commissioned by the Alumni Office and University Foundation.

We would love to hear from you - please let us know your new details and where your law degree has taken you. If you are in touch with other graduates, encourage them to make contact with the Faculty of Law.

You can update your details by contacting Rebecca by email Rebecca.Bradfield@utas.edu.au or by telephone +61 3 63 334499.

Alternatively, details can be updated online at <http://www.alumni.utas.edu.au/changeofadd.html>.



Opening of Law Term 2005

The following church services will be held to mark the opening of Law Term 2005:

Monday, 31 January

9.00am: Red Mass, St Mary's Cathedral

10.30am: Anglican service, St James' Church, King Street

2.00pm: Uniting Church service, St Stephen's, Macquarie Street

The Jewish service to mark the opening of Law Term will take place on Friday, 4 February 2005 at 5.30pm in the Great Synagogue, 166 Castlereagh Street.



THE AUSTRALIAN BAR/IRISH BAR JOINT CONFERENCE DUBLIN 29 JUNE TO 2 JULY 2005

Expressions of interest are now being taken for the Australian Bar Association Conference to be held in Dublin between 29 June and 2 July 2005.

The names of those interested will be placed on a Priority List to receive a registration brochure prior to any general mailout.

Questions about registration?

Contact:
Dan O'Connor
ABA Conference Secretariat
Tel: (07) 3238 5100
Fax: (07) 3236 1180
mail@ustbar.asn.au

Questions about Travel?

Contact:
Ruth Carlton
Synergi Travel
Tel: (07) 3225 7400
Fax: (07) 3225 7444
ruth.carlton@synergitravel.com.au



Casual teaching at UTS

The Faculty of Law UTS invites applications for expressions of interest for casual teaching positions in the Practical Legal Training Program. Students at UTS undertake the Practical Legal Training Program as part of the undergraduate program or in postgraduate study.

The subjects taught within the program are:

- litigation;
- property transactions;
- commercial & estate practice;
- advocacy;
- legal skills & professional awareness;
- professional conduct 1 (legal accounting); and
- professional conduct 2 (legal ethics).

Recent significant legal practice in one of these subject areas and excellent interpersonal skills are essential. Recent teaching experience is desirable.

Duties of the position include:

- delivering workshops and seminars; and
- marking and assessing student assignments.

For further information please contact the Director, Practical Legal Training Program, Vedna Jivan on 9514 3402.

Expressions of Interest should be sent to Vedna Jivan by 28 January 2005.

LAWASIA downunder 2005

21-24 March 2005 | Gold Coast Queensland Australia



The Leading Legal Conference for Asia and the Pacific in 2005

Set to take place from March 21-24, at the glorious Queensland Gold Coast, *LAWASIA downunder 2005* will undoubtedly be the leading legal conference for Asia and the Pacific in 2005.



LAWASIA downunder 2005 will combine the international interest created by LAWASIA's traditional biennial conference, with the national profile of the Law Council of Australia's 34th Australian Legal Convention – the Meeting of Meetings.

The conference is proudly arranged and hosted by the Queensland Law Society, and its 44th Queensland Law Symposium will be held under the *LAWASIA downunder 2005* banner, bringing a unique networking opportunity to Queensland practitioners, as well as the chance to show off their home state to national and international legal colleagues.

Importantly, the conference will run concurrently with the 12th Conference of Chief Justices of Asia and the Pacific, with the Chief Justices combining their activities with those of *LAWASIA downunder 2005* at various times throughout the week.

In addition, the Australian Standing Committee of Attorneys-General (SCAG), will meet in conjunction with the conference.

What to expect from the program

The work program will cover (9) separate streams:

- Criminal Law
- Dispute Resolution/Litigation
- Human Rights and Constitutional Law
- Trade and Business Law
- Intellectual Property Law
- Legal Practice
- Family Law
- Property and Succession Law
- Legal Education

A panel of high profile practitioners, academics and others has been appointed as session rapporteurs, and to them goes the honour of arranging some (60) sessions within those streams. The work program will cater to the practical, the esoteric, the commercial, the inspirational and the need to collect CLE points, and each session will include expert speakers at regional, national and state level.

Bringing the profession together from around the region

Traditionally, delegates at a LAWASIA Biennial Conference come from as many as 30 different countries from the region and beyond, and tend to be drawn from amongst the leading law firms and chambers. LAWASIA's national member organisations send representatives, so the opportunity for delegates to mix with the leaders of the Asia-Pacific profession is an invaluable one.

LAWASIA downunder 2005, as an educational event, will provide

a climate that promotes open and informed discussion aimed at fostering regional uniformity and understanding in the increasingly cross-jurisdictional legal world. As a professional event, it will bring together those who have an active interest in the development of the profession and the welfare of those who practice in it. As a networking event, it creates opportunity to develop state, national and international relationships.

The social program will combine formal and informal occasions that will deliver a uniquely Australian social experience to overseas guests, and that will bring Australian colleagues together to celebrate the sense of belonging to an international legal community.

An exciting new venue

The conference venue, the Gold Coast Convention and Exhibition Centre, is a brand new facility in the heart of this popular destination, one that



needs no introduction to Australian delegates. Those coming from overseas will enjoy the chance to explore some of the area's attractions, which range from endless white sandy beaches, breathtaking hinterlands and golf at over 30 world class courses to international shopping, casinos, theme parks and zoos.

One of the major benefits of this destination is the comprehensive variety of accommodation that the conference can offer. Conrad's Jupiter Hotel, attached to the Convention Centre, will be the 5 star jewel in the accommodation crown, but other possibilities, including apartments for the family and friends-minded and 3 and 4 star hotels for the budget-conscious will be readily available, and within easy reach of the conference venue.

In that context, potential delegates might note that the conference dates are set to lead into the Easter vacation, and there is no doubt that the Queensland coast would be a highly desirable spot to spend a few post-conference days.

In all, there will be something for everyone at *LAWASIA downunder 2005*. The conference organising committee members are drawn from the three organisations that are coordinating to put the event together, so the needs of legal professionals at all levels and in all areas of legal interest are addressed.

Those who have attended a LAWASIA biennial conference before will attest to the camaraderie that the event produces; others are encouraged to experience it. Those who have enjoyed the stimulation of the Australian Legal Convention will enjoy the added regional and state level emphasis, and regular Queensland Law Symposium attendees will find CLE delivered at a more significant level than ever before.

Queensland Law Society looks forward to welcoming over 1000 judges, lawyers, academics and business partners to this premier event, and encourages delegates to register early to ensure participation at the conference and in its surrounding activities.

Need more information?

Full detail can be found on the conference website at:
<http://www.lawasiadownunder.com>

Indigenous Barristers' Trust launched at UTS

When he was called up for service in East Timor, Norman Laing packed his law books. The Australian saltier and budding lawyer then carried a gun by day and studied at night during his six-month tour of duty.



Chris Ronalds SC and a group of Indigenous law students at the launch of the Indigenous Barristers' Trust.

He duly graduate from the University of Technology and is now 'sharing a cupboard' at chambers in Martin Place - only one of four Indigenous barristers in NSW.

However, a scheme set up by the Bar Association should go a long way to ensuring that lifting Aboriginal numbers at the Bar by giving junior barristers such as Laing a little help on the way.

Against a backdrop of 'bad news' from Palm Island and Goondiwindi, the association launched the Indigenous Barristers Trust on 2 December 2004 with a \$40,000 donation by the 25 new senior counsel for 2004.

The message from the trust's patron, former High Court chief justice Sir Gerard Brennan, was music to the ears of Mullenjaiwakka (Lloyd McDermott), who was also the first Indigenous person to play test rugby union for Australia.

He had been at the Bar since 1971 and for most of those years he has been the sole representative of his race. Early in the 1990s he adopted his tribal name to be a more visible inspiration to young Indigenous people.

In a speech delivered on behalf of Sir Gerard by the association's senior vice-president, Michael Slattery QC, the audience of barristers, academics and Indigenous law students were told how the trust was 'a significant milestone' in breaking down the traditional mistrust Aboriginal people have for the law.

He also said it was a step that 'which will enrich the culture of the bar'.

It is a point which occurred to Norman Laing as he helped show Aboriginal law students around the courts and the Bar Association's premises in Philip Street after the trust was launched.

'There was only one past president that was a woman and no blackfellas. I am not bagging other other whitefellas, but I believe in proportional representation and there should be a lot more than four of us.'

It was Slattery QC and Chris Ronalds SC, who sought out Norman Laing, 29, when he was still a student at UTS. A research position with the Federal Court judge John Wilcox was arranged and there has been continuing support in the early days of practice.

However, the Australian Taxation Office almost derailed the project, due to the ATO's reluctance to accept that the trust was indeed a charity.

The association had to take action in the Federal Court, but in a nice touch the taxman ended up making its own contribution. Counsel involved acted pro bono and after the victory, they donated their costs to the trust.

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*Tony Mitchell will return at the beginning
of law term 2005.*

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certification@nswbar.asn.au

Professional Conduct Department
pcd@nswbar.asn.au

Sickness & Accidents Inquiries
sickacc@nswbar.asn.au

Bar Council regional representatives

Name	Address	Phone/Fax	E-mail
Stuart Hill	Hargraves Chambers Cnr of Church & Crown Streets Wollongong NSW 2500	ph: (02) 4228 8977 fax: (02) 4226 3947	harlaw@hotkey.net.au
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	woc@bigpond.net.au
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	sca_371@ozemail.com.au