



## The Big CPD day in the Bush at Orange

By Bill Walsh

Friday, 18 June 2004 was a cold, wet day in Wagga Wagga. The District Court was sitting in its criminal jurisdiction. A sentence hearing was taking place when the learned crown prosecutor handed the presiding judge some written submissions on sentence. Norrish DCJ, having read the crown's written submissions, declared, 'These written submissions are as good as I have ever seen'. Mark Smith, counsel for the offender, stood up and said, 'I congratulate the learned crown'. I later chastised Smith for foolishly congratulating the crown prosecutor, saying, 'A good defence counsel never does that'.

Well, who was this great crown prosecutor so well versed in the law relating to sentencing? It was none other than Peter Sampson Dare SC, who was 'billed' to appear as the first presenter at the CPD

day at Orange the very next day on the very topic of which he was now a declared expert, namely, sentencing law. Had Norrish DCJ been pressured by the Bar Association to 'promote' its CPD day? Was this yet another case of 'cash-for-comment'? So effective was His Honour's promotion that Smith asked, 'Is it too late to enrol?'. My reply, 'It's never too late'. Smith, not having intended to come to Orange the next day, altered his itinerary and took the trip from Wagga Wagga to his home in the Blue Mountains via Orange. The Bar Association graciously accepted his late enrolment.

The weather at Orange on Saturday, 19 June 2004 could euphemistically be described as decidedly unpleasant – freezing cold, heavy rain and sleet. An 8am start added to the beauty of the occasion. I must say that, in the middle of winter at

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## Official launch of child care scheme

The federal Sex Discrimination Commissioner, Pru Goward, was the guest of honour on Thursday, 15 July at the launch of the emergency in-home child care scheme for barristers.

The scheme has been developed in response to the difficulty many barristers were having balancing child care arrangements with inflexible court sittings and the sheer hard work and irregular hours required for a successful practice at the Bar. Although the balancing of professional and family commitments is a concern for both men and women at the Bar, Ms Goward and other speakers at the launch acknowledged that it was one of the perceived barriers preventing more women from practising at the Bar.

Ms Goward commended the Bar for displaying 'leadership' to other sectors of the workforce by setting up the scheme. The President of the Bar Association, Ian Harrison SC, echoed these remarks: 'We are proud to be at the forefront of an innovative scheme which we know is already being adopted by other professional groups and corporate organisations'.

Barristers wishing to find out more about the scheme should contact McArthur Management Services direct on 02 9252 0799 or fax: (02) 9252 1399 and ask for Bernadette Dunn.



Virginia Lydiard,  
Chair of the Equal Opportunity Committee.



Rashda Rana.



Sex Discrimination Commissioner, Pru Goward and Ian Harrison SC with Grace Jo and Lyubov, one of the McArthur carers.

# International Bar Association conference – Auckland 2004

More than 2000 lawyers from 90 countries are expected to attend the International Bar Association's annual conference in Auckland during the week starting on October 24.

It will be the first time the prestigious annual conference of the world's largest lawyers' organisation has been held in New Zealand - last year's conference was in San Francisco and the 2005 conference will be held at Prague - and the IBA is hoping for a sizeable number of registrations from Australia. Attendance is open to all lawyers, not just IBA members.

Topics covered in over 150 working sessions will cover all areas of legal practice, ranging from e-commerce and technology to human rights, banking law, criminal law, tax, intellectual property, arbitration and ADR, family law, employment law, corporate governance, terrorism and legal aspects of globalisation.

Many of the sessions will focus on the Asia-Pacific region, within the wider international context.

The impressive line-up of speakers includes many who are very well known in international business, political and other circles, as well as the legal profession.

One of the showcase sessions will discuss the lessons to be learnt from the collapse of Enron, with a keynote address from Neal Batson, the examiner in the company's bankruptcy. The session will focus on contrasting approaches from different jurisdictions on how to govern corporate conduct and the prospects for future evolution of legislative and regulatory responses.

A second showcase session will consider the impact of increasing government regulation on legal practice, with particular reference to competition law and the

effects of globalisation. A third showcase, on corporate social responsibility, will cover such topics as new areas of liability for lawyers and the practical role of the lawyer in advising business clients.

Registration at the five-day conference covers attendance at all sessions, conference documentation, daily lunches, morning and afternoon teas, and some social events. Registration fees are at the lowest rates if paid before August 13, with a second tier for payments in the period August 14 - October 15, and higher rates for registration at the conference itself.

Reduced fees are paid by IBA members and by lawyers aged under 30.

Details of the wide-ranging programme and an on-line registration facility are available at [www.ibanet.org/auckland](http://www.ibanet.org/auckland).



## 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, caused the Bar Council to decide not to continue publication of the Rule 92 list.

The Bar Association, however, continues 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 Bar 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 giving assistance are written to separately if the Bar 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 are advised in writing as to available options in the event that the Bar 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 Bar 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 Bar 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.

# Bar Council business for May–June 2004

## 2004 Bench & Bar dinner

The President noted that the dinner had been a very successful function. The Bar Council expressed its thanks to Ms Senior, Christine Adamson SC and Mr Junior, Garry McGrath and also to Travis Drummond and other staff of the Bar Association who had done so much to make the evening a success. A video of the speeches at the dinner has been lodged in the library.

## Proposed amendments to the *Bankruptcy Act 1966*

The President referred to the exposure draft Bill released on 14 May to amend the *Bankruptcy Act 1966* to make it simpler for a creditor to claw back gifts made to their family and the like. The legislation was very pointedly aimed at high income earners. The Attorney-General had referred specifically to the actions of some barristers who had rorted the Bankruptcy legislation.

The President expressed his concern that the legislation was 'overkill' and that it would adversely affect many persons who had arranged their financial affairs for perfectly reasonable reasons.

## Professional standards application

The Executive Director noted that the Professional Standards Council had advertised in the *Sydney Morning Herald* of 19 May giving notice of the Bar Association's proposed scheme under the *Professional Standards Act 1994*. Comments and submissions from the public had been invited. These had to be lodged with the Professional Standards Council within 21 days of the notice.

The Executive Director advised that the Government had agreed that the current exemption for personal injury matters in the *Professional Standards Act 1994* be removed. He was hopeful of legislation in the immediate future.

## Professional indemnity insurance

The Executive Director advised the Bar Council of the 'state of play' with the various PII policies that had been provided to the Bar Association for consideration. He noted that 'PII Updates' were being issued to the Bar on a regular basis.

## Amendments to the *Legal Profession Act 1987*

The Executive Director advised that the Attorney General had directed that urgent legislation be introduced into the Parliament to overcome the problem of

filing Informations in the Administrative Decisions Tribunal within a very limited time frame identified in *New South Wales Bar Association v de Robillard* [2004] NSWADT 45. That Bill would include a few other amendments for which the Bar Association had been pressing.

Other amendments the Bar Association has been seeking are to be included in legislation to bring the New South Wales legislation in line with the National Model Bill.

## Equitable briefing policy

Adoption of the Law Council of Australia's 'Model equal opportunity briefing policy for female barristers and advocates'.

Bar Council discussed the very minor differences between the Bar Association's currently approved equitable briefing policy and the Law Council of Australia's 'Model equal opportunity briefing policy for female barristers and advocates'.

The council noted that there were practical problems if the Bar Association did not adopt the LCA model, which had been endorsed by the Law Council and its constituent bodies (including the Bar Association) and the Standing Committee of Attorneys-General.

The Bar Council resolved to adopt as the Bar Association's Equal Opportunity Briefing Policy the Law Council of Australia's 'Model equal opportunity briefing policy for female barristers and advocates'.

It was further resolved that the Executive Director formally ask the Law Council of Australia to provide a report to its constituent bodies on the implementation of the model policy. At the end of the first 12 months experience of the policy. The Law Council is also to be asked to review the wording of the policy and give consideration to amending that policy to adopting the following wording:

### Equitable Briefing Policy

In selecting counsel, all reasonable endeavours should be made to:

- a) identify female counsel *capable and willing to practise* in the relevant practice area: (1) and ...

## Membership of The New South Wales Bar Association

The Executive Director noted that under clause 4.3.1(c) of the *Constitution of The New South Wales Bar Association*, the Bar Council may determine a group eligible for Class B membership. Class B membership, which is that held by a person not holding a New South Wales barrister's practising certificate, gives the member all

membership rights other than the right to participate in Bar Council elections.

Bar Council resolved that membership be offered to staff of the Bar Association and to members of the Barristers' Clerks Association.

## In-home child care scheme

The Bar Council enthusiastically endorsed the suggestion that this scheme be extended to barristers' clerks and employees and staff of the Bar Association.

## *Motor Accidents Compensation Act 1999*

The Bar Council resolved that the *Motor Accidents Compensation Act 1999* should be amended to introduce a no fault provision for children under the age of 10 years.

The Bar Council noted that the Personal Injuries Litigation Committee was giving attention to the matters arising under the Act, including long term care on a no fault basis for the seriously injured. The committee would prepare a report for the Bar Council's consideration.

The Bar Council expressed its thanks to Andrew Stone for his work on the Motor Accidents Council.

## Meeting with Commonwealth Attorney-General

The President advised that he and the Executive Director had met with Mr Ruddock on 11 June. They had discussed a wide range of matters. One of the matters raised was the Commonwealth's continuing reluctance to amend s16 of the *Income Tax Assessment Act 1936* (assuming an amendment was necessary) to allow the ATO to advise the Bar Association when court action was being taken against barristers. The President had referred to the advice to the Commissioner of Taxation from Walker SC to the effect that the existing legislation allowed for this disclosure. The Executive Director had advised the Attorney-General that he understood this matter was with his Department for advice. The Attorney-General had undertaken to follow up this matter.

The President had expressed his concern with the government in part justifying proposed amendments to the *Bankruptcy Act 1966* on the basis of a few barristers having misused the bankruptcy laws to avoid the payment of income tax. The President had strongly made the point that the proposed draconian amendments were unfair and went far beyond that which was needed to prevent the perceived problem.

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# Bar Council business for May–June 2004

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## Report on meeting with the President and CEO of the Law Society

The President advised that he and the Executive Director had met with Mr Salier and Mr Richardson on 16 June. Matters discussed included members of the judiciary returning to practise; the Commonwealth's proposed amendments to the *Bankruptcy Act 1966*; the Legal Service Commissioner's working party on conflict of interest; and the possible need for amendments to the *Barristers' and Solicitors Rules* to take account of Division 5C of the *Legal Profession Act 1987* concerning reasonable prospects of success.

## Newcastle regional visit

The President advised that he, the Junior Vice President and the Executive Director had on 4 June met with a group of Newcastle University students interested in coming to the Bar and had then met with members of the Newcastle Bar. They had then gone on to dinner with a number of members of the Bar. These functions had all been very successful. The President had been impressed at the collegiality and enthusiasm of the Newcastle Bar.

## Parramatta regional visit

The President advised that on 21 May he, the Junior Vice President and the Executive Director had met with members of Lachlan Macquarie Chambers for a general discussion and social function.

## Practising certificate renewals and membership

The Executive Director informed the Bar Council of the number of practising certificate renewal applications that had been received to date. He had outlined the problems that were being experienced by staff in processing the returns, both because of problems being identified in those applications and problems that arose from barristers' dealings with the insurers.

A statutory late fee applied in respect of applications received after 11 June.

The Treasurer was considering all requests for a waiver of this fee, taking into account the personal and practice circumstances of the barrister.

The Executive Director advised that a number of staff were assisting in the processing of renewal applications. He noted in particular that Mr Catsaros, Mr

Anthony and Ms Kemp had been working evenings and weekends in an effort to have the applications processed by 30 June, even where they had been lodged well after the due date.

The Bar Council expressed its appreciation for the all work of the Association's staff in the renewal process.

## Legal Profession - Model Laws Project

The Executive Director advised that he had agreed to be one of the Law Council of Australia's representatives on a Standing Committee of Attorneys General officers

working party that had been established to guide the drafting of the Model Bill.

## Proposed amendment of the Crimes (Sentencing Procedure) Act 1999

The President advised that at the meeting with the Law Society's representatives on 11 June one of the matters discussed had been the Law Society's suggestion that the *Crimes (Sentencing Procedure) Act 1999* be amended to provide the Council of the Law Society and the Bar Council with the right to appear in guideline proceedings.

The Bar Council noted that both the Senior Public Defender and the Director of Public Prosecutions had standing to appear in such matters. The Attorney General also had the opportunity to appear.

It was resolved that the Bar Council not seek to be given legislative standing for such applications.



## Papers to note

*MAA claims handling guidelines*, July 2004. The guidelines are issued to licensed insurers with respect to the manner in which insurers and those acting on their behalf are to deal with claims. The guidelines are available from the Motor Accidents Authority web site at [http://www.maa.nsw.gov.au/pdfs/claims\\_handling.pdf](http://www.maa.nsw.gov.au/pdfs/claims_handling.pdf). A copy is held in the Bar Library.

*Advice in relation to workplace death, occupational health and safety legislation & other matters*, 2004, Report to WorkCover Authority of NSW by Professor Ron McCallum, Peter Hall QC, Adam Hatcher, Adam Searle. A copy of the report is available from the WorkCover web site at <http://www.workcover.nsw.gov.au/Publications>

'The strengths of the weakest arm: Keynote address, Australian Bar Association Conference, Florence', by the Hon Justice Michael McHugh AC, 2 July 2004. A copy of the speech may be obtained from the High Court web site at [www.hcourt.gov.au](http://www.hcourt.gov.au). A copy is held in the Bar Library.

## Web update

The New South Wales Public Defenders Office has a new web site at [http://www.lawlink.nsw.gov.au/lawlink/pdo/ll\\_pdo.nsf/pages/PDO\\_index](http://www.lawlink.nsw.gov.au/lawlink/pdo/ll_pdo.nsf/pages/PDO_index). The site contains information about the role of the PDO, guideline judgments, sentencing tables, Evidence Act tables and papers delivered by public defenders.



## Change to listing practice in the Philadelphia Arbitration List

From 2 August 2004 the callover of Philadelphia Arbitration matters will be conducted at 9:15am.

All matters listed for Philadelphia Arbitration will be listed to commence at 9:30am.

Counsel are required to attend from 9:30am.

Matters where counsel are not in attendance at 9:30am will be referred to the List Judge for consideration of dismissal of the action or striking out of the defence as appropriate.

# 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 34<sup>th</sup> Australian Legal Convention – the Meeting of Meetings.

The conference is proudly arranged and hosted by the Queensland Law Society, and its 44<sup>th</sup> 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 12<sup>th</sup> 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.

### 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>

# The Big CPD day in the Bush at Orange

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6am, it is difficult to find the horse in the paddock let alone saddle up to make it to the big CPD day in the Bush on time.

The day commenced with Dare SC, now wearing the crown of 'king of sentencing'. Then followed Virginia Lydiard, who dealt with that dreadful area of the law dealing with relationship and tendency evidence in sexual assault matters. This is an area of the law, which needs to have the slate wiped clean and start off afresh. How could juries possibly follow the ridiculous directions, which trial judges are supposed to give about such matters? Is it any wonder that Chester Porter QC in his book *Walking on water – A life in the law* expressed his concern that persons are being wrongly convicted in sexual assault matters, especially child sexual assault? Lydiard, resplendent as usual, was heard to say in the course of the day that being on the Bar Council is like being a member of the royal family. She failed to elaborate as to which member of the royal family she had in mind.

Then followed the wife and husband team of Anna Russell (Class A member of the Bar Association) and Magistrate Howard Hamilton (Class B member, having been demoted from Class A). Russell dealt with a fascinating topic of 'Apprehended Violence Orders and their effect on employment'. Frightening effect, to say the least. We learnt that you can amend an Act of parliament by a mere Regulation if you are the government! Hamilton LCM told us about the new interlock devices for drink-driving offenders. We came away with the distinct impression that the genius at the RTA, who devised the scheme, was either very well affected by alcohol and/or some restricted substance and/or suffered a significant mental impairment at the time of drafting this legislation. No wonder only ten people have joined the scheme in the past nine months.

Philip Selth, our Executive Director, brought us up to speed with all we need to know about anything and everything. Always a fountain of knowledge, Selth bedazzled us about the inner workings of the Bar Council, standing and sitting committees, which government department was doing what to whom etc etc. It was a great idea to have our learned and always helpful Executive Director take a 'spot' at the CPD day and it should be a regular feature of such days.

Peter Arden SC (no stranger to the Bush) took us back, in a simple but most effective manner, to our heartland – advocacy.

We concluded the day with a real-live venture into the Bush with Alan Taylor,

veterinary surgeon/barrister reflecting on some veterinary-legal cases, followed by Tony Smith, recently retired law lecturer at the University of Sydney – Orange, looking at some 'bush' law of which he should know something as he is the author of the authoritative text *The bush law handbook*. Many of us had a good night at the restaurant to finish off a full but satisfying day.

I am pleased to report that the Bar Association's Equal Opportunity Policy seems to be working well, some may say 'too well'. At breakfast on the Sunday, I saw, but hardly at first recognised, Graham Lamond, the solicitor-in-charge of the Legal Aid Office at Dubbo and partner of Christine Mendes. Lamond looked distressed and bedraggled. Mendes, on the other hand, looked relaxed and radiant. Enquiries disclosed that, whilst Mendes was attending the CPD activities, Lamond was locked in the motel room with their three under-five aged children. Mendes even had the audacity to leave her beloved partner locked in the motel room discharging his child-minding duties whilst she enjoyed the convivial company of her brothers and sisters at the restaurant for dinner. Lamond says that he now has some appreciation of what home detention must be like. I have informed Lamond that, whilst one is not easily eligible for legal aid these days, he may be eligible for assistance under the child care initiative. If not, then I advised him to contact Lydiard, who, in her capacity as Chair of the Equal Opportunity Committee, no doubt would not mind doing a spot of baby-sitting.

Only one complaint of significance was lodged. It came from David Rickard. Whilst Rickard was applying himself with great vigour and endeavour to the CPD activities, his partner, Fran, was let loose in the City of Orange. Fran found an antique fair was in progress and, using Rickard's many well-earned fees, made numerous expensive purchases. What a surprise Rickard got when a furniture removalist van drove up the driveway of Turner's Vineyard with Fran sitting up in the passenger seat smiling gleefully. There was no smile or any glee from Rickard.

Turner's Vineyard proved to be a great venue for the weekend. The conference facilities were first class, the accommodation was excellent and we had the benefit of full dining and bar facilities. Many of us made a weekend of it. Peter Huntington resorted to hiring a car just to get around the venue grounds. All other participants had no difficulty in strolling the grounds with ease and enjoyment.

Participants came from far and wide. The Sydney Bar was well represented. Ray Moyle journeyed from the South Coast. David Rickard, Christine Mendes, Anna Russell and Hamilton LCM came from Dubbo. Peter Arden SC, Ian Byrne, David Day, Michael Allen and Bill Walsh travelled all the way from Orange. Dare SC had come up from Wagga. John Jones made the journey over from Mudgee.

It was great to have Magistrate Jan Stevenson of the Orange Circuit in attendance.

Selth was very keen to have Stevenson LCM 'baptised' into the Bar Association – only as a Class B member, of course!

Chris D'Aeth, Travis Drummond and Kathy O'Neill (the latter insists on being called 'Kathleen' on more formal occasions) of the Bar Association staff ensured that the day went off well. We thank them for their attendance and friendly support.

Snow fell overnight (just to add to the variety of the weather conditions). What a great picture the landscape looked when we woke up. The snow delayed the departure of the 8.30am plane to Sydney on Sunday morning with Selth and Lydiard as potential passengers. That serves them right for not having the courtesy to stay for breakfast!

Selth says that he will never travel to Orange again by plane. His excuse is that a 36 seater plane does not do justice to the illustrious office of the Executive Director of the Bar Association of New South Wales. Apparently, he has ordered a personal Airbus for executive business. But the truth is that he dislikes what he loves to term "small planes" (when you are a person with big dreams and ambitions, a 36 seater plane is small!). A few years ago, when the now Honourable Justice Ruth McColl was our President, and she, Walker SC and Selth were coming to Orange on the occasion of a royal visit of the Executive, the plane's departure was delayed for several hours due to mechanical problems. When the plane landed at Orange after a rough flight Selth was more interested in reacquainting himself with *terra firma* than he was in the lunch – and our fine wines!

The CPD days are great for fostering one of the unique features of the Bar – collegiality. A venue such as Turner's Vineyard, where we can wine and dine as well as stay overnight, gives that full opportunity to enjoy each other's company and, at the same time, keep up-to-date and learn.

Subject to the approval of the Bar Council and the mandatory blessing of Selth, we look forward to another CPD day in the Bush at Orange in 2005.\*

*\* Since drafting this epistle, I have been told that Selth HAS blessed a CPD mini-conference at Orange in 2005 – subject to the date not being in the middle of winter – and he being able to drive to and from Orange.*

# Professional development update

By Chris D'Aeth, Director, Professional Development

## Information on CPD requirements for 2004/05

At its meeting on 17 June, the Bar Council considered and approved the continuing professional development requirements for barristers in the 2004/05 practising certificate year and for future years.

The new document 'Information on CPD' replaces the previous document 'CPD in a nutshell'. The new document also incorporates clause 142 of the *Legal Profession Regulation 2002* and the protocol for barristers conducting CPD in small groups – floors, chambers etc. The approved 'Information on CPD' is set out in full in the CPD section on the Bar Association web site.

Most aspects of CPD, developed since the introduction of the scheme in 2002, remain unaltered. Barristers are still required to obtain 10 points, with a minimum of one point in each of the four strands. Barristers still have until 30 June of each practising certificate year to accrue the required number of points.

Changes to the CPD requirements for 2004/05 include:

- Previously NSW barristers practising interstate were exempt from the CPD requirements. Now, with the introduction of CPD or its equivalent in most states and territories, NSW barristers practising interstate must still comply with all CPD requirements.
- Clause 142 of the *Legal Profession Regulation 2002* requires all barristers to attend a seminar (or equivalent event) on EEO, the law relating to discrimination and harassment, OH&S and employment law at least once every three years. Most barristers will need to

have completed this requirement by 31 March 2007 and then once every three years thereafter. The Bar Association will be offering a number of seminars in 2004/05 and in future years that will comply with clause 142.

- Clarification of the start of the points period. The period for accumulating CPD points commences on 1 July each year and ends on 30 June the following year (practising certificate year). Points earned between the second Monday in April and 30 June that are in excess of the 10 points required for the current practising certificate year may be carried over to the following practising certificate year.

If you have any questions regarding the CPD programme or require clarification of any aspect of the CPD requirements please contact the Professional Development Department via e-mail: [professionaldevelopment@nswbar.asn.au](mailto:professionaldevelopment@nswbar.asn.au).

## Professional Development Calendar for 2005

There have been some changes to the Professional Development calendar for 2005. The major change relates to the timing and duration of the Bar practice courses. Traditionally the courses have been held in February/March and August/September of each year. In recent years the course duration has been five weeks full-time.

The Bar Association will continue to offer two Bar practice courses each year. From 2005 the first BPC will be held in May, commencing Monday 2 May and concluding on Saturday 28 May 2005. This will be a four week course.

The second BPC will be offered in October each year. For 2005 the course will commence on Monday 3 October and conclude on Saturday 29 October 2005. This will also be a four week course.

This change has been made in order to continue to provide the best course possible. Each course involves over 200 practising barristers. Contacting and securing the involvement of so many members of the Bar during the December and January period was proving increasingly difficult. The problem is exacerbated by the increasing number of readers attending each course (the 1/04 course had a record 68 readers). Conducting the course in May will eliminate this difficulty.

The other change to the BPC is a reduction in the duration from five weeks to four weeks. The course will remain full-time. Since its inception the course has been between three and five weeks. With the commencement of the CPD programme it is now feasible to reduce the course, once again, to a four week course. It is hoped that this change will also ease the burden on regional practitioners wishing to come to the Bar.

As a result of the changes to the BPC it will be necessary to move the Bar examinations. Exams for the 1/05 BPC will be conducted in November 2004 and exams for the 2/05 BPC will be conducted in July 2005. Exams will be in February and July from 2006 onwards.

The CPD programme will be unaffected by these changes. The popular CPD intensive will still be offered in the final two weeks of June and regional mini-conferences in March and April.



## 15 Bobber

the Hon Justice John Hislop and the Hon Justice Richard White

Friday 23 July 2004

A 15 bobber will be held in the Bar Common Room on Friday 23 July 2004 to commemorate the appointments of the Hon Justice J D Hislop and the Hon Justice R W White as Judges of the Supreme Court of New South Wales.

**VENUE:** Bar Common Room

**DATE:** Friday 23 July 2004

**TIME:** 5:00pm, Speeches at 5:30pm

# CPD videos

The following are the latest CPD seminars to be added to the Bar Library's video collection. Members may borrow videos by contacting the library on ph: (02) 9233 4025 or e-mail: library@nswbar.asn.au

'Using s106 of the Industrial Relations Act to litigate commercial disputes', Ingmar Taylor, 17 June 2004, **VID/200**

'Mediation seminar', Jennifer Stuckey-Clarke and Micheline Dewdney, 17 June 2004, **VID/201**

'Conducting inquiries', Ian Temby AO QC, 21 June 2004, **VID/202**

'Injunctions: defensive strategies', Sydney Jacobs, 22 June 2004, **VID/203**

'Statutory demands under the corporations law', Peter Cook, 22 June 2004, **VID/204**

'Self managed super funds', Dr John Keogh, 24 June 2004, **VID/205**

'Computers and the law', Richard Maurice, 23 June 2004, **VID/206**

'Professional conduct update', Anne Sinclair, 28 June 2004, **VID/207**



## Queen's Birthday Honours 2004

The Bar Association congratulates the following member-recipients of Queen's Birthday honours:

Order of Australia - Companion (AC) in the General Division

The Hon Justice Dyson Heydon AC

Order of Australia - Officer (AO) in the General Division

Jennifer Blackman AO

Charles Crittle AO

The Hon Mahla Pearlman AM AO

The Hon Justice Peter Young AO



## BARCARE

BarCare is designed to guide barristers through emotional and stress related problems including family or marital problems, drug or alcohol dependency and practice pressures.

The Bar Association will cover costs associated with the initial consultation with the BarCare counsellor.

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

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# 'Sign up' to sexual harassment policy: a challenge to all chambers

The Bar Council will encourage heads of chambers to publicly support its model sexual harassment policy by listing participating chambers on the Bar Association web site.

On 17 June 2004 the Bar Council approved a model sexual harassment and discrimination policy for adoption by individual chambers. The policy provides chambers with a structure to resolve matters of sexual harassment or discrimination that may arise.

The Bar Association will, in accordance with the new policy and with clause 142 of the *Legal Profession Regulation 2002*, be organising CPD seminars relating to sexual harassment.

## MODEL SEXUAL HARASSMENT AND DISCRIMINATION POLICY

### INTRODUCTION

1. The members of this Chambers/ Floor<sup>1</sup> are committed to ensuring that each other and any employees, visitors or other barristers working with members of this Floor are free from sexual harassment and discrimination whilst on the Floor.
2. The Legal Profession Regulations reinforce a barrister's responsibilities with respect to discrimination and harassment.
  - 2.1 The *Anti-Discrimination Act* and Federal discrimination laws including the *Racial Discrimination Act*, *Sex Discrimination Act* and the *Disability Discrimination Act* make it unlawful to engage in conduct constituting discrimination, harassment, vilification and victimisation in employment and the provision of services.
  - 2.2 A legal practitioner who, in connection with the practice of law, engages in any conduct that constitutes unlawful discrimination (including unlawful sexual harassment) under the *Anti Discrimination Act* against any person can be liable for professional misconduct.
  - 2.3 A legal practitioner who fails to take all reasonable steps to prevent his other employees, agents or fellow workplace participants from engaging in unlawful discrimination and/or harassment may be vicariously liable for such acts or treated as permitting those acts to have occurred.

### POLICY

3. Sexual harassment and discrimination of any kind towards any barrister, employee of the Floor or any person visiting the Floor including solicitors, their staff or clients is unacceptable conduct and will not be tolerated.

4. All members of this Floor and people who work on this Floor have a responsibility to help maintain a work environment that is free from all forms of sexual harassment or discrimination.
5. The policy is also intended to provide people, who do not work on the Floor but have dealings with a barrister who is a member of the Floor, with the option of raising a concern about the barrister's conduct with the relevant Floor contact person or committee. In the event that there is an issue between barristers on different Floors, if both Floors have adopted the model policy then in the first instance the complaint will be dealt with the cooperation between those responsible for implementing the policy on each Floor, if only one of the Floors has adopted the policy then the matter can be dealt with by that Floor's committee.

### PURPOSE OF THIS POLICY

6. The purpose of this policy is to:
  - (a) record that the Floor has adopted this policy,
  - (b) put in place a procedure where by any complaints relating to such conduct can firstly be dealt with on an informal basis within the Floor, hopefully to resolution in a way that preserves the dignity of all involved but also causes whatever conduct that may have occurred to cease;
  - (c) put in place a procedure whereby if the Floor feels it is unable, after its best endeavours, to resolve any issue to refer the matter to the panel established under this policy for advice. Where the matter is particularly serious, the complainant or the floor itself has the option to lay a complaint with the Legal Services Commissioner in the usual way.

### COMPLAINTS / PROCEDURE

7. Any person who believes that he or she has been the subject of sexual harassment or discrimination in connection with this Floor or any person who believes that another person on the Floor has been the subject of such conduct by another Floor member or employee, should immediately report the alleged act to either [the nominated contact person, head of chambers or the Directors or the relevant Floor Committee]. The obligation to take all reasonable steps to prevent discrimination and harassment, may require Floor members to be proactive in addressing issues when they arise and not rely on a complaint to be made by the specific person affected by the conduct.
8. Reports of such nature will be taken seriously and dealt with promptly. Such complaints will be treated confidentially.

9. Whilst, what action is taken will depend on the nature and gravity of the conduct reported and the extent to which the person the subject of the discrimination and harassment wishes to make a complaint, in general the Floor will endeavour to resolve the matter by consultation/mediation on an informal and confidential basis. If satisfied that harassment or discrimination has occurred, the Floor will take such steps as are deemed appropriate at the time and having regard to all the circumstances to ensure that the conduct ceases and will not reoccur.
10. In the event that the complainant, or the Floor feels incapable of resolving the matter, either because of the identity of those involved, or the gravity of the complaint or after its best endeavours to resolve the matter, either or both will refer the issue to the panel established under this policy for advice.

11. It goes without saying that any retaliation of any type against any person who in good faith raises a reasonable concern about sexual harassment or discrimination will simply not be tolerated and may in certain circumstances amount to professional misconduct.
12. Further, it is always open to the complainant to seek independent advice and pursue such remedies as may be available under relevant State or Federal law, as she or he considers appropriate or to make a formal complaint to the Legal Services Commissioner.

### CONFIDENTIALITY

13. It is recognised that confidentiality is essential. The Floor members who are responsible for the enforcement of this policy undertake to respect and maintain the confidentiality and privacy of all individuals involved, to the extent that that is reasonably possible.

### DEFINITION

14. The following definition is contained in the *Anti Discrimination Act*.

Sexual harassment is an unwelcome sexual advance, request for sexual conduct and/or other verbal or physical conduct of a sexual nature when such conduct unreasonably interferes with work performance, or creates an intimidating, hostile or offensive working environment.
15. In short, once it becomes reasonably clear that the recipient of the conduct does not welcome or appreciate it, then the conduct must stop immediately.

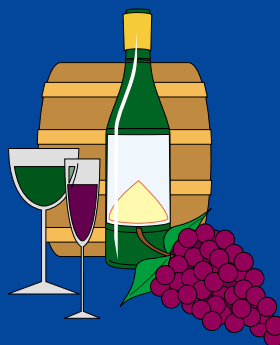
DATED: 17 June 2004

<sup>1</sup> This policy refers to 'Floor' but if appropriate, substitute 'Floor' with 'Chambers' where used in the policy.



# LIQUOR BAR

## Wines of the Month



### Take advantage of these great specials . . .

- **KATHERINE HILLS – CAB/MERLOT 2000 (MCLAREN VALE)**  
*Tasting Notes: A rich plum red colour with attractive mint and black current bouquet. Three months in French Oak.*  
\$11.00 per bottle /case – buy mixed or straight dozen  
\$12.00 per bottle / single
- **KATHERINE HILLS – CHARDONNAY 2002 (MCLAREN VALE)**  
*Tasting Notes: Straw gold in colour with a bouquet of butterscotch and a hint of toasty oak and honey. Creamy rich palate and good length of flavour.*  
\$11.00 per bottle /case – buy mixed or straight dozen  
\$12.10 per bottle / single
- **SKILLOGALLEE 2003 – CLARE VALLEY S.A.**  
*Tasting Notes: Lively fresh lime citrus aroma, with intense fruit flavours balanced by refreshing acidity. Wine Magazine nominated Skillogallee as a Top 10 Riesling producer.*  
\$16.50 per bottle /case – buy mixed or straight dozen  
\$18.15 per bottle / single

Contact Tony Mitchell at the Bar Association on ph: (02) 9229 1717 for any queries or to place your order.



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*Contributions and advertising bookings and material for **Bar Brief** must be received by the end of the month prior to publication.*

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