



## 'Servants of all yet of none'

The motto of the coat of arms of the New South Wales Bar Association is 'Servants of all yet of none'. The motto was included on the coat of arms granted to the Bar Association by the College of Arms in 1959. The motto emphasises specialised functions of barristers, which over the centuries have come to distinguish them from other legal practitioners.

## Corporate Directory

### Incorporating the annual report of

The New South Wales Bar Association

ABN 18 526 414 014

The Indigenous Barristers' Trust

ABN 53 124 431 831

### Financial results for:

Barristers' Benevolent Association of NSW

ABN 18 466 736 745

The Barristers' Superannuation Fund

ABN 23 921 476 227

### Registered office

Selborne Chambers

174 Phillip Street

Sydney 2000

Ph : + 61 2 9232 4055

Fax : + 61 2 9221 1149

www.nswbar.asn.au

### Auditor

Nexia Court & Co Chartered Accountants

PO Box H195 Australia Square

Sydney 2000

### Bankers

National Australia Bank

75 Elizabeth Street

Sydney 2000

### Annual General Meeting

The Annual General Meeting will be held

at 1.00pm on Friday, 3 November 2006

in the Bar Association Common Room.

### Cover photo

Photo: A composite photo of barristers before the beginning of the WorkChoices case, High Court, Canberra, Thursday, May 4, 2006.

(AAP Image/High Court of Australia)

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## Bar Association office bearers

Michael Slattery QC was elected president of the New South Wales Bar Association in November 2005. He was educated at the University of Sydney, where he graduated with a Bachelor of Arts in 1975 and Bachelor of Laws in 1978.

Michael was called to the Bar in May 1978, where his principal areas of practice have been commercial and equity. He took silk in December 1992. Michael has played an active part in the affairs of the association. He was elected to Bar Council in 19 of the last 26 years and served as chair of the Equal Opportunity Committee and Professional Conduct Committee #2 from 2000 to 2003.

In February 1990 he was appointed an officer in the Royal Australian Naval Reserve and presently holds the rank of captain. Between 2002 and early 2006 Michael was the head of the New South Wales Navy Reserve Legal Panel. Michael has appeared in a number of inquiries. In 2004 he appeared for the Medical Research and Compensation Foundation in the commission of inquiry into the asbestos liabilities of James Hardie Industries. Since 2005 he has served as counsel assisting a navy board of inquiry into the helicopter crash on Nias Island, Indonesia on 2 April 2005.



**President**  
Michael Slattery QC



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1. Anna Katzmann SC  
Senior Vice President
2. Tom Bathurst QC  
Junior Vice President
3. Robert Toner SC  
Treasurer
4. Rachel Pepper  
Secretary
5. Philip Selth  
Executive Director



1	2	3	4	5
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1. Bernie Coles QC
2. Larry King SC
3. Philip Greenwood SC
4. Jane Needham SC
5. Jeremy Gormly SC



1	2	3	4	5
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1. Rena Sofroniou
2. Kate Traill
3. Paresh Khandhar
4. Virginia Lydiard
5. Michael McHugh



1	2	3	4	5
6				

1. Angela Pearman
2. Nye Perram
3. Stuart Torrington
4. Margaret Holz
5. Philippe Doyle-Gray
6. Christopher Wood



## Highlights

### 2005

#### July

Tutors and Readers Dinner  
Bar exams

#### August

Bar Practice Course 02/05

#### September

Senior counsel appointments

#### October

Bar Council elections  
*Legal Profession Act 2004 & Legal Profession Regulations 2005* commenced

#### November

Annual General Meeting



### 2006

#### January

Indigenous Pre-Law Day  
2006 committees announced  
New silks ceremony, High Court

#### February

Bar exams

#### March

Law Week 2006  
Bar Association Media Awards  
Sir Maurice Byers Address

#### April

CPD mini-conferences  
World Conference of Advocates & Barristers

#### May

Bench and Bar Dinner  
Bar Practice Course 01/06  
Women law students visit the Bar

## Aims

The New South Wales Bar Association is a voluntary association of practising barristers. Our aims, as expressed in our Constitution, include:

- ❖ to promote the administration of justice;
- ❖ to promote, maintain and improve the interests and standards of local practising barristers;
- ❖ to make recommendations with respect to legislation, law reform, rules of court and the business and procedure of courts;
- ❖ to seek to ensure that the benefits of the administration of justice are reasonably and equally available to all members of the community;
- ❖ to arrange and promote continuing professional development;
- ❖ to promote fair and honourable practice amongst barristers; to suppress, discourage and prevent malpractice and professional misconduct;
- ❖ to inquire into questions as to professional conduct and etiquette of barristers;
- ❖ to confer and cooperate with bodies in Australia or elsewhere representing the profession of the law;
- ❖ to encourage professional, educational, cultural and social relations amongst the members of the Bar Association; and
- ❖ to make donations to charities and such other objects in the public interest as determined from time to time by the Bar Council.

## History of the Bar Association

In July 1896 an association of barristers was formed in New South Wales to consider and report upon all matters of current legislation, enunciate and enforce rules of professional discipline and to foster social and professional liaison amongst the members of the Bar.

On 9 June 1902 the old association was dissolved and the first annual meeting of a new body took place. It was called the Council of the Bar of New South Wales.

On 22 October 1936 the New South Wales Bar Association was incorporated and the first meeting of the Council of the New South Wales Bar Association took place. The Memorandum and Articles of Association noted that the Bar Association would make suggestions on legislation, court rules, procedure and business. The memorandum also noted that a library would be established together with reading, meeting, and dining rooms, and power to undertake law reporting, printing, publishing and bookbinding.

Over the years, both the judicial and executive branches of government sought the advice of the Bar Association regarding Bills and rules of court. By 1960 the number being sent to the Bar Association had increased markedly. In 1962 the association formed a standing Law Reform Committee to deal with the increased workload. By 1968 there were 14 standing committees of the Bar Association including the Ethics, Finance, Fees, Accommodation, Liaison with the Law Society, Bar History, Law Reform, Continuing Legal Studies, Barristers' Benevolent Association, Reading, Membership, Listing, Library and Housing committees.

In 2005 there were 13 standing committees and three working parties. A considerable number of barristers are appointed as members of court liaison committees, government working parties and statutory authorities, providing their skills and expertise for the public benefit.

Thirty four presidents and 104 Bar councils later, the association has grown from strength to strength. In 1961 Bowen QC, then president of the Bar Association commented:

The Bar as a community has entered upon a period unlike anything experienced before...We have not been afraid to speak out, if need be publicly, on matters of general concern on which the community might fairly look to the Bar as an experienced professional body for guidance.

The statement remains true today.

## Bar Association staff

As at 30 June 2006

### Office of the Executive Director

Executive Director	Philip Selth OAM BA (Hons) LLB
Executive Assistant	Kathy O'Neill
Director Legal	Jennifer Pearce BEc LLB
Projects Officer	Kim Kemp LLB
Project Officer, Secretariat and Research	Cindy Penrose B Comm LLB

### Administration Department

Administration Support Manager	June Anderson
Administrative Officer (Records)	Kim Ellis
Administrative Officer (Trainee)	Elise Hickey
Administrative Assistant	Patrina Malouf
Reception Officer	Barbara Coorey B Comm LLB
IT Consultant	Darren Covell
IT Consultant	Matthew Vickers

### Bar Library

Librarian	Lisa Allen B App Sc(Info) M Inf Stud
Assistant Librarian	Jennifer Nott BA DIM
Technical Services Librarian	Benjamin Laing BA Grad Dip Inf Stud

### Finance Department

Finance Manager	Basil Catsaros B Comm ACA
Assistant Accountant	Tess Santos B Sc (Bus Admin)
Certification Officer	Barrie Anthony JP

### Legal Assistance Referral Scheme

Legal Assistance Manager	Heather Sare
Legal Assistance Administrative Assistant	Wendy Incoll BA

### Professional Conduct Department

Director, Professional Conduct	Anne Sinclair BA MLM
Deputy Director, Professional Conduct	Helen Barrett LLB
Deputy Director, Professional Conduct	Jocelyn Sparks LLB (Hons)
Assistant to the Director, Professional Conduct	Lorraine Haycock
Assistant	Barbara Stahl
Assistant	Denisha Govender

### Professional Development Department

Director, Professional Development	Chris D'Aeth LLB (Hons) MBA
Deputy Director, Professional Development	Stephanie Mancell BA (Hons) LLB
Professional Development and Events Officer	Travis Drummond B Econ
Education Assistant	Adriana Ferrigno

### Public Affairs

Public Affairs Officer	Chris Winslow BA(Hons) MIntS DIM
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## Statistics

The New South Wales Bar Association is a voluntary association of practising barristers. Being a member of the Bar Association and holding a NSW barrister's practising certificate are distinctly separate. The following is a statistical profile of both membership of the Bar Association and barristers who hold a NSW practising certificate.

### Membership

There are 2757 members of the New South Wales Bar Association.

#### Members who hold a NSW practising certificate

(including members based interstate & overseas and life members who have a current NSW PC)

Male	1779
Female	342
<b>Total</b>	<b>2121</b>

#### Number of senior counsel (QC or SC)<sup>†</sup>

Male	308
Female	15
<b>Total</b>	<b>323</b>

#### Number of 'junior' barristers<sup>‡</sup>

Male	1471
Female	327
<b>Total</b>	<b>1798</b>

#### Practising address of members who hold a NSW practising certificate

New South Wales	2051
ACT	42
Queensland	6*
Overseas	22

\*Practitioners advised that NSW is their principal place of practice

#### Number of honorary life members and non practising members (including members interstate & overseas)

Male	523
Female	113
<b>Total</b>	<b>636</b>

(Includes 25 honorary life members who do not have a current NSW PC)

#### Occupation of non practising members

Judge	162
Magistrate	36
Statutory/government officer	7
Judicial officers	14
Member of parliament	1
Academic (non practising)	13
Interstate barrister	167
Overseas barrister	16
Former barrister	98
Former judge	83
Clerk	23
Miscellaneous	16

### Practitioners

There are 2135 barristers with a New South Wales practising certificate.

#### Practitioners holding NSW practising certificates

(including practitioners based interstate & overseas)

Male	1790
Female	345
<b>Total</b>	<b>2135</b>

#### Number of practitioners who are senior counsel

(QC or SC)

Male	310
Female	15
<b>Total senior counsel</b>	<b>325</b>

#### Number of junior barristers

Male	1480
Female	330
<b>Total junior barristers</b>	<b>1810</b>

#### Location of holders of NSW practising certificates

	Juniors		Silks		Total
	Male	Female	Male	Female	
New South Wales	1433	321	297	14	2065
ACT	29	8	5	0	42
Queensland	4	0	2	0	6
Overseas	14	1	6	1	22
<b>Total</b>	<b>1480</b>	<b>330</b>	<b>310</b>	<b>15</b>	<b>2135</b>

#### Overseas practitioners by country of residence

	Juniors		Silks		Total
	Male	Female	Male	Female	
USA	1	0	0	0	1
UK	3	1	3	1	8
Hong Kong	1	0	3	0	4
New Zealand	5	0	0	0	5
Solomon Islands	2	0	0	0	2
Bermuda	1	0	0	0	1
Kazakhstan	1	0	0	0	1
<b>Total</b>	<b>14</b>	<b>1</b>	<b>6</b>	<b>1</b>	<b>22</b>

<sup>†</sup> Senior counsel (QC and SC) are commonly called 'silks'. SCs have been appointed since 1993 and replaced the appointment of queen's counsel.

<sup>‡</sup> The term 'junior' barrister means all barristers except those who have been appointed senior counsel (QC or SC). A junior barrister does not necessarily indicate the ability or number of years at the Bar; for example, some 'juniors' have been practising for 30 years.



## President's report



Since the last annual report many issues which had been gathering momentum for some time in this state have emerged in public discussion or legislation and the Bar has dealt with them. The usual law and order debate before the March 2007 state election is already upon us.

The Bar has been able to take the position that it has on many of these issues only because of the dedicated work of members of Bar Council, its committees and the staff of the association. It is because of their work that the Bar has the special influence that it does in public policy debates and issues in relation to the administration of justice in this state. The issues that the Bar faced during this period were varied.

In November 2005 the Bar put submissions to state parliament about the new supervision and detention orders proposed in the *Anti-Terrorism Bill 2005*. The Bar demonstrated a possible means of their misuse which had apparently not been appreciated by those responsible for the introduction of this Bill. Our submissions were noted and resulted in the government declaring that it did not intend the legislation to authorise a series of rolling detention orders.

It is perhaps hardly surprising that when detention without trial is authorised in one form of legislation it is soon proposed in others. Legislation for continuing detention without trial was also a feature of the *Crimes (Serious Sex Offenders) Act 2006* introduced into the New South Wales Parliament in April 2006. The Bar advanced detailed submissions on each of these pieces of legislation suggesting how each should be confined to provide more appropriate protection to the rights of individuals whilst maintaining public security. The detailed work on these submissions was done by Robert Toner SC, the Criminal Law Committee and the Human Rights Committee. The Bar owes each of them a considerable debt of gratitude for their work to prepare the ground for the Bar's opposition to this legislation.

In February this year Bar Council resolved to oppose the introduction of majority verdicts in criminal trials in this state. The change was proposed in the *Jury Amendment (Verdicts) Bill 2006*. The Bar Association's opposition to the Bill was founded upon the reasoning in cases such as *Cheatle v R* (1993) 177 CLR 541, at 543 to the effect that where proof is required beyond reasonable doubt, a jury decision by a majority verdict over the dissent of other reasonable jurors objectively suggests the existence of a reasonable doubt, and therefore carries a greater risk of conviction of the innocent than does a unanimous verdict.

The Bill was supported by both sides in the Legislative Assembly. The Bar's opposition did not carry the day despite the fact that this Bill went much further than similar legislation in

other jurisdictions, with the sole exception of the Northern Territory. The public interest raised in the issue by the Bar did result in the Bill being amended to provide for a review of its operation within five years. This review will be facilitated through increased powers to interview jurors for research purposes.

*As a result of work done within the Bar between February and June this year the Bar was strikingly successful in changing government policy on the Innocence Panel. Between 2001 and 2003 the panel provided a procedure by which prisoners who claimed they were wrongfully convicted could have their DNA tested against available crime scene materials to help establish their innocence.*

By the time this report is published the Bar will have held its Criminal Justice Reform Conference on Friday 1 September 2006 in the Bar Association Common Room. All members of the Bar were invited to speak at or contribute to this conference.

The principal purpose of this conference was to bring the immediate procedural needs of our criminal justice system to the attention of both government and opposition during the pre-election law and order debate. This conference will enable the Bar Association to inject some sound proposals for reform to criminal procedure and sentencing into that debate.

The conference proceedings will be used by the Bar Association's Criminal Law Committee to make specific policy submissions for consideration and approval by the Bar Council. The Bar Association will then publicly propound proposals, which command a broad measure of consensus within the Bar, to both government and opposition for wider debate in the community.

The informed views of the Bar and the judiciary on the operation of criminal procedure are not often taken into account directly in public policy making in this state. This conference has been a special opportunity for that to occur.

I wish to thank Stephen Odgers SC and the other conference conveners, his Honour Judge James Bennett SC, Tony Bellanto SC, Andrew Haesler SC, Kate Traill and Lloyd Babb for their thoughtful attention to detail in organising the conference together with Cindy Penrose, the association staff member directly responsible.

As a result of work done within the Bar between February and June this year the Bar was strikingly successful in changing government policy on the Innocence Panel. Between 2001 and 2003 the panel provided a procedure by which prisoners who

## President's report - continued

claimed they were wrongfully convicted could have their DNA tested against available crime scene materials to help establish their innocence. The panel was suspended in mid 2003 and in September of that year the Hon Mervyn Finlay QC published a report which recommended the reintroduction of the panel supported by a proper legislative structure. Until the Bar intervened publicly on the issue it had been ignored for years by both government and opposition.

On 13 July 2006 the Bar requested the premier to re-introduce the Innocence Panel and forwarded him a copy of a paper on international comparatives to the panel written by the Bar's Human Rights Committee. The Bar brought the issue to wide public attention the next day. The government immediately committed itself to introducing legislation in the next session of state parliament to implement the Finlay Report. The Bar will closely scrutinise this legislation when it becomes available. Thanks for the fine work on this policy initiative are due to the Human Rights Committee and the association's staff who were involved with its success: Cindy Penrose; Alastair McConnachie; and Chris Winslow.

*During the year members of our Bar have helped train prosecutors for Iraq, have served in the Solomon Islands and Kosovo and have conducted trials in the International Criminal Tribunal for the Former Yugoslavia. Their service in some of these environments can be especially arduous and may involve lengthy periods of dislocation from family and friends but their work is remembered and appreciated by the Bar.*

On 10 August 2006 Bar Council resolved that the Bar join with the New South Wales Law Society, the Law Council of Australia and Australian Lawyers Alliance to raise the issue of the denial of rights to fair compensation to the injured in this state. There is a pressing need to fix the legislation which between 1999 and 2002 has progressively restricted the rights of some of the most vulnerable members of our society, especially those suffering as a result of workplace and motor accident injuries. Some of these people are very seriously injured by any present community standard. Without change to the current legislation they will go under-compensated for their injuries. Many members of the Bar have already identified and contributed case studies of injured people that can be used to raise public awareness of this need.

One of the only ways to gain appropriate attention to this important social issue is through the stories of the seriously injured who have been denied proper compensation through these changes. Because of our specialist work as barristers we have unique access to these stories, which may not otherwise

come to public notice. The people contacted through the Bar's case study research have very moving stories to tell, which illustrate the fundamental unfairness of these changes. We can help provide a voice for them.

Ross Letherbarrow and Larry King, the co-chairs of the Common Law Committee, and the Bar's staff, Chris Winslow, Kim Kemp and Alastair McConnachie have put in many hours to ensure that public awareness of this issue is raised.

The Bar will continue to act as an independent voice of reason in the law and order debate as the state approaches the March 2007 election. We will publicly respond whenever the judiciary or the administration of justice suffers unwarranted criticism. We will continue to remind both government and opposition of the need to promote only just and fair legislative policy. In all this the Bar stands in a tradition which was so well articulated by Edmund Burke in his reflections on the revolution in France in 1790. Commenting on the arguments used to justify the confiscations of private, especially church, property in the revolution, Burke said:

They say ... that it is a great measure of national policy, adopted to remove an extensive, inveterate, superstitious mischief. It is with the greatest difficulty that I am able to separate policy from justice. Justice is itself the great standing policy of civil society; and any eminent departure from it, under any circumstances, lies under the suspicion of being no policy at all.

This year the Bar has again expanded the range of its international practice, particularly in the field of criminal law, for the assistance of failed states or states attempting to rebuild their justice infrastructure after the ravages of war. During the year members of our Bar have helped train prosecutors for Iraq, have served in the Solomon Islands and Kosovo and have conducted trials in the International Criminal Tribunal for the Former Yugoslavia. Their service in some of these environments can be especially arduous and may involve lengthy periods of dislocation from family and friends but their work is remembered and appreciated by the Bar.

The Bar Association in conjunction with the Law Society of New South Wales has purchased the portrait of the Hon Justice Michael Kirby AC CMG by the well-known Australian portrait artist, Josonia Palaitis, which was an entry in the 2006 Archibald Prize competition. It will be given to the Supreme Court of New South Wales so that it can be displayed in the President's Court on Level 12 of the Law Court's Building.

Late in 2005 the New Barristers Committee conducted a survey of new barristers. The survey focused on the background, life and practice of barristers of six years call and under. It found that there are very high levels of career satisfaction presently expressed by junior barristers. Over 90 per cent of respondents considered their career decision to come to the Bar was the right one. The survey helped confirm what we mostly think: that

## President's report – continued

despite the long hours required by life at the Bar, it remains one of the most satisfying ways to practise our profession. The survey also found a significant difference in reported income between male and female juniors, showing that the Bar's equal opportunity policies still have much work to do.

Harrison SC was our president for the first half of the financial year. He gave something very special to our Bar in the last two years. His leadership was a constant assurance to members of personal concern for their welfare and best interests. His warmth and inclusive leadership approach have done so much to strengthen the cohesiveness of Bar Council and of the whole Bar during this period. Ian undertook a very high presidential administrative load, including an exceptional number of official and private speaking engagements for the Bar. In all of these he was an inspiring and positive public face of the Bar. We were fortunate to have him as our leader.

As is evident from the list of public issues set out in this report, Bar Council has dealt in the course of this year with many important policy issues on which the Bar has been required to take a public position. During the year Bar Council has been a place of wide ranging, good humoured and well-reasoned debate about those important questions and many others. Consistent with the Bar Council committee structure developed in previous years I have tried to ensure that on most Bar Council committees the chair or a senior member of the committee is a member of council so as to assist communication between the committees and the council.

Throughout the year I have been very well supported by the executive; Anna Katzmann SC, the senior vice-president; Tom Bathurst QC, the junior vice-president; Bob Toner SC, the treasurer; and Rachel Pepper, the secretary. Their sound advice at Bar Council meetings, executive meetings and at other times has helped me set the right course for the Bar.

Voluntary service on the Bar's committees is a constant affirmation of the generosity and professionalism of our members. The association is very fortunate to have so many members voluntarily give their time to assist in the full range of association activities. Whether it be commentary on law reform, producing professional conduct reports, drafting correspondence to be signed by the president, issues papers, drafting the form of amended legislation or submissions to government, the Bar's committees do constant unseen work for us for which I and all members of the Bar are most grateful.

A difficult task for every new president, which I faced in December last year, is to select final committees from the large number of volunteers. I regret it is not possible to accommodate all those who have volunteered to serve on the existing committees.

It would be remiss of me not to mention the close working relationship we have during 2006 with the president of the Law Society of New South Wales, June McPhie. This cooperation

has extended well beyond the work we are jointly undertaking to raise the issue of fair compensation to the injured.

Executive Director Philip Selth was awarded an OAM in the 2006 Australia Day Honours list. The citation for the award was 'for service to the law, particularly through the New South Wales Bar Association, to public administration, and to the community'. On behalf of the whole Bar and all Bar Association staff I gave Philip the warmest congratulations on the announcement.

Philip has been the association's executive director since 1998 and has now worked with five presidents. Our present capacity to engage with government, opposition and cross-benchers in both state and federal parliament and relevant senior departmental officers is excellent. We have ready access to them and a sound reputation for advancing ideas in the public interest. Philip's quiet and continuous building of external relationships over the last eight years is very substantially responsible for this. Once again this year we barristers are the beneficiaries of his restless enthusiasm for our professional and personal wellbeing.

As they have for many years, the hard working staff of the association have provided selfless support to Bar Council, its committees and all members throughout the last year. We are most grateful to them. The association has exceptionally dedicated and creative staff members. As president, it has been a pleasure to work closely with every one of them.

M J Slattery QC  
President



# Executive director's report



## The National Practice Model Laws Project

The end of this massive project is in sight. The New South Wales Act, which comprises 397 pages (the Regulation, 104 pages) will require a considerable amount of 'bedding down' and procedures to be implemented.

Thankfully, the light at the end of the tunnel is no longer that of an on-rushing locomotive.

The *Legal Profession Act 2004*, the *Legal Profession Amendment Act 2005* and the *Legal Profession Regulation 2005* commenced on 1 October 2005. They replaced the *Legal Profession Act 1987* and the *Legal Profession Regulation 2002*. An overview of this new legislation was published in the September/October 2005 issue of *Bar Brief*. Circulars were issued and seminars held to inform the Bar about new provisions, in particular the new complaint and costs provisions. Carol Webster's very informative article, 'Legal Profession Act 2004: Complaints procedures and show cause requirements', was published in the Summer 2005/2006 edition of *Bar News*.

A problem with the new New South Wales legislation, based as it was on the national Model Bill, was the overly complex costs disclosure provisions, some of which were excessively detailed and all but unworkable in practice.

The Law Council of Australia, the Large Law Firm Group and the Bar Association all took up these problems with the New South Wales attorney general and with officers of the Standing Committee of Attorneys General. The attorney general was quick to listen to, and appreciate, the concerns expressed.

In April 2006 the *Legal Profession Amendment Bill 2006* was introduced into the Legislative Assembly. That Bill addressed many of the costs issues about which there was concern, as well as the drafting issues the Bar Association had brought to attention. The legislation commenced on 2 June 2006.

It also removed a concern to which I referred in my 2005 report, namely that a person could practise law without holding a practising certificate (and professional indemnity insurance) if that person did not charge a fee. The 2006 Bill removed this short-lived provision to ensure that clients who receive pro bono services 'receive the same level of consumer protection as clients who pay for legal services'. The amendment brought New South Wales into conformity with the Queensland and Victorian legislation.

There remain a few issues that need to be remedied arising from the new legislative regime. Discussions with officers of the Attorney General's Department are continuing.

The Bar Association is grateful to Attorney General Bob Debus and his department for their willingness to address practical problems with this new legislation when brought to attention.

## Mutual recognition

The other issue of some substance concerns the Commonwealth's mutual recognition legislation. This problem is not a theoretical one. Persons who hold a practising certificate from New Zealand have sought to be issued with a NSW barrister's practising certificate on the basis of the *Trans-Tasman Mutual Recognition Act 1997* even though they did not meet the requirements all NSW applicants need to meet. (In at least one case the applicant was resident in NSW!) Similar problems have arisen where the holder of an interstate practising certificate has sought a NSW barrister's practising certificate without undergoing the standard exams and Bar Practice Course.

This mutual recognition legislation was of course enacted before the national legal profession came into effect. It now conflicts with, and is a possible way of bypassing, that regime. The Bar Association's concerns were conveyed to the NSW attorney general. In January 2006 Mr Debus advised the Bar Association that the situation was 'clearly not entirely satisfactory' and that he had asked his department to add the issue to the agenda for further discussion at a national level. The association has also raised the problem with the federal Attorney-General's Department.

## Section 55D of the Judiciary Act 1903

Unfortunately, for all the work that has been done, and endorsed by SCAG and state parliaments, there still remains a serious flaw in the national practising certificate regime.

The *ACT Legal Profession Act 2006* commenced on 1 July 2006. Section 16 of this Act makes it an offence to practice law in the ACT unless the person is an Australian legal practitioner, that is, an Australian lawyer who holds a practising certificate.

However, section 55D of the *Judiciary Act 1903*, enacted when no law in the ACT dealt with legal practice existed, is inconsistent in that it provides that a person whose name is on the roll of barristers and solicitors kept by the High Court or a Supreme Court is entitled to practice in the ACT (there being no rule or statute to the contrary). While it is arguable that the ACT legislation has the effect of suspending the right to practice, the contrary argument appears to have been favoured by the court (in obiter) in *Commonwealth v Vance* [2005] ACTCA 35. That is, a person whose name is on a roll of legal practitioners can seemingly practice in the ACT, including before the High Court sitting in Canberra, and need not hold a practising certificate. This is not a hypothetical situation. It is an unintended remaining loophole in the national practice regime that should be closed.

The association has taken up this matter with the NSW attorney general, the federal Attorney-General's Department and with the chief executive of the High Court.

## Executive director's report - continued

### The ill barrister

Unfortunately, in recent years the Bar Council has become aware of a few instances where barristers are suffering from an illness that is, or may be, adversely affecting their ability to practise. Before the *Legal Profession Act 2004* there was little the Bar Council could formally do when, on receipt of a complaint or during an investigation into a complaint, it became aware that the complaint might be better managed as a medical problem rather than as a disciplinary problem.

Section 9(1)(m) of the *Legal Profession Act 2004* now provides that when considering a person's suitability to take out, or to continue to hold, a practising certificate the Bar Council (and the Law Society Council) must consider 'whether the person currently is unable to carry out the inherent requirements of practice ... and that inability arises from infirmity, injury or mental or physical illness, impairment or disability'. Section 105 of the Act authorises the council to require the applicant or holder of a practising certificate 'to be medically examined by a medical practitioner nominated by the council'. (Unlike for medical practitioners under the *Medical Practice Act 1992*, the councils may impose conditions on the practitioner's practising certificate even should they do not agree to this being done.)

During 2005 – 2006 the Bar Council exercised these powers in two instances. One barrister's practising certificate was suspended. The association met relevant medical costs. Legal representation in several jurisdictions was provided pro bono to assist one of the practitioners to extricate himself from proceedings.

These cases clearly demonstrated the public interest benefits of the new provisions.

The Bar Council (as trustees of the Barristers' Benevolent Association) continued to provide both financial and pastoral support to barristers and their families in times of grief and financial hardship.

All of these cases are of course very stressful to the barristers (and their families). They are also stressful to the staff of the Bar Association who provide personal assistance and guidance. It is not just a matter of sending a formal letter to the affected person. But it is clear that the assistance is appreciated. It is an example of the Bar's collegiality at its best.

### The Bar Association's dealings with the Australian Taxation Office

Since November 2000 the Bar Association has endeavored to persuade the Australian Taxation Office and the relevant Commonwealth ministers to seek parliamentary approval to an amendment to section 16 of the *Income Tax Assessment Act 1936* to allow the ATO to provide the association with *publicly available* information about the prosecution of those very few barristers who have flouted the taxation laws and so badly let down the profession – and the public more generally.

In last year's report I noted that 'some five years' after the Bar Association first sought this amendment, 'the matter is still under consideration'. During the past financial year the NSW attorney-general, the Australian Bar Association, the Law Council of Australia and the Bar Association all took up with Commonwealth ministers the need to have resolution of this matter expedited. The best that was achieved was a letter to the Law Council from the minister for revenue and assistant treasurer's chief of staff stating that 'the Treasury has been considering whether, and to what extent, publicly available information should be provided to regulatory bodies about their members. Treasury is currently engaged in discussions with the ATO and the Office of the Privacy Commissioner about this issue, and hopes to be able to consult with the Law Council of Australia on these questions in the second half of 2006'.

That is, it is now *six years* since the amendment was sought, and the matter is still under discussion in Canberra.

### The Law Council of Australia

The Bar Association is a constituent body of the Law Council of Australia. Each member of the association is a member of the LCA 'family'.

In December 2005 the Law Society of New South Wales informed the LCA that the society had resolved to give notice of its intention to withdraw from the LCA effective from 30 June 2006 unless certain matters were undertaken and resolved in the meantime. These matters concerned the role of the LCA as a national representative body and regulator of Australian lawyers, the LCA's relationship with its sections and voting equity between constituent bodies based on financial contribution.

The LCA and its 'Futures Working Party' (of which I am a member) have since that time put in many hours on the issues raised by the Law Society.

The Futures Working Party was already working on a wide range of issues before the Law Society's advice to the LCA. The Law Institute of Victoria and (to a lesser extent) the Queensland



Picture by PETER BRAGG/fairfaxphotos

## Executive director's report - continued

Law Society supported their NSW counterpart's demands for major changes to the constitution and role of the LCA.

In May the LCA issued a consultation paper, *National Representation of the Legal Profession – The Future* designed to facilitate consultation with the constituent bodies about the future of representation arrangements for the Australian legal profession. That consultation is on-going.

There is a good case for the LCA to have more 'clout' and authority when representing the profession at a national level. However, there is, at least in the view of the Bars, no reasonable case for the LCA's constitution and governance structure to be amended so that the views of the major law societies would always prevail. No convincing case has yet been advanced to show the current federal governance model cannot continue to work effectively, as it has in the past. Suggestions such as that the New South Wales Bar Association and Law Society of NSW should form an entity titled 'Law Council of Australia (NSW Division)' are impractical.

The concerns of at least some of the law societies to retain the membership of the major firms are understandable. (An enhanced role and different structure for the LCA is thought by some to be an essential prerequisite to retaining the large firms' involvement.) The need to better resource the LCA is accepted by most observers. What is not at all clear is why some wish to impose a constitutional and governance regime on the constituent bodies that may have the effect of disenfranchising the Bars and smaller law societies. The result of such a structural change would almost inevitably be for the LCA to split between the law societies and the Bars. That would be in the interests of neither the constituent bodies, the LCA nor the legal profession. The Law Society of New South Wales' advice to the LCA in June this year that the society remains committed to participating actively as a constituent member of the Law Council for the duration of the 2006/2007 practising year is a welcome indication that in the 2006-2007 report I will be able to note that this issue has been amicably and constructively resolved.

### Thanks

Much of the Bar Association's work is done 'behind the scenes'. Several hundred members give invaluable support to the association and the wider community. Elsewhere in this report there are reports about some of their activities. But that is only part of the story.

The Bar Association could not function, nor could the Bar Council, without the constant assistance, happily given, by so many members of the association. The members of committees and sections, the duty barristers, the contributors to the Legal Assistance Referral Scheme, the authors of countless submissions to government and law reform agencies. The many who cheerfully provide assistance (well, on occasion understandably not so cheerfully) when rung early in the

morning or late at night, often on weekends, and are asked to assist with a media inquiry, information for an obituary being published the next morning, or to answer a query just raised in debate in parliament. The staff in barristers' chambers, Counsels' Chambers and court staff: the list goes on.

Those who have contributed in so many ways know who they are. I respect, and am grateful for, their assistance.

I should also record my appreciation for the support given to me and the staff by the 2005 and 2006 Bar councils, and in particular to the presidents, Ian Harrison SC and Michael Slattery QC, and the members of the Bar Council executives. I am aware that phone calls and e-mails from me at all hours of the day and night, seven days of the week, are not always welcome. But there has never been an occasion when the assistance I have sought has not been willingly provided, or the information and advice I wished to convey given due attention.

### The Bar Association's staff

As I said in last year's annual report, this part of my annual report is the hardest – albeit the most pleasurable – to write.

It is hard because I need to find different ways of saying what I have said before. It is enjoyable because the staff deserve my thanks, that of the Bar Council, and those of the association's members more generally. Each member of the staff is committed to providing a high quality service to the association and to the wider community. They work hard, and long hours, usually unrecognised. It is not just the day to day paperwork that is managed so cheerfully and efficiently. The chairs and tables in the Common Room do not move themselves virtually every day to allow a function to be held. The staff in attendance after normal working hours at a social function are not paid to work those extra hours. The processing of practising certificate renewals late into the night and on public holidays goes ahead without complaint. The servicing of committees, all of which meet 'after hours', is done quietly and effectively. The library staff are seemingly permanently on duty. The vexatious and on occasion threatening potential litigant receives courteous attention, even when undeserved.

I remain proud of what the staff achieve, and am very grateful for their personal support, and support to members of the Bar Association.

PA Selth  
Executive Director



# Appointments

## Committees of the Bar Association

The Bar Association's committees regularly advise and assist the Bar Council in the preparation of detailed submissions regarding draft legislation and current issues in the administration of justice. The expert commentaries of Bar Association committees are sought by governments and opposition political parties, as well as parliamentary committees and law reform agencies.

The committees are comprised of Bar Association members, who volunteer for service and give generously of their time. Some committees include members of the community in their ranks. The following lists display committee membership as at 30 June 2006. Appointees who may have resigned during the reporting year are not included.

### **Bar News Committee**

Andrew Bell (Editor)

Keith Chapple SC

John Mancy

Gregory Nell

Rena Sofroniou

Arthur Moses

Chris O'Donnell

Carol Webster

David Ash

Catherine Parry

Michael Kearney

Julie Soars

Geoff Hull (clerk)

### **Bar Association staff member**

Chris Winslow

### **Criminal Law Committee**

Stephen Odgers SC (Chair)

Anthony Bellanto QC

Tim Game SC

Phillip Boulten SC

John Stratton SC

Carolyn Davenport SC

Gregory Smith SC

Daniel Howard SC

Linda McSpedden

Elizabeth Wilkins

Richard Button

Sue Kluss

Greg Farmer

Sally Dowling

Donna Spears

Maria Cinque

Matthew Johnston

Gaby Bashir

Michael Coroneos

Peter Doyle

Paul Kerr

### **Bar Association staff member**

Cindy Penrose

### **Common Law Committee**

Larry King SC (co-chair)

Ross Letherbarrow SC (co-chair)

Andrew Morrison SC

Stephen Campbell SC

Simon Harben SC

Peter Mooney

Lorna McPhee

Richard McHugh

Kylie Nomchong

Julia Lonergan

Andrew Stone

David Wilson

### **Bar Association staff member**

Kim Kemp

### **Costs and Fees Committee**

Tom Bathurst QC (Chair)

Bernie Coles QC (Deputy chair)

Dr Chris Birch SC

Kerrie Leotta

Mark Brabazon

Madeleine Gilmour

Gregory Sirtes

Peter Gwozdecky

Rachel Pepper

Christopher Wood

Philippe Doyle Gray

### **Bar Association staff member**

Jennifer Pearce

### **Equal Opportunity Committee**

Jeremy Gormly SC (Chair)

Angela Bowne SC

Liz Olsson SC

Linda McSpedden

Virginia Lydiard

Malcolm Gracie

Julia Baird

Trish McDonald

Kate Eastman

Kathy Sant

Michelle Painter

Andrew Pickles

## Committees of the Bar Association - continued

David Price  
 Lincoln Crowley  
 Melissa Fisher  
 Norman Laing  
 Dr Jocelyn Scutt  
**Bar Association staff member**  
 Cindy Penrose

### Family Law Committee

Grahame Richardson SC (Chair)  
 Robert Lethbridge SC  
 Margaret Cleary  
 Warwick Tregilgas  
 Peter Cook  
 Paul Sansom  
 Richard Schonell  
 Neil Macpherson  
 Emily Pender  
**Bar Association staff member**  
 June Anderson

### Human Rights Committee

Anna Katzmann SC (Chair)  
 Ian Barker QC  
 Nicholas Cowdery AM QC  
 Bruce Collins QC  
 Phillip Boulten SC  
 Simeon Beckett  
 Kate Eastman  
 Dr Sarah Pritchard  
 Ben Kasep  
 Prof Andrew Byrnes, UNSW  
 Prof George Williams, UNSW  
**Bar Association staff member**  
 Cindy Penrose

### Legal Aid Committee

Tim Game SC (Chair)  
 Geoff Lindsay SC

Peter Zahra SC  
 Phillip Boulten SC  
 Stephen Hanley  
 Susan Kluss  
 Mark Buscombe  
 Luke Brasch  
 Nicole Carroll  
**Bar Association staff member**  
 Cindy Penrose

### Mediation Committee

Robert Angyal SC (Chair)  
 Bruce Hodgkinson SC  
 Angela Bowne SC  
 Chris Ronalds AM SC  
 Ian Bailey SC  
 Michael McGrowdie  
 Michael Eagle  
 Brian Ferrari  
 Graham Barter  
 Samuel Reuben  
 Mary Walker  
 Geraldine Hoeben  
 Malcolm Choat  
 Katherine Johnson  
 Susan Phillips  
 Andrew Bulley  
 Rashelle Seiden  
 Jane Rawlings  
**Bar Association staff member**  
 Cindy Penrose

### New Barristers' Committee

Philip Greenwood SC (Consultant)  
 Christopher Wood (Chair)  
 Philippe Doyle Gray  
 Andrew Justice  
 John-Paul Redmond

Madeleine Avenell  
 Teni Anne Berberian  
 Jennifer Single  
 Craig Biscoe  
 Esther Lawson  
 Kylie Day  
**Bar Association staff member**  
 Travis Drummond

### Practice Management Committee

Tom Bathurst QC (Chair)  
 Robert Dick  
 Michael McHugh  
 Nick Tiffen  
**Bar Association staff member**  
 Jennifer Pearce

### Professional Conduct Committee #1

Phil Greenwood SC (Chair)  
 Stephen Robb QC  
 Larry King SC  
 Leonard Levy SC  
 John Sheahan SC  
 Michael Loewenstein  
 Janet Oakley  
 Mark Best  
 Richard McHugh  
 Vicki Hartstein  
 Ian Tonking  
 Frank Veltro  
 Sally Dowling  
 Sara Bowers  
 Alister Abadee  
 Elizabeth Beilby  
 Philippe Doyle Gray  
 Edward Muston  
**Academic members**  
 Dorne Boniface

## Committees of the Bar Association - continued

### Lay members

John Freeman  
Geraldine Walsh

### Committee Secretary

Jocelyn Sparks

### Professional Conduct Committee #2

Robert Toner SC (Chair)  
Ian Temby AO QC  
Jeremy Gormly SC  
Liz Olsson SC  
Peter Hamill SC  
Geoff Underwood  
Virginia Lydiard  
Kim Morrissey  
Jay Anderson  
Mark Stevens  
Michael Jenkins  
Richard Weinstein  
Sandra Duggan  
Dr James Renwick  
Gail Furness  
David Ash  
Vahan Bedrossian

### Academic members

Maxine Evers

### Lay members

Bronwyn Preston  
Mary Werick

### Committee Secretary

Helen Barrett

### Professional Conduct Committee #3

Tom Bathurst QC (Chair)  
David Higgs SC  
David Davies SC  
Hayden Kelly SC  
Craig Leggat SC

Lorna McFee  
Madeleine Gilmour  
Ian Davidson  
David Jordan  
Robert Beech-Jones  
Nye Perram  
Graham Turnbull  
James Lockhart  
Louise Byrne  
Michael McHugh  
Louise McManus  
Penny Sibtain  
Paul Bolster

### Academic members

Bernard Dunne

### Lay members

Peter Cassuben  
Helga Esamie  
Ian Fitzgerald  
Nicholle Nobel

### Committee Secretary

Jocelyn Sparks

### Professional Conduct Committee #4

Bernie Coles QC (Chair)  
Philip Hallen SC  
David Russell SC  
Todd Alexis SC  
Ian Lawry  
Brendan Hull  
Peter Tomasetti  
Geoffrey Rich  
Lachlan Gyles  
Rena Sofroniou  
Igor Mescher  
Matthew Vesper  
Patrick Griffin

Carol Webster

Sigrid Higgins  
Margaret Holz

### Academic members

Andrew Buck

### Lay members

Judy Butlin  
Lyndsay Connors  
John Girdwood

### Committee secretary

Helen Barrett

### Senior Counsel Selection Committee

Michael Slattery QC  
Anna Katzmann SC  
Peter Kite SC  
Steven Finch SC  
Chris Craigie SC

### Bar Association staff member

Kathy O'Neill

### Taxation Committee

Anthony Slater QC (Chair)  
David Russell QC  
Holger Sorensen  
Kevin Connor  
Christopher Bevan  
Igor Mescher  
Peter Fraser  
Mark Richmond  
Narelle Butler  
Brett Young  
Michelle Hirschhorn

### Bar Association staff member

Cindy Penrose

## Committees of the Bar Association - continued

### Working parties

#### Asia Pacific Advisory Working Group

Tom Bathurst QC (Chair)

#### Bar Association staff member

Jennifer Pearce

#### Indigenous Barristers' Strategy Working Party

Chris Ronalds SC (Chair)

David Frearson SC

Andrew Haesler SC

Mullenjaiwakka

Peter Miller

Anthony McAvoy

Lincoln Crowley

Norman Laing

Professor David Barker (UTS)

Professor Larissa Behrendt (UTS)

Associate Professor Jill Hunter (UNSW)

#### Bar Association staff member

Cindy Penrose

#### Limited Liability Working Party

Tom Bathurst QC

David Davies SC

Dr Andrew Bell

Alister Abadee

Kate Barrett

#### Bar Association staff member

Kim Kemp

### Sections

#### Administrative Law

Convenor: Alan Robertson SC

Secretary: Stephen Lloyd

#### Constitutional Law

Convenor: Stephen Gageler SC

Secretary: David Knoll

#### Trade Practices & Consumer Protection Law

Convenor: Jeffrey Hilton SC

Secretary: Andrew Ogborne

## New South Wales members appointed to the Bench



#### Supreme Court of New South Wales

The Hon Justice P Brereton

#### Land & Environment Court of New South Wales

The Hon B J Preston, Chief Judge

The Hon Justice J Jagôt

The Hon Justice P Biscoe

#### District Court of New South Wales

His Honour Judge J Bennett SC

#### New South Wales Local Court

Magistrate Peter Dare SC

Magistrate Glenn Bartley

#### Federal Court of Australia

The Hon Justice S Rares

The Hon Justice D Cowdroy OAM

#### Federal Magistrates Court

Magistrate Kevin Laphorn

Magistrate Louise Henderson

Magistrate Judith Housego

## Bar Association representatives on educational bodies

### College of Law, Board of Directors

Michelle Painter

### Legal Practitioners Admission Board

Peter Taylor SC  
Jeremy Gormly SC

### Legal Practitioners Admission Board, Legal Qualifications Committee

John Fernon SC  
Janet Oakley  
Philippe Doyle Gray

### Legal Practitioners Admission Board, Law Examinations Committee

Michael Christie  
University of Sydney, Faculty of Law  
Peter Garling SC

### University of Sydney Law School Advisory Board

Jennifer Stuckey-Clarke

### University of NSW, Faculty of Law

Margaret Holz

### University of Technology, Sydney, Faculty Board

Geoff Lindsay SC

### University of Sydney, Law Extension Committee

Peter Hamill SC  
Anthony O'Brien

### University of Western Sydney

Robert O'Neill

### University of Wollongong Faculty of Law, Visiting Committee

Bruce Collins QC

## Court committees and working parties

### Commonwealth courts and tribunals

#### Federal Court of Australia Court User Committee

Malcolm Oakes SC  
Richard Cobden SC  
Rhonda Henderson

#### Family Court Case Management Committee

Grahame Richardson SC

#### Migration Review Tribunal/Refugee Review Tribunal Liaison Committee

Nick Poynder

### State courts and tribunals

#### Uniform Rules Committee

Geoff Lindsay SC

#### Court of Appeal Users Group

John Maconachie QC  
David Davies SC  
Justin Gleeson SC

#### Supreme Court Rule Committee

Michael Slattery QC  
Jeremy Gormly SC

#### Supreme Court Commercial Users Committee

Robert Macfarlan QC  
Steven Rares SC  
Noel Hutley SC  
Glen Miller QC  
Michael Rudge SC  
Rodney Smith SC  
David Hammerschlag SC  
James Stevenson SC

#### Supreme Court Common Law Division Criminal Users Committee

Tim Game SC  
Stephen Odgers SC

#### Supreme Court Common Law Division Civil Users Committee

Peter Deakin QC  
Tony Hewitt SC

#### Supreme Court Company List User's Group

Malcolm Oakes SC  
Robert Newlinds SC  
James Thomson  
James Johnson

#### Supreme Court Probate User's Group

Michael Willmott SC

#### Supreme Court Working Party for Establishment of Guidelines for Expert Conferences / Court Appointed Experts

Leonard Levy SC

#### Supreme Court Registry Users Group

Mr John Hennessy  
Mr Michael Meek

#### Supreme Court Working Party for Expert Witnesses in Criminal Trials

Ian McClintock SC

#### Land & Environment Court Users Group

Jeffrey Kildea

#### Land & Environment Court Information Technology Implementation Group

Jeffrey Kildea

#### Industrial Relations Commission Rules Committee

Ian Neil  
Arthur Moses

#### Industrial Relations Commission Users Group

Peter Kite SC  
Trish McDonald

## Court committees and working parties – continued

### District Court Rule Committee

Paresh Khandhar

### District Court Civil Business Committee

Peter Deakin QC  
Larry King SC

### District Court Criminal Listings Review Committee

Kate Traill

### Dust Diseases Tribunal Rules Committee

Wendy Strathdee  
Brian Ferrari (Deputy)

### Local Court (Civil Claims) Rule Committee

Andrew Kostopoulos

### Local Courts (Civil Claims) Court Users Forum

Andrew Kostopoulos

### St James Local Court Users Forum

Elizabeth Beilby

### Local Court Rule Committee

Elizabeth Beilby

### Workers' Compensation Commission Users Group

Michael Jenkins

### Children's Court Advisory Committee

Greg Moore

## Statutory appointments

### Administrative Appeals Tribunal

Peter Taylor SC

### Administrative Decisions Tribunal Legal Services Division

Robert Macfarlan QC  
(Term Expires: 31.10.08)

Sharron Norton SC  
(Term Expires: 31.10.08)

David Officer QC  
(Term Expires: 31.10.08)

Lionel Robberds QC  
(Term Expires: 31.10.08)

Wendy Robinson QC  
(Term Expires: 31.10.08)

Alison Stenmark SC  
(Term Expires: 13.01.07)

### Council of Law Reporting

Bret Walker SC (Editor)  
Lee Aitken (Consulting Editor)  
Francis Douglas QC  
Christopher Birch SC  
Noel Hutley SC  
Ian Jackman SC  
Christine Adamson SC  
Timothy Castle

### Motor Accidents Authority Senior Assessors Service

(Terms expired 30 June 2006)  
Peter Capelin QC  
Larry King SC

Ross Letherbarrow SC  
Margaret Holz

### Claims Assessment and Resolution Service

(Terms expired 30 June 2006)

Christopher Hickey  
Robert Tonner  
Robert Quickenden  
John Turnbull  
William Fitzsimmons  
John Tancred  
Helen Wall  
John Watts  
Margaret Holz

### Legal Aid Commission

#### Board members

Geoff Lindsay SC  
Alternate: Phillip Boulten SC

### Legal Aid Commission - Legal Aid Review Committees

#### Committee No.1

John McCarthy QC  
1st alternate: Paul Menzies QC  
2nd alternate: Paul Blackett SC

#### Committee No.2

Winston Terracini SC  
1st alternate: Anne Healey  
2nd alternate: Mark Buscombe

### Family Law Legal Aid Review Committee No.1

Gregory Moore  
1st alternate: Richard Schonell  
2nd alternate: John Berry

### Legal Aid Public Interest Human Rights Committee

Member: Dr Sarah Pritchard  
Alternate: Nick Poynder

### Legal Profession Advisory Council

Peter Garling SC  
Philip Greenwood SC

### Law and Justice Foundation

Bret Walker SC

### Law Week Board

Philip Selth

### Patent and Trade Marks Attorneys Disciplinary Tribunal

Sigrid Higgins

### Professional Standards Council

Brian Rayment QC (Chair)

### The Nurses and Midwives Tribunal

Irving Wallach (Deputy Chairperson)

## Court liaison members 2006

### Federal courts and tribunals

#### High Court

David Jackson QC

#### Federal Court

Malcolm Oakes SC

#### Family Court

Grahame Richardson SC

#### Migration Review Tribunal, Refugee Review Tribunal

Nick Poynder

### State courts and tribunals

#### NSW Court of Appeal

Donald Grieve QC

#### Supreme Court of NSW - Common Law Division

Richard J Burbidge QC

#### Supreme Court of NSW - Equity Division

Robert G Forster SC

#### Supreme Court of NSW - Possessions List

James Stevenson SC

#### Supreme Court of NSW - Criminal Matters

Tim Game SC

#### Supreme Court of NSW - Admiralty List

Sandy Street SC

#### Land and Environment Court

Malcolm G Craig QC

#### Industrial Relations Commission of NSW

Max Kimber SC

#### Local Court

Kate Traill

## Other appointments

### Australian Advocacy Institute

Elizabeth Fullerton SC

### Australasian Dispute Resolution Centre

Richard Bell

### Fair Trading Tribunal - Home Building Division Consultation Group

Simon Kerr

### Motor Accidents Assessment Service (MAAS) Reference Group

Andrew Stone

### Public Interest Law Clearing House

Geoff Lindsay SC

Nye Perram

### Trustees of the Pro Bono Disbursement Fund

Philip Selth

### NSW Attorney General's Department working parties

#### Evidence Act working party

Stephen Odgers SC

#### Civil Procedure Working Party

Greg George

Christopher Wood

#### Legal Technology Reference Group

Jeffrey Kildea

### Law Society of New South Wales committees

#### Criminal Law Committee

Matthew Johnston

Michael Coroneous

#### Personal Injury Committee

Andrew Stone

### Law Council of Australia committees

#### Access to Justice Committee

Christopher Whitelaw

#### Advisory Committee on Indigenous Legal Issues

Chris Ronalds SC

Dr Sarah Pritchard

Anthony McAvoy

#### Alternative Dispute Resolution Committee

Mary Walker (Chair)

#### Australian Advocacy Institute

Her Honour Judge Ann Ainslie-Wallace

Elizabeth Fullerton SC

#### Australian Young Lawyers Committee

Hugh Stowe

#### Equalising Opportunities in the Law Committee

Julia Lonergan

### LCA/SCAG National Legal Profession Officers' Working Group

Philip Selth (Alternative to Peter Carne)

### Military Justice System Working Group

Dr James Renwick

### Model Equal Opportunity Briefing Policy Working Group

Jeremy Gormly SC

### National Criminal Law Committee

Tim Game SC (Co-chair)

Bret Walker SC

Stephen Odgers SC

### National Practice Working Group

Jennifer Pearce

### National Profession Practice Reference Group

Michael Slattery QC

### National Legal Practitioners Database Working Group

Jennifer Pearce

### National Practice Advisory Group

Philip Selth

Jennifer Pearce

### 2007 Legal Convention Committee

Chris Winslow



# Reports

## Promoting the interests of local practising barristers

### The New Barristers Committee

In early 2006 the Young Barristers Committee was renamed the New Barristers Committee. This was done to avoid the misconception that it represents barristers of a certain age, rather than years spent practising at the Bar.

The New Barristers Committee represents the 'under fives': barristers of not more than five years standing at the Bar. It is the only committee that is devoted exclusively to their concerns and interests.

The committee's aims include:

- ❖ responding to concerns raised by new barristers;
- ❖ undertaking initiatives that assist new barristers; and
- ❖ raising policy issues that arise in the experience of new barristers.

### The transition from readership

The New Barristers Committee has been considering ways that it can assist new barristers in the transition from readership and in the early years of practice.

Finding suitable accommodation, particularly after readership, can be a challenge for barristers in their early years of practice. The committee organised a CPD seminar on Wednesday, 12 April 2006 in which Mary Walker and Geoff Hull, the clerk of Eighth Floor Wentworth Chambers, addressed frequently asked questions regarding licensing and purchasing chambers.

The committee also identified ethical issues surrounding direct access briefs as a common concern for barristers in their early years in practice. In response, a CPD seminar was held on Wednesday 19 April 2006, in which Paresh Khandhar discussed ethical issues and hypothetical scenarios concerning direct access briefs.

The committee intends holding other CPD seminars on particular matters. A seminar by Don Grieve QC on pleadings is scheduled to take place on Wednesday, 20 September 2006.

### Costs disclosure and recovery

The regulation and recovery of costs is an important matter for every barrister and perhaps a daunting one for those starting out in practice. The New Barristers Committee is working to make available on the web site of the Bar Association some sample costs disclosure documents. The committee is also working with The Bar Council on ways to facilitate more efficient recovery of outstanding fees.

### Bar News & the new barristers' survey

In 2005 the committee commissioned a survey of new barristers covering matters such as income and work satisfaction. A summary of the results was published in the winter 2006 edition of *Bar News*. The findings relating to practice management,

such as invoices outstanding, should assist new barristers to assess how they are faring compared to others of similar seniority. Members of the committee were pleased to provide a number of feature articles on matters of particular relevance to the junior Bar.

### Development of procedural guides to courts and applications

One of the constant challenges confronting new barristers is appearing at short notice in unfamiliar courts or in unfamiliar areas of law. The New Barristers Committee is compiling a set of practical reference materials on courts, lists and applications in which new barristers commonly appear. In order to assist new barristers to get up to speed quickly, the committee intends to make those documents available on the web site of the Bar Association shortly.

### Issues of policy

The New Barristers Committee is keen to work with The Bar Council to provide comment and submissions for reform in substantive areas of the law. At present, the committee is drawing upon the regular exposure that new barristers receive to procedural applications to provide ongoing input to the Civil Procedure Working Party. The committee is also developing a proposal for reconsideration or reform of the law of undue influence in the area of probate.

### Fostering the collegiality of the junior Bar

Earlier this year, Phil Greenwood SC raised for the committee's consideration the issue of how to better foster the collegiality of the Bar. The New Barristers Committee has, throughout the year, provided some regular low-key opportunities for barristers to meet socially with other colleagues at the Bar.



L to R: Joanne Shepard, Anne Horvarth, Craig Lenehan, Duncan Macfarlane, Nick Eastman, Edwina Holt, Phil Greenwood SC

## Promoting the interests of local practising barristers – continued

The committee has organised a series of social gatherings over the course of the year, and in various locations. Informal drinks were held at Bar Europa on 6 April 2006 and 8 June 2006, and at the Crown Hotel (close to the Downing Centre) on 17 August 2006. In addition, the committee has organised a wine tasting evening for members of the Bar, which is to take place in the Bar Association Common Room on Thursday 26 October 2006.

The New Barristers Committee is also hosting the Inaugural Under 6's Dinner, which is to be held on Wednesday 13 September 2006 at Sky Phoenix Restaurant. It is hoped that, together with the Bench and Bar Dinner, this will be an annual event.

### International exchanges

At the request of the president of the Bar Association, the New Barristers Committee has also been exploring the possibility of new barristers working at the Bar in other common law

countries such as England and Hong Kong, perhaps by way of an exchange program. Any barristers who may be considering practice overseas, or who have experience in practice as a barrister overseas, have been requested to contact Christopher Wood or Travis Drummond, if they are interested in assisting with this proposal.

### Presentations to students

Throughout the year, members of the committee have responded to requests for people to speak to solicitors and students about the decision to practise as a barrister and the nature of life at the Bar. The president and members of the committee spoke at a seminar organised by NSW Young Lawyers earlier in 2006 on the topic 'Everything you wanted to know about coming to the Bar but were too scared to ask'.

## Important social events

### *Bench & Bar Dinner*

The 2006 Bench & Bar dinner was held at the Westin Hotel on Friday, 5 May. There are few sights more impressive than the Westin's ballroom set up with tables sufficient for the 750 guests that this year's dinner attracted. In addition to a speech by the guest of honour, the Hon Justice Susan Crennan, guests were entertained by Ms Junior (Kate Morgan) and Mr Senior (Tony Bannon SC).

### *15-Bobbers*

During 2005/2006 the association hosted numerous 15-Bobber functions for recent appointees to the various courts in New South Wales. The 15-Bobbers provide a wonderful opportunity for barristers to relax and enjoy some wonderful stories about some of the finest minds (not to mention more colourful characters) in the profession.

### *Tutors & Readers Dinner*

The Tutors & Readers dinner for the May 2005 course was held on Friday, 28 July 2005 at L'Aqua at Cockle Bay. The 120 guests were entertained during the evening by the past president, Ian Harrison SC, who was MC for the evening and Richard Beasley, who was the after dinner speaker. Richard provided a hilarious insight into the arguably more glamorous world of a successful author. The evening was a great success.

At the Tutors and Readers Dinner L to R: Ian Harrison SC, Sue Chrysanthou, Catherine Yeomans, Richard Beasley, Alex Pring, Wendy Stephens





# Reports

## Promoting the interests of local practising barristers

### 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. BarCare offers members of the bar an opportunity to discuss with a specialist professional counsellor any personal problem that is interfering with work or family life.

BarCare is available to all members of the Bar Association and their immediate family. Confidentiality is guaranteed. The Bar Association covers costs associated with the initial consultation, assessment and referral by the BarCare counsellor.

	2004-2005	2005-2006
<b>Number of members seen</b>	<b>15</b>	<b>13</b>
Female	4	5
Male	11	8
Most common age brackets	35-44 years & 55-64 years	45-54 years & 35-44 years
Most common length of time in practice	11 years +	11 years +
Most common locality of practice	Sydney CBD	Sydney CBD
Most common types of problems	Marital/relationship, panic attacks, stress, anxiety	Overwork, financial, marital, alcohol
Number of family members seen	4	4
Number of members who continued with treatment after the initial consultation	14	7

A designated member of the Bar Association staff has dealt with a small number of enquiries received through the BarCare helpline: (02) 9230 0433.

#### Review of the scheme

A seminar was held in May at the Bar Association offices. It was attended by most of the BarCare panel members, the executive director and a member of the association staff. A variety of issues were discussed, including ways to increase utilisation of the scheme. At the seminar it was decided that in June 2006 a BarCare panel member would address the CPD mini-conference at the University of Technology, Sydney. Subsequent feedback from the conference indicated that the session was well received. It was also decided to enclose a BarCare card with the Bar Association's annual report.

#### The history of BarCare

In July 2000 the Bar Council executive recommended to Bar Council that an independent counselling service be established along the same lines as LawCare, the Law Society's system of providing counselling and medical treatment to solicitors.

After a series of meetings with the New South Wales Medical Board, medical practitioners and members of the Bar, the structure of the scheme (four panel members, with the initial consultation paid by the Bar Association) was agreed. In May 2001 a brochure describing the new scheme was distributed to members. A formal announcement of the introduction of the scheme was made in the May/June 2001 edition of *Bar Brief*.

#### How it works

Barristers and their families seeking assistance initially contact a BarCare counsellor and make an appointment for consultation. The consultation takes place at the counsellor's professional rooms or by telephone. The Bar Association covers the costs arising from the initial consultation with the BarCare counsellor.

During the initial consultation the counsellor seeks to identify the nature and extent of the problem. With the client's permission, the counsellor may formally consult with a medical practitioner or other health professional of the member's choice to assess the treatment options available – both therapeutic and medical – prior to discussing a treatment programme. The treatment programme may involve further counselling sessions with the BarCare counsellor, and/or a referral to a specialist in a particular discipline, or to a specific support programme, for appropriate treatment.

The BarCare counsellors have access to a wide network of professionals from different disciplines for referral purposes or to discuss aspects of treatment. These include both general and specialist medical practitioners, social workers, psychologists, stress management consultants, dependency counsellors, as well as qualified people in other professional services.

Participation in any part of the BarCare service is voluntary. Confidentiality is assured.

**BarCare helpline: (02) 9230 0433**  
[www.nswbar.asn.au/barcare](http://www.nswbar.asn.au/barcare)

## Report of the Management Committee of the Barristers' Benevolent Association

Every year there are barristers who encounter personal misfortune or require some form of assistance from the Benevolent Association in order to overcome a major problem. Sudden deaths, serious illness, accident, mental illness, cancers, suicides, HIV/AIDS, alcoholism, families of deceased members who have some need and serious financial misfortune are all problems which have been addressed by the Barristers' Benevolent Association over the last few years.

The association can respond to calls for assistance without formality and without delays. There are no formal applications, forms, waiting periods, means tests or other predetermined administrative requirements. There have been times when assistance has been provided on the same day as information about a problem became known.

The assistance given is generally financial, but it is not limited to money. Arrangements have been made for legal assistance, for independent psychiatric assessment, for negotiating housing, negotiating with banks, preparing financial position statements, or dealing with other aspects of members' financial problems and intervening with creditors where that becomes necessary.

Every aspect of the operation of the Benevolent Association, from the donations made to the association through notification that a member is in difficulty, assessing and providing assistance is an expression of the collegiate nature of the life of a group of independent individuals collectively operating as the Bar.

In the financial year 2005-2006 the Management Committee approved seven grants (totalling \$83,000). One new loan totalling \$8,000 was made. No loans were waived in 2005-2006.

Information that a member is in difficulty can come from any source. The most common source of information is from barristers who are aware that a floor member is in difficulty. Very often clerks will make contact, but sometimes family members will make an approach, either directly to a member of the Bar Council or to the executive director. This contact can take the form of a telephone call or letter to the executive director or a Bar councillor, and is treated with the utmost confidentiality.

## Contributions to the Barristers' Benevolent Association

### Contributions \$6,000 and above

Francis Douglas QC

### Contributions \$4,000 to \$4,999

Bret Walker SC

### Contributions \$2,000 to \$2,999

Paul Byrne SC

Anna Katzmann SC

Tim McKenzie

Michael Slattery QC

### Contributions \$1,000 to \$1,999

Anthony Bartley SC

Anthony Bellanto QC

Campbell Bridge SC

Philip Doherty SC

John Durack SC

Malcolm Gracie

Simon Kerr

Stephen Longhurst

John Murphy

The Hon George Sharpe

Clive Steirn SC

Andrew Stone

David Studdy

John West QC

### Contributions \$500 to \$999

David Ash

Stephen Burley

John Cauchi

Richard Cavanagh

Jeremy Clarke

Bruce Collins QC

Ian Cullen

Matthew Darke

Sandra Duggan

The Hon R J Ellicott QC

Gregory Farmer

John Fernon SC

William Fitzsimmons

John Gooley

Michael Green

Christopher Hoy

His Honour Judge W P Kearns SC

Larry King SC

John Levingston

Terrence Lynch

Rory McCrudden

Garry McIlwaine

Neil Murray

The Hon J A Nader RFD QC

Robert Newlinds SC

The Hon Barry O'Keefe AM QC

Bruce Oslington QC

His Honour Judge J B Phelan

Brian Rayment QC

## Contributions to the Barristers' Benevolent Association – continued

Eugene Romaniuk	Andrew Campbell	Michael Gallagher	Gregory Johnston
Dennis Ronzani	Grant Carolan	Giovanni Galluzzo	Gregory Jones
Richard Royle	Ross Carruthers	Andrew Gee	David Jordan
Stephen Rushton SC	David Caspersonn	Geoffrey Gemmell	Sheila Kaur-Bains
Angela Seward	Paul Castley	James Gibson	James Kearney
Jeffery Sewell	David Catterns QC	Madeleine Gilmour	David Kell
Julian Sexton SC	Jeunesse Chapman	Andrew Givney	Roland Keller
Douglas Timmins	Keith Chapple SC	Allan Goldsworthy	Darryn Kelly
Terence Tobin QC	David Cochrane	Jeremy Gormly SC	John Keogh
John Webster SC	Nicholas Confos	Martin Gorrick	Victor Kerr
John Wilson SC	The Hon Justice R Conti	Richard Grady	Stuart Kettle
Christopher Dennis Wood	Peter Cook	Geoffrey Graham	Nicholas Kidd
<b>Contributions \$100 to \$499</b>	Gerard Craddock	His Honour Judge G J Graham	Jeffrey Kildea
Her Honour Judge Ainslie-Wallace	Malcolm Craig QC	Robert Greenhill SC	Paul King
Michael Allen	Gregory Curtin	Adrian Gruzman	Peter Kintominas
Her Honour Acting	David Davies SC	Peter Gwozdecky	Taras Kolomyjec
Judge C E Backhouse QC	Peter Deakin QC	Simon Harben SC	Andrew Kostopoulos
Matthew Baird	Mark Dempsey QC	Victoria Hartstein	Gemunu Kumarasinhe
Paul Barnes	Jonathan de Vere Tyndall	Anthony Hatzis	Allen Lakeman
John Bartos	Lewis de Vere Tyndall	Brent Haverfield	Ian Lawry
Philip Bates	Hament Dhanji	Jane Healey	Christopher Leahy SC
Philip Beale	Matthew Dicker	John Heazlewood	The Hon D D Levine RFD QC
Richard Beasley	Matthew Sean Docker	Alister Henskens	Leonard Levy SC
Nicholas Beaumont	Michelle Dolenech	The Hon G C Herkes	Geoffrey Lindsay SC
Robert Beech-Jones	Peter Dooley	Francis Hicks	Paul Livingstone
His Honour H H Bell	Philippe Doyle Gray	The Hon B E Hill QC	William Lloyd
Robert Bellamy	Ronald Driels	The Hon G C Herkes	Michael Loewenstein
The Hon Justice P Bergin	The Hon J R Dunford QC	Geraldine Hoeben	James Loxton
His Honour Judge A D Bishop	David Dura	Dominique Hogan-Doran	George Lucarelli
Peter Bodor QC	John Durack SC	Margaret Holz	Mark Lynch
Phillip Boulten SC	Michael Eagle	David Hooke	John McDonald
Michael Bozic SC	Katherine Eastman	Thomas Howard	Peter McEwen SC
Mark Brabazon	The Hon Justice R Edmonds	Steven Hughes	Robert Macfarlan QC
David Buchanan SC	The Hon M R Einfeld AO QC	Thomas D F Hughes	Terence McGill
Simon Buchen	Lindsay Ellison SC	Brendan Hull	Lorna McFee
Andrew Bulley	Michael Elkaim SC	Emily Ito	Ian McGillicuddy
Gregory Burton SC	Clive Evatt	Neil Jackson	Gordon McGrath
Mark Buscombe	John Eyeson-Annan	James AO CBE QC	Peter McGrath
Ian Butcher	Robert Forster SC	Anthony Jamieson	Anthony McInerney
Mark Cahill	Garry Foster	Richard Jankowski	The Hon Associate Justice
Peter Callaghan SC	Rachel Francois	Geoffrey Johnson	J K McLaughlin
	Serge Galitsky	The Hon Justice P A Johnson	

## Contributions to the Barristers' Benevolent Association - continued

His Honour Judge R McLoughlin SC	Robert Quickenden	Dominic Toomey
Gregory McNally	Elizabeth Raper	Robert Toner SC
John Maconachie QC	John-Paul Redmond	Her Honour Judge R C Tupman
Anthony McQuillen	James Renwick	John Turnbull
The Hon Justice R N Madgwick	Anthony Reynolds	Christopher Twomey
Phillip Mahony SC	Garry Rich	Christian Vindin
Peter Mallon	Timothy Robertson SC	The Hon Justice L D S Waddy RFD
Tamir Maltz	Michael Robinson	Martin Walsh
Christos Mantziaris	John Robson SC	William Walsh
Janet Manuell	Leah Rowan	Ralph Warren
Robin Margo SC	Paul Rowe	Gregory Watkins
Andrew Martin	Terence Rowles	Oswald Watt
Philip Massey	Geoffrey Rundle	Carol Webster
Roderick Mater	Peter Russell	Richard Weinstein
Gerard Meehan	John Ryan	Michael Williams SC
Paul Menzies QC	James Sainty	Dennis Wilson
Terese Messner	Frank Santisi	The Hon Justice Lance Wright
Cameron Moore	Gregory Scragg	Sophie York
The Hon J Moore	Mark Seymour	The Hon Justice P W Young AO
Andrew Morrison RFD SC	Bernard Sharpe	
Judith Munday	The Hon C S C Sheller AO QC	<b>Contributions \$25 to \$99</b>
Peter Neil SC	James Sheller	Michael Adamo
James Nelson	Christopher Simpson	Desmond Andersen QC
Hugh Newton	Anthony Slater QC	Novica Angelovski
His Honour Judge J Nicholson SC	The Hon J P Slattery AO QC	His Honour Judge C J Armitage
His Honour Judge S Norrish QC	The Hon Justice R F Smart	Hamish Bevan
Peter O'Connor	Rena Sofroniou	Roland Bonnici
Gary O'Gorman	John Spender QC	Anthony Bowen
Peter O'Loughlin	Stephen Stanton	Luke Brasch
Elizabeth Olsson SC	Craig Stewart	Bernadette Britt
Robert O'Neill	Kenneth Stewart	The Hon Justice J P Bryson
Angela Pearman	Hamish Stitt	Mark Campbell
Giuseppe Pesce	Peter Stitz	Michael Carey
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Borys Pluznyk	Garry Sundstrom	The Hon B J K Cohen QC
Joseph Pollak	Russell Sweet	Michael Coleman
Kathryn-Anne Poulos	John Tancred	Michael Crowley
Jonathon Priestley	Robert Taylor	Michael Davies
David Pritchard	Amanda Tibbey	David Dickinson
The Hon R N Purvis AM QC	John Thompson	Thomas Dixon
	Alexander Todd	Avni Djemal

## Contributions to the Barristers' Benevolent Association – continued

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 Gregory Drake  
 Peter Dwyer  
 Maureen Fanning  
 The Hon M D Finlay QC  
 The Hon G E Fitzgerald AC QC  
 His Honour Judge D J Freeman  
 The Hon R W Gee  
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 Andrew Jungwirth  
 Leonard Karp  
 The Hon Justice P M Kavanagh  
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 Mary Lilienthal  
 Peter Lyons QC  
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 Mark McFadden  
 The Hon Dr James Macken AM  
 John McKenzie

Louise McManus  
 The Hon Barry Mahoney QC  
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 Jane Merkel  
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 The Hon P R Moran  
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 Neil Newton  
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 Peter Strasser  
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 Wendy Thompson  
 David Thorley  
 Iain Todd  
 John Travassaros  
 Julian Trebeck  
 Warwick Tregilgas  
 The Hon P Urquhart QC  
 James Viney  
 His Honour Judge S L Walmsley SC  
 Warwick Ward

Wayne Warwick  
 Robert Webb  
 Richard Wilson

### **Contributions under \$25**

Alexis Barlow  
 Edgar Baskerville  
 Michael Bateman  
 Peter Batey  
 Malcolm Beveridge  
 Simon Blount  
 Liam Byrne  
 His Honour Judge T S Davidson QC  
 Sir Michael Davies  
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 Archie Hallas  
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 Sean Hughes  
 George Iknors  
 Ashok Kumar  
 Norman Laing  
 Patrick Leary  
 Lawrence Ma  
 Michael McAuley  
 Trevor Neill  
 Quang Nguyen  
 David Shoebridge  
 Evan Smith  
 Penelope Sturrock  
 Robert Tregenza  
 James Trevallion  
 Nicholas Ulrick  
 James Whyte  
 Lesley-Gaye Wong  
 Harry Woods  
 Justin Young

## The Bar Library

The Bar Library was established to provide legal source material in a fast and accurate manner to the members of the New South Wales Bar and their staff. Services are also provided to staff of the New South Wales Bar Association and to other selected users, primarily legal libraries in Sydney.

### Major goals of the library are to:

- ❖ support the practice of the members of the New South Wales Bar by identifying, selecting, acquiring, processing and making available resource material to constitute a relevant, up-to-date and well-balanced collection;
- ❖ provide information resources in the most appropriate medium; and
- ❖ assist members in the effective use of library resources.

### To this end, the library provides the following services:

- ❖ legal reference services for members and NSW Bar Association staff;
- ❖ access to and guides for subscribed legal databases via the library's intranet;
- ❖ library orientation and legal research training;
- ❖ development and maintenance of links to relevant legal web sites;
- ❖ interlibrary loan services; and
- ❖ current awareness services.

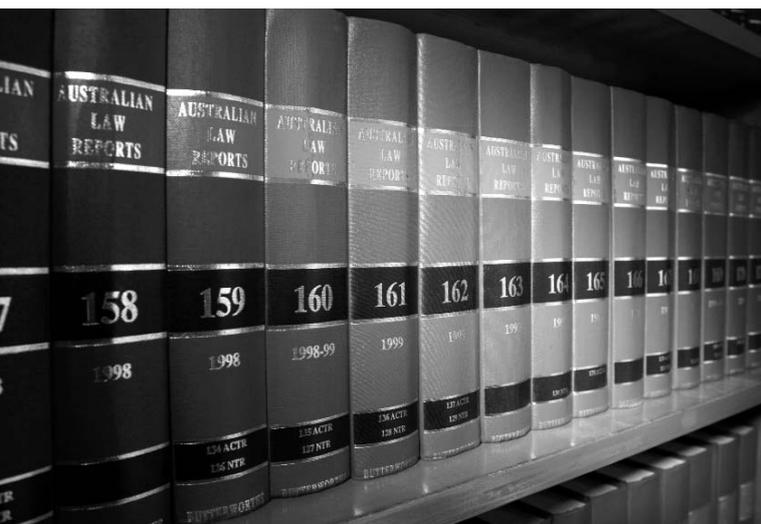


In the 2005-2006 financial year the library continued to develop the collection and to make resources available to members in an effective manner. Acquisition of materials this year has been in formats that will assist members in the most efficient use of resources.

The Bar Council has made available funds from the Emerton Bequest to enable the library to purchase a new library management system. The new system will allow the library's catalogue to be searched via the Bar Association's web site and to provide links to relevant electronic resources.

Funds have also been provided to renovate the library premises. The new design will improve study and research areas, upgrade the library fitout to comply with OH&S legislation and provide facilities for personal laptop computer use in the library.

Both these projects are expected to be completed over the end of year break and be ready for the start of the 2007 legal year.



## Equal Opportunity Committee

The 17 members of the Equal Opportunity Committee, ably supported by Cindy Penrose of the Bar Association, have worked on an array of issues affecting ordinary opportunities to practise as a barrister.

The work of the committee, for practical purposes, is divided into a number of working areas, examples of which include:

- ❖ domestic care (child and aged parent care, housekeeping)
- ❖ equitable briefing
- ❖ visits by women law students
- ❖ sexual harassment and discrimination
- ❖ gay and lesbian issues
- ❖ court facilities
- ❖ the needs of the disabled
- ❖ law reform
- ❖ mentoring for women barristers

Previously, the EOC promoted opportunities for Indigenous lawyers. Since 2001, extensive work in that field gave rise to an active Indigenous Barristers Strategy Working Party, chaired by Chris Reynolds AM SC. Lincoln Crowley is on both bodies and acts as a link between the two.

There are many areas of work in progress, including some proposed amendments to the *Anti-Discrimination Act 1977*, together with age and other discrimination issues. Sometimes individual members require attention or one-off problems arise, which call for immediate attention. The committee's major areas of work, however, are set out below.

### Sexual harassment and discrimination

Most members will be aware of a request made of all heads of chambers to adopt the Model Sexual Harassment & Discrimination Policy endorsed by the Bar Council on 17 June 2004. In 2005 nine floors had adopted it. At the time of writing the policy has been adopted by more than 40 floors; over two-thirds of the Bar.

Chambers that adopt the policy have access to a specialist panel trained for the task of managing or mediating problems that might arise. The panel consists of Neil Williams SC, Jane Needham SC, Todd Alexis SC, Sharron Norton SC, Paul Menzies SC together with clerks Paul Daley, Nick Tiffen and Belinda Lyus. In addition there are two independent members, Maggie Smyth and Zita Antonious, who have experience in the field and who have assisted in training the panel members.

Thus far, issues of a type covered by the policy have been infrequent, but when they occur they represent a significant disruption for the persons involved and the entire chambers. The policy concerns anyone coming onto the floor, whether barristers, clerks, staff, solicitors or members of the public.

### Equitable briefing

The Equitable Briefing Policy was finalised and adopted by the Bar Council in June 2004. It is in a form adopted by the Law Council of Australia, which in turn was adopted by the Standing Committee of Attorneys-General. A number of firms, including Blake Dawson Waldron, Mallesons, Clayton Utz and Freehills have adopted the policy. The IAG (Insurance Australia Group), the ACC and the National Australia Bank have also adopted it. The Law Society has been asked for their support. The chief justice of the Federal Court and firms such as the National Australia Bank held functions to promote the policy. The chief justice of the Federal Court is about to hold a further function in Sydney (having already supported the policy in Melbourne) later this year.

The committee is indebted to Angela Bowne SC for work she has done in formulating practical means by which the policy can be promoted.

### Barristers with special needs

The committee is indebted to the administration of the Supreme Court and Philip Selth for work done on disabled facilities required in the Supreme Court. It is also indebted to the Sydney City Council for its cooperation in reconstructing the wheelchair ramp from the footpath to the road outside the Supreme Court opposite the Law School. The committee is grateful for the work of Linda McSpedden and Cindy Penrose for liaising with the Sydney City Council.

### Mentoring

Each year a number of senior women barristers act as mentors to women in their second and third year at the Bar. The mentoring scheme continues, albeit in a quite different form, some of the benefits of the readership year.

This particularly effective scheme, which commenced in 2001, has received excellent feedback from participants.

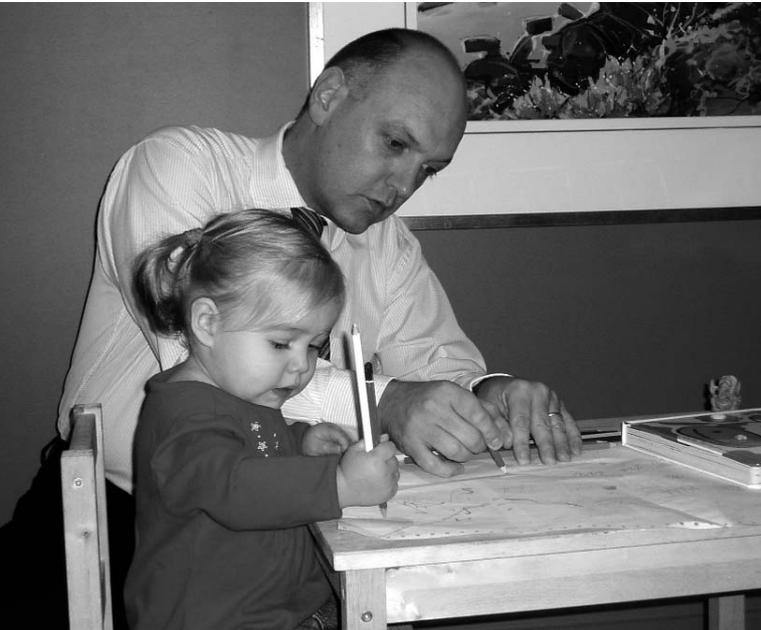
The committee is grateful for the substantial work of Michelle Painter, Julia Baird and Sandra Duggan, who have organised and administered the scheme. It is also grateful to those senior women members who take part.

### Domestic care

The Bar Association engaged the services of Jane Smyth, a specialist childcare consultant and McArthur Management, a childcare provider, to design a scheme for members of the Bar and those working in chambers.

In 2006, following discussions with McArthur Management, the scheme was broadened to provide emergency and regular child care for clerks and chamber staff. The expanded scheme assists barristers who have responsibility for sick or aged relatives by providing, for example, domestic support in the home.

## Equal Opportunity Committee - continued



James and Georgina Crisp

By the time this report goes to print, an article about the scheme will have been published in the winter edition of *Bar News*. Kate Eastman, Melissa Fisher and Andrew Price have done a great deal of work designing and promoting the scheme. The committee is grateful for their dedication.

### The universities visit the Bar

For some years the Bar has conducted a scheme in which women law students in their final two years of their degree are invited to the Bar to meet women barristers.

This scheme is very demanding on its organisers, but has never failed to be both successful and rewarding.

During the reporting year, the first such visit occurred in May by students from the University of New South Wales. The second will occur in October with a visit from students from University of Technology, Sydney.

Julia Baird, ably assisted by Tricia McDonald and Virginia Lydiard, is organising both events. The organisation involves having the students meet in the boardroom with a woman barrister, watching women judges in court and seeing women barristers both in court and in chambers. The students have an opportunity to meet and talk with the judges and then return to the meeting room for lunch.

The enthusiasm among the students after their morning is intense.

This scheme draws heavily on women judges, women at the Bar and in particular on the organisers all of whom the committee again thanks. Julia Baird should be congratulated on the enormous amount of detailed and highly successful work carried out by her and her team in the organisation of these visits.

### Court facilities

While the committee has substantially involved itself in opportunity matters related to members of the Bar, it occasionally deals with wider issues. At present for example committee members Dr Jocelyne Scutt and Malcolm Gracie are working on a paper to deal with some anomalies and some outdated provisions in the *Anti-Discrimination Act 1977*.

In addition, members of the committee have done a considerable amount of work concerning the facilities available at court both for members of the Bar, solicitors, litigants, witnesses and members of the jury.

Dr Scutt, on behalf of the committee, attended a very useful meeting held by the architect for the Attorney General's Department concerning the needs of users at the new Parramatta courthouse.

It must again be recorded that the committee is grateful to Philip Selth and the administration of the Supreme Court for receiving and responding to submissions concerning existing court facilities.

### The future

The Equal Opportunity Committee will maintain all of its present activities but is also working towards dealing with some gay and lesbian issues. It has so far concerned itself with the difficulty for gay men in obtaining insurance. In addition, the committee is developing a program of high profile speakers.

As ever, and indeed more than ever, the committee is grateful for the support that it has received from Michael Slattery QC, an initiator of the existence of this committee and the support it receives from the staff of the Bar Association.

## Indigenous Barristers' Strategy Working Party

The Indigenous Barristers' Strategy Working Party is a special committee set up to implement the Bar's Indigenous Lawyer's Strategy. It is comprised of barristers and representatives from law schools at the University of New South Wales and the University of Technology, Sydney.

The working party continues to focus primarily on developing part-time job opportunities for Indigenous law students, as well as employment and mentoring for recent Indigenous law graduates.

In March 2006, Michael Slattery QC and Chris Ronalds SC, Chair of the IBSWP, visited the Nura Gili Indigenous Programs Centre at the University of New South Wales. There they met with Indigenous law students to discuss career options at the Bar and the assistance provided by the working party. Visits to all other law schools are planned for the remainder of 2006.

The Indigenous Barristers' Trust – the MumShirl Fund – was established in 2002. It provides financial assistance to Indigenous barristers, especially in their first few years of practice, as well as Indigenous law students. The fund has deductible gift recipient status as a public benevolent institution under the *Income Tax Assessment Act 1936* (Cth).

There are four trustees, including the current president of the Bar Association, Michael Slattery QC, and Mullenjaiwakka, the most senior of the four Indigenous barristers in New South Wales.

Barristers and judges continue to make generous donations to the trust so it can meet the special needs of Indigenous law students and graduates. Craig Leggat SC, of Martin Place Chambers, makes a significant monthly donation and will be doing so for a period of three years. Another member donates his sitting fees from a committee he attends as a Bar Association representative.

Members of the working party work with the trustees to promote their joint objectives. Two members, Chris Ronalds SC and Tony McAvoy, are organising a conference to be held under the auspices of the trust and the Bar Association, on 22-23 September 2006. They have been provided with invaluable assistance from association staff, particularly Travis Drummond and Cindy Penrose.

The National Indigenous Legal Conference is the first time there will be a conference aimed at bringing together Indigenous

lawyers and law students to meet and exchange ideas. Many members of the Bar and the judiciary and several law firms have given generously to sponsor Indigenous law students from around New South Wales to enable them to attend the conference.

The working party has been liaising closely with the Victorian and Queensland Bars, whose members are preparing similar strategies to those started by the New South Wales Bar. The working party is also cooperating with the Australian Bar Association, assisting other states and territories to set up a trust fund and implement employment strategies.

In December 2005 students participating in the University of New South Wales Indigenous Pre-Law Program attended the Bar Association for a day during their course and were taken to chambers. They were introduced to the work of a barrister and then visited courts to speak with judges about their experiences on the Bench and at the Bar. This visit is an annual event and is important in exposing new Indigenous law students to the career opportunities available at the Bar.

Indigenous law students were assisted in finding part-time employment with twelve barristers or groups of barristers during the year. Further employment opportunities are being sought from interested members.



Aboriginal lawyer Noel Pearson addresses The Indigenous Barristers' Trust fundraiser. Photo: Bob Finlayson / News Image Library



# Reports

## Arranging and promoting continuing professional development

### Education, training and professional development programmes

#### The role of the department

The professional development department provides educational and other services to all practising barristers in NSW. The main responsibilities of the staff of the department are to:

- ❖ Co-ordinate the Bar exams and the Bar Practice Course;
- ❖ Provide continual professional development (CPD) seminars;
- ❖ Liaise with commercial and other CPD providers in order to inform members as to external provision of CPD; and
- ❖ Arrange the various social functions put on by the association for members, such as the Bench & Bar Dinner, the Tutors & Readers Dinner and the 15-Bobber functions.

#### Services for new barristers

There are two main aspects to the substantive educational services for new barristers: the Bar examinations; and the Bar Practice Course.

#### The Bar examinations

The 2005/2006 year began with a rush for the professional development department with the Bar exams being held for the first time in July. One hundred and thirty one candidates registered for the July 2005 exams, which were held in the third week of July. The registrations were up by 14 per cent from the numbers in the previous (November 2004) exams.

In addition, 130 candidates registered for the February 2006 exams. February 2006 was the first time in which candidates sat a practice and procedure exam based on the Uniform Civil Procedure Rules.

It would not be possible to run the Bar exams nearly as smoothly without the tireless efforts of many barristers. The Bar Association would like to thank:

- ❖ The Bar Examinations Working Party (convened by David Davies SC);
- ❖ All those who set, marked and moderated the exam papers; and
- ❖ All those who conducted viva examinations after the moderation.

#### The Bar Practice Course

Bar practice courses were held in October 2005 and May 2006. Thirty seven readers completed the October 2005 course and 57 completed the May 2006 course. This represents a two per cent decrease from the 2004/2005 year.

The course is now a four-week full-time course. It comprises both lectures and practical advocacy exercises. The timetable is subject to constant review and feedback from the readers in each course is actively encouraged.

When the course changed from five weeks to four weeks, a number of seminars were taken from the course timetable and slotted into several 'extension sessions' for readers. There have been a number of advantages in taking this approach, but the two main advantages seen are: first, some of the extension sessions are streamed into civil and criminal areas, so readers can pick the area more relevant to their practice; and secondly, it provides an opportunity for readers to meet and offer support to one another during what can be a very challenging year.

Another aspect of the changed course which has proved valuable to the readers has been the two Saturday advocacy workshops. A number of readers have commented on the opportunity those workshops provide to try something new that they may not feel comfortable with trying in an actual court situation.

The course has in recent times been conducted under the careful and considered guardianship of Phil Greenwood SC, who acts as course convenor. The October 2005 course marked a milestone for Phil: it was the 30th Bar Practice Course in which he has been involved. The Bar Council wishes to acknowledge the extraordinary commitment and contribution of Phil Greenwood to the education of new barristers in New South Wales. The staff of the department particularly thanks him for both his wisdom and infectious enthusiasm.

There are many barristers and members of the judiciary who give generously of their time during the course. The Bar Council wishes to thank all those who:

- ❖ present sessions in the course and in the extension session program;
- ❖ act as advocacy instructors for the evening practical exercises and for the additional advocacy workshops; and
- ❖ act as judges for the mini-trials and the final mock trial.

#### Continuing professional development

##### In-house CPD

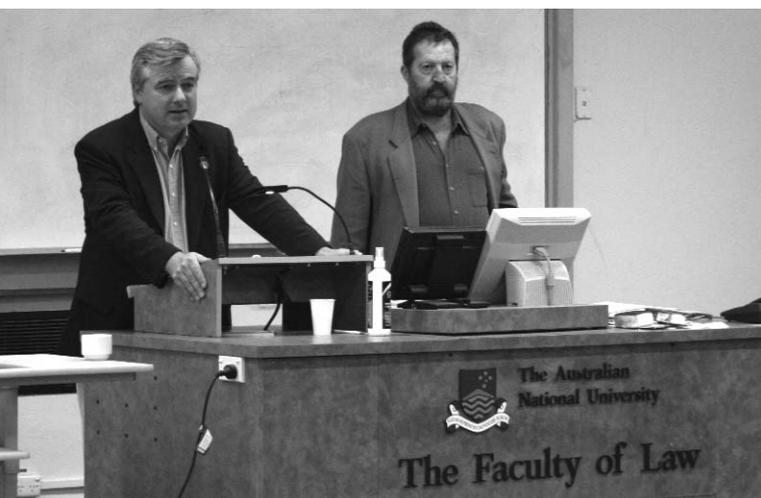
The in-house programme is a service provided to member of the association and is funded by a component of the practising certificate fees. There are working parties for each of the four CPD strands. Through the working parties, department staff are provided with support in developing the CPD programme. Significant numbers of barristers and judges contribute to the program in any given year.

The in-house program provided approximately 150 hours of CPD seminars through a combination of evening seminars and mini-conferences. Highlights of this year's programme included the Sir Maurice Byers lecture, presented by David Jackson QC, and the Francis Forbes Lecture, presented by the Hon Justice B H McPherson CBE.

## Education, training and professional development programmes – continued

The mini-conferences offer barristers the opportunity to accrue all 10 CPD points in each of the four strands in the one day. As in previous years, mini-conferences were held in the four regional centres of Lismore, Orange, Newcastle and in Canberra, the latter being a joint conference held with the ACT Bar Association. The contact with regional centres offered by the mini-conference programme is invaluable for all involved. It provides an important opportunity for regional and city-based practitioners to mix and gain exposure to the knowledge and support each has to offer the other. Members of the executive of the Bar Council also attend each regional mini-conference, which provides regional practitioners with an opportunity to liaise with the office bearers of the association and discuss matters of importance to regional members. In addition to the regional centres, two mini-conferences were held in Sydney, one at Parramatta and one within the downtown CBD area.

The mini-conferences have traditionally been held in facilities provided by the various universities in the regions. Increased contact with the universities has been an important part of establishing both the CPD programme within the regional areas in particular and, more generally, a good working relationship with each of the institutions involved. The Bar Association provides support to the universities in two main ways: first, through the sponsoring of academic prizes; and secondly, through the provision of career advice to those students considering a career at the Bar. The association now sponsors a prize or prizes at each of the nine universities with a law faculty in New South Wales.



President Michael Slattery QC introduces Robert Toner SC at the CPD mini-conference in Canberra.

### Accredited seminars and conferences

In addition to the in-house programme the association accredited many hours of CPD organised by commercial and academic providers in the form of seminars, lectures and conferences. Co-operation between the association and commercial and other providers ensures that barristers in NSW have access to a broad range of CPD, both within Australia and overseas.

### Plans for 2006/2007

In June 2006 Bar Council resolved to make several changes to the CPD rules. The most important change is that the CPD year will, from 2007/2008, run in line with the MCLE year for solicitors and most other jurisdictions in Australia: from 1 April to 31 March. As an interim measure for 2006/2007, Bar Council resolved that the CPD year will run from 1 July 2006 to 31 March 2007. Barristers will still need to accrue 10 points across the four CPD strands within that period.

As of 2007/08, the CPD year will run from 1 April to 31 March. As a transitional measure, the 2006/07 CPD year will run from 1 July 2006 to 31 March 2007. Barristers must still accrue 10 CPD points in this period, with one point being accrued in each of the four strands. Excess points accrued in the period 10 April - 30 June 2006 may be carried forward into the 2006/2007 CPD year. Notification has been sent to all clerks and a circular has been sent to all barristers with an e-mail address. In addition, the change is being noted on all advertising material for CPD seminars this year. Details of the changes to the CPD rules can be found on the association's web site at [www.nswbar.asn.au](http://www.nswbar.asn.au)

To ease the transition to the new regime, the professional development department is drafting the program for the year with the view to having at least one and, where possible, two seminars per month in each of the four strands. This is particularly so for the Ethics and Management strands, which have traditionally been the more difficult points to accrue. The regional and metropolitan mini-conferences will now be held in February/March instead of April and June to ensure that all barristers have an opportunity to accrue their outstanding points by 31 March 2007.



## Reports

### Making recommendations and promoting the administration of justice

#### Family Law Committee

Members of the Bar practising in the Family Court are now experiencing and adjusting to major reforms to the parenting jurisdiction of that court.

The first stage of the implementation of substantive reforms introduced by the *Family Law Amendment (Shared Parental Responsibilities) Act 2006* commenced on 1 July 2006.

The Act introduces both substantive and procedural reforms which will not only impact on the manner in which the court is to approach the determination of a parenting dispute but the practical manner in which such cases will run, including significant reform to the applicable laws of evidence. Perhaps of most significance is the introduction of a rebuttable presumption of equal shared parental responsibility and the priorities afforded to various considerations are significant among the reforms. Clearly there will be many changes to the way in which parenting proceedings are conducted and are determined by the court.

To a significant degree much of the procedure introduced by the amendments to the Act shadows that which was the subject of the Children's Cases Program, trialled in the Sydney and Parramatta registries of the court.

The family law arm of the Federal Magistrates Court has extended nationally over the last year with additional appointments in Parramatta, Newcastle and, since the beginning of 2006, the first two appointments in Sydney. It appears likely that there will be further expansion to that court, hopefully without further reduction in the ranks of sitting judges in the Family Court.

During the course of the year this committee has made submissions in relation to family law reform including the *Shared Parental Responsibilities Bill* and an evaluation of relocation cases. It has otherwise provided representatives to the:

- ❖ Family Court's Case Management Committee;
- ❖ Selection committee for children's representatives (as of 1 July known as 'independent children's lawyer');
- ❖ Selection committee for the determination of persons to be included in the Children's Care and Protection Panel.

The committee has participated in making representations for the supplementing of judicial resources in the Family Court.

The committee members participated in an evaluation of the Family Court's Children's Cases Program convened by Associate Professor Rosemary Hunter of Griffith University.

The foregoing reforms promise a challenging year for those who practise in the jurisdiction.

#### Criminal Law Committee

In the past twelve months the committee's operations have reflected the increasing need to respond rapidly to developments in criminal law. Instead of regular meetings, the committee has relied heavily on e-mail to debate issues and quickly draft submissions. Of course, some issues do require traditional debate and meetings continue, albeit at less frequent intervals.

The committee assisted the Bar Association when it opposed the introduction of majority verdicts in NSW. In 2005, Sally Dowling prepared a lengthy submission on the right to silence for submission to the New South Wales Parliament's Legislation Review Committee, while in 2006 John Stratton SC prepared a detailed response to proposals advanced by the Australian Law Reform Commission for changes to the *Evidence Act 1995*.

In 2005 submissions were prepared in respect of prison visits and a variety of Local Court practice issues, such as:

- ❖ case conferencing;
- ❖ the admissibility of audio-visual recorded evidence of a sexual assault complainant;
- ❖ judicial control over cross-examination of witnesses; and
- ❖ use of 'back-up charges'.

The Criminal Law Committee has also played an active role in assisting in the preparation of a conference in the Bar Association Common Room on 1 September 2006 that will consider the practical problems arising during criminal trials and sentencing of offenders in New South Wales. Conceived by the president, the conference will focus on criminal procedure and sentencing, as well as substantive law. The proceedings will be studied by the committee with a view to making specific policy submissions for consideration and approval by the Bar Council. The Bar Association will then publicly propound proposals which command a broad measure of consensus within the Bar to both government and opposition for wider debate in the community. As the president has stated, 'by this means we can add a reasonable voice for sound law reform to public debate'.



Photo: Fiona-Lee Quimby/New Image Library

It is likely that the workload of the committee will increase in the second half of 2006 and the beginning of 2007, in the lead up to the New South Wales election. It is reasonable to anticipate that, as with all state elections in the last few decades, the 'law and order' issue (some refer to it as an 'auction') will again play a major role. The committee, along with the association, will be vigilant to ensure that the voice of rationality is heard in that debate, together with an accurate representation of how the criminal justice system actually operates.

## Common Law Committee

In 2005-2006 the committee monitored the practical operation of the New South Wales Government's tort law reforms and studied possibilities for their modification. The committee's efforts were strengthened by the appointment of Ross Letherbarrow SC as co-chair.

In conjunction with the president, Michael Slattery QC, the committee considered the detailed report of the Legislative Council's General Purpose Standing Committee No.1 inquiry into personal injury compensation legislation.

The results of that inquiry substantially accord with the submission put by the Bar Association, which had been drafted by members of the committee and settled by the president. The inquiry's central recommendation acknowledged that three different systems for the assessment of damages was undesirable, and that there should be uniformity between the motor accidents, workers compensation and civil liability legislation.

On 8 June 2006 the government tabled its response to the report. It showed no interest in acting on the vast majority of the inquiry's recommendations.

### Workers' compensation

Detailed concerns were raised by a member of the Bar Association about the increasingly harsh operation of s151Z of the *Workers Compensation Act 1987*, whereby injured workers must face the post-November 2001 damages regime. This correspondence was taken up in a supplementary submission to the Inquiry, which had indicated its willingness to consider additional material.

The Bar Association's supplementary submission made the point that there would be no necessity for a provision along the lines of s151Z if a consistent damages regime applied to all personal injury claims. However, the prospect of any government amendment of the restriction on compensation for injured workers who sue non-employers where the employer is also negligent remains remote indeed, given the government's negative response to the Legislative Council's inquiry mentioned above.

As in previous years, individual members and sub-groups of the committee provided excellent service, preparing submissions and representations to bodies such as the Motor Accidents

Authority in respect of the *Motor Accidents Compensation Amendment Bill 2006* and the *Motor Accidents (Lifetime Care and Support) Bill 2006*. Whilst all members of the committee gave freely of their time and effort, special mention must be made of the contributions of Andrew Morrison SC, Brian Ferrari and Andrew Stone.

The work of the committee continues, and representations and enquiries from all members of the association are welcomed.

### Listing procedures in the Common Law Division

The committee examined an apparent anomaly with listing procedures in the Common Law Division of the Supreme Court. A particular case was kept in the progressive list for over a week with very significant costs and inconvenience before it was marked as 'not reached'. This was in contrast to the usual system, whereby cases are regarded as not reached after two days.

Representations were made by the Bar Association to the chief judge at common law. The chief judge responded that the usual system would prevail unless the parties sought otherwise.

## Mediation Committee

### Objectives of the committee

The Mediation Committee continued to promote its general objectives:

- ❖ education of the Bar as counsel representing parties at mediation;
- ❖ education of the Bar as mediators;
- ❖ promotion of barristers to users of mediation services to represent parties at mediations;
- ❖ promotion of barristers as mediators to users of mediation services;
- ❖ nomination to Bar Council of barristers for the Bar's panel of mediators;
- ❖ liaison with, and development of good relations with, the Law Society of NSW; and
- ❖ provision to the Bar of two CPD seminars relating to mediation each year.

The committee also adopted a series of specific objectives:

- ❖ establishing links with LEADR, ADRA and IAMA;
- ❖ providing a link on the Bar's web site that provides answers to frequently-asked questions about mediation;
- ❖ considering whether it is feasible to mediate civil tax disputes;
- ❖ promoting barristers as mediators to those who advise on selection of mediators, such as solicitors, other barristers and insurers;

- ❖ encouraging mediation of intellectual property disputes;
- ❖ encouraging the use of private mediators in equity matters, particularly for statutory claims; and
- ❖ liaising with the Law Society to promote uniform mediation documents such as the mediation agreement and the contractual clause mandating mediation.

### Activities of the committee

The committee has taken a number of steps towards achieving its objectives.

#### *CPD seminars*

Bar Council has requested the committee to organise two CPD seminars related to mediation each year. Barristers on the Bar Association's list of mediators are required to take at least one hour of training in mediation every two years.

The committee organised a successful CPD seminar on 13 June 2006. Ms Patricia Lane spoke on the impact of mediation in relation to the peace settlement negotiations in Darfur.

On 14 August 2006 the committee is due to chair a Bar Practice Course extension seminar by the Hon Sir Laurence Street AC KCMG KStJ on commercial mediation.

The Bar Association also provided and will continue to provide a series of CPD arbitration training seminars in 2006 as follows:

'The Beak's Eye View on Arbitration', presented by his Honour Judge N E Delaney, Wednesday 14 June 2006.

'Advocacy for Presentation', presented by the Hon Robert Hunter QC, Thursday, 29 June 2006.

'Fact Finding for Arbitrators', presented by the Hon Dennis Mahoney QC, Wednesday, 26 July 2006.

'Court-Referred Arbitration: A Look at the Legislation', presented by John Heazlewood, Thursday, 10 August 2006.

A sub-committee has been appointed to consider uniform mediation documents, and work is well underway on other projects listed above.

#### *The Court of Appeal Mediation Pilot Scheme*

The Mediation Committee participated in the Court of Appeal mediation pilot scheme. The Attorney General's Department made available limited funds to be expended before 15 June 2006 to subsidise the cost of mediations in the Court of Appeal.

The registrar of the Court of Appeal chose cases which were regarded as suitable for mediation and offered the parties the opportunity to participate in the Mediation Pilot Scheme. Where parties agreed to participate in the scheme, a subsidy of \$2,500 was paid after the conclusion of the mediation.

The scheme was successful and the committee has expressed support for the continuation of the project into 2007.

#### *Bar Practice Course*

The committee commenced involvement in the distribution of material about mediation available to readers as part of the Bar Practice Course.

## Human Rights Committee

At a meeting in February 2006, Bar Council resolved to form the Human Rights Committee.

The committee's objectives include:

- ❖ monitoring legislation and prospective legislation for its impact on human rights;
- ❖ providing opinion to the Council, the Criminal Law Committee and the President on human rights issues; and
- ❖ dealing with such other matters as are referred to it by the Bar Council or the executive for consideration and report.

The committee has been active since its formation, with initiatives on a range of issues, such as:

- ❖ examining and strongly opposing the Crimes (*Serious Sex Offenders*) Act 2006, which diminishes fundamental human rights;
- ❖ a review of the *Telecommunications (Interception) Amendment Bill 2006*;
- ❖ preparing a position paper for Bar Council regarding a charter of human rights;
- ❖ a review of the NSW Innocence Panel report, then sending a letter and paper supporting it to all members of The New South Wales Government;
- ❖ a review of anti-terrorism legislation;
- ❖ meeting a delegation of judges and human rights lawyers from Laos;
- ❖ a submission to the attorney general supporting an increase in the statutory limit for compensation under s108 of the Anti-Discrimination Act; and
- ❖ a submission to the Australian Law Reform Commission opposing the inclusion of sedition provisions in any Australian legislation.

## Public Affairs

The World Conference of Advocates and Barristers, held in Hong Kong and Shanghai in April 2006, featured a session on 'The referral Bar and the media'. Former chairman of the General Council of the Bar of England and Wales, Guy Mansfield QC, presented a paper titled 'Handling the media'. It was a forthright and persuasive appraisal of the need for an independent Bar to actively engage with the media, instead of withdrawing behind the traditional defensive rampart of 'no comment'.

Mansfield QC supported media training for Bar councillors and impartial background briefings for journalists. Such a strategy would exploit the great strengths of the Bar, which is 'rightly seen as having an authoritative voice' in such matters as anti-terrorism legislation.

'Make the most of it. Be fair and independent. Do this well and you will receive a more sympathetic hearing when the issue is more personal to the Bar', he said. His conclusion was succinct: 'Above all: engage!'

The need for the New South Wales Bar to engage the mainstream media, to provide journalists with comment or background briefings on law reform proposals, bills and specific cases, has been accepted for some years now.

Throughout 2005-2006 the Bar Association provided journalists with comment and background briefings in response to important and varied issues, such as:

- ❖ Australia's anti-terrorism laws;
- ❖ the arrest and detention of terrorist suspects in Sydney and Melbourne;
- ❖ majority verdicts for juries in criminal trials;
- ❖ continuing detention orders for sex offenders after their sentence has been served; and
- ❖ mandatory sentencing for those convicted of killing police officers.

For many people, their only thoughts and impressions of law and justice come via the media. There is a tendency for misconceptions and misrepresentations to be 'recycled': beginning with the daily newspapers, before moving through radio and prime time current affairs television shows. Many legal practitioners are pessimistic about the prospects of changing this state of affairs. Some barristers perceive journalists as well meaning, but ignorant of the law. Others believe that elements of the media turn justice into a circus in order to sell papers or win viewers.

One thing is clear: without an informed response, the cumulative effect on the public's confidence in the legal system can be damaging. Fortunately, after a number of difficult years following the tax-bankruptcy scandal, the Bar is reclaiming its place as an authoritative source of information for the media and other organisations.

### Media engagements

In March 2006 the media devoted a great deal of coverage to newspaper reports that the New South Wales Government would consider legislation providing for continuing detention orders for serious sex offenders. On the morning that the story broke, President Michael Slattery QC spoke on the Ray Hadley Show. He told the average estimated audience of 108,000 listeners that the proposal was inherently dangerous because it undermined the independence of the sentencing judge and the parole board. He told listeners that:

This is the politics of failure ... we should be investing more time, energy and resources into rehabilitation. If someone's in jail, the incentive is to improve themselves and prove to a parole board that they can get out. But if this sort of thing is introduced they'll have no hope. The government appears to be saying 'put them in jail indefinitely'.



November 8, 2005. Sydney. Press conference held at NSW State Parliament regarding the overnight raids and arrests of alleged terrorists in the suburbs of Sydney and Melbourne. [L to R] AFP Deputy Commissioner John Lawler; Victorian Acting Deputy Commissioner Noel Ashby, NSW Police Commissioner Ken Moroney, NSW counter-terrorism chief Norm Hazzard and NSW Premier Morris Iemma. Photo: Toby Zerna Terror Raids / Newspix

In late 2005 and early 2006 the media focused on government moves to introduce majority verdicts for juries in criminal trials. The Bar Association mounted a concerted effort to oppose the Bill. Both the president and Bob Toner SC conducted numerous interviews on television and talkback radio, including the Alan Jones Show. At one point in the campaign the association delivered to every member of the New South Wales Parliament a DVD of the movie *Twelve Angry Men*, starring Henry Fonda.

There have been many other occasions during 2005-2006 in which the Bar has provided comment, but few would have been more important than in relation to Australia's draconian anti-terrorism laws and highly publicised arrests of suspects in Melbourne and Sydney.

Let's cool down. These people have now been charged, they've been charged in a regular fashion. Why don't we give them due process? Why don't we let the proper functions of the law now operate and demonstrate to the world that our society is governed by the rule of law and part of that is to give these men proper due process'.

## Public Affairs - continued

On 11 November 2005, during an on-air discussion with Gerard Henderson on the ABC's World Today programme, Robert Toner SC vigorously refuted suggestions that federal authorities needed more powers to fight terrorism. An estimated 54,000 listeners heard Toner SC warn that:

You don't pass laws simply because the police advise you that they think it's a good idea. One of the things politicians are supposed to do is to weigh competing interests.

None of this legislation would have helped one iota in preventing [the terrorist attacks in London]. What's really needed in this country is giving sensible resources to enable police to investigate potential criminal offences. One of the real problems about this whole debate is that we're putting terrorism in a separate box, rather than dealing with those people who are planning to perpetrate these offences as criminals.

It is an absurd proposition to say that you have to re-categorise [terrorist suspects] by saying that they're not really criminals, they're revolutionaries. That gives them a cache above and beyond what their real badge ought to be, and they're criminals.

### Proactive public affairs activities

Reaction and response to media-driven issues is the most defensive element in the Bar Association's public affairs strategy. Proactive measures are required in order to properly convey and propagate the many important principles which underlie the rule of law. This may involve communicating directly with the public, or influencing the attitudes of the media.

#### *Law Week*

Law Week is designed to promote greater understanding of the law, the legal system and the legal profession within the community and improves access to the legal profession, courts, police and legal and government service providers.

The Bar Association is closely involved in the planning of Law Week. The executive director is a member of the Law Week board and the public affairs officer sits on the planning committee.

Law Week underwent major changes in 2006. Normally held in May each year, the board accepted a recommendation from the planning committee that Law Week should be brought forward to March. The weather at this time of the year is milder and brighter and it was thought that this would encourage attendance at events. The programme was streamlined around a series of key events, with more emphasis on cooperation among stakeholders and greater efforts to attract HSC legal studies students.

The first key event was 'You be the Judge', a hypothetical on sentencing, held at the Wesley Theatre. More than 600 people attended. Moderator Julie McCrossin and panellists, including the Hon Greg James QC, Mike Carlton, Stephen Odgers SC, Howard Brown, Michael Pelly & Virginia Perger, were both informative and entertaining when providing their views on the

sentencing process in NSW. The audience was a mixture of high school students and teachers, university students, members of the legal profession and the general public.

The event was videotaped by a professional camera crew and the Planning Committee is in the process of producing a DVD that can be used as an educational tool for HSC legal studies students.

Another key event was the publication of a children's book called *Why should I? A Fun Way to Learn About the Law*. To help launch the book, more than 600 members of the legal profession were enlisted to visit primary schools during Law Week to present to the school library a copy of the book.

On Tuesday, 28 March at 10.30am, the Police Commissioner Ken Moroney launched the book at Darlington Public School. The commissioner talked at length to the students about the book and the law. This event was picked up by the media, with coverage in all the major newspapers and radio stations. Talk-back announcers requested copies of the book and radio stations such as 2UE, 2GB, 2BL, and TripleM had a number of their announcers talking about the book.

#### *Media awards*

In 2004 Bar Council approved the creation of the Bar Association Media Awards for excellence in the reporting of legal affairs. The aim of the awards is to break the cycle of poor media coverage, popular misconceptions about the justice system and the steadily increasing crisis of faith in the rule of law. For this reason, the awards are a key element in the Bar Association's public affairs strategy.

The winners for 2006 were announced at an informal ceremonial lunch in the Sheraton on the Park. Representatives of the Bar Association, including President Michael Slattery QC, were able to meet journalists from various media organisations. The guest of honour, Nick Cowdery AM QC, Director of Public Prosecutions, highlighted the vital role the media must play in fostering community understanding of, and confidence in, the rule of law.

The prize for an electronic media report was awarded to Damien Carrick & Anita Barraud for their two part radio programme 'NSW Children's Court turns 100', broadcast on 4 & 11 October 2005 on ABC Radio National's 'The Law Report'. The prize for print media, which also carries with it a prize of \$2500, was awarded to Marcus Priest of *The Australian Financial Review*, for his articles on compensation for the victims of asbestos diseases, published between 18 March 2005 and 2 December 2005. The two awards, covering both electronic and print media reports, are worth \$2,500 each.

#### *Bar News*

*Bar News* continued to be an important mechanism for the Bar Association to propagate informed comment about the profession and matters of law. The president's lead articles, together with the journal's opinion pieces, have become much sought-after by senior legal affairs journalists in the metropolitan and national daily papers.



# Reports

## Promoting access to justice

### Legal Assistance Referral Scheme

#### The scheme

The New South Wales Bar Association's Legal Assistance Referral Scheme (LARS) aims to provide legal assistance for free or at reduced rates to persons who would otherwise not be able to obtain legal assistance without suffering severe financial hardship. As such, it embodies and reflects the strongly held view of the profession that a person's rights and access to justice should not be diminished because of indigence.

Despite the considerable amount of assistance provided through LARS, the scheme represents only a portion of the pro bono work customarily carried out on an informal basis by members of the Bar. The Bar Association's Legal Assistance Department runs LARS, with the majority of funding for the administrative support provided by the Public Purpose Fund. Since the scheme's inception barristers have contributed approximately 27,150 hours of work.

#### Eligibility

The scheme has in place a set of strict criteria for determining an applicant's eligibility for assistance. For example, personal injury, medical negligence, neighbourhood disputes and Apprehended Violence Orders are excluded from the scheme. Further, LARS will not consider matters refused assistance by other legal assistance providers due to a lack of legal merit. The income threshold for applicants has been quantified at a gross income not exceeding \$1,000 per week. Further information about applicants' obligations, as well as the nature and criteria for grants of assistance may be obtained from the Bar Association's web site under 'Legal Assistance'. Once an applicant has qualified financially for assistance, an attempt is made to refer the matter to a barrister for an assessment of the legal merit on a no-fee basis. After the provision of the initial advice, if further legal services are recommended, the applicant may deal with the barrister on one of the following bases:

- ❖ the barrister may accept the matter on a speculative basis where the applicant only pays on a successful outcome, and/or the establishment of a costs entitlement, and/or the actual recovery of costs from the other party;
- ❖ the barrister may agree to accept the matter on a reduced fee basis;
- ❖ the barrister may accept the matter for no fee, regardless of the outcome (and hence in the event of success, would not be seeking a costs order which includes payment of any fee to the barrister).

#### Review of 2005-2006

As in previous years, the Bar Association's staff received in the order of 500 – 600 enquiries about legal assistance and related matters. Many enquiries were made by persons visiting (unannounced) the association's office. All were addressed to the best of our ability to do so.

For the 2005-2006 financial year, 253 formal applications for assistance were received and processed. This is a nine per cent reduction on last year's figures, bringing the figures back to the same level as the 2003-2004 financial year. Of these applications, 115 were eligible under the scheme's guidelines for a referral to a barrister. All applications, whether ultimately referred or not, involve considerable time and resources in their assessment. The breakdown of those applications not referred to barristers is set out in the accompanying statistical report.

For the period in question, barristers contributed approximately 1,300 hours through the scheme, with 23 matters still in the court system. An additional 1,000 hours work was contributed from matters commenced in the previous financial year.

There were some points to note from an analysis of the activities of the scheme:

- ❖ The number of referrals received from Legal Aid increased nearly 300 per cent.
- ❖ Sixty-eight per cent of the matters referred to barristers were considered to have legal merit/prospects of success.
- ❖ The financial category of matters handled on a continuing basis was highest in the 'no fee' category.
- ❖ There was a 38 per cent drop in the number of referrals received from the District Court of New South Wales. This could be attributed to a general fall in the number of matters filed in the District Court or a higher utilisation of the court's own legal assistance scheme.
- ❖ Referrals received from the Federal Magistrates Service in immigration matters dropped by 60 per cent drop. This could be attributed to a greater utilisation of the Federal Court/Federal Magistrates' Court Refugee Review Tribunal Legal Assistance Scheme (run by the Bar Association and Law Society of New South Wales) or the presiding magistrates only referring matters which, in their view, are meritorious in law.
- ❖ As in the previous financial year, 80 per cent of the applications to the scheme were refused Legal Aid as being outside the commission's guidelines.

## Legal Assistance Referral Scheme - continued

Listed below are some results achieved through the scheme:

A District Court judge referred a young man to the scheme in the hope he could be represented in a criminal trial in two days' time. The man was charged with matters arising out of serious allegations of a knife attack, allegedly perpetrated by a co-accused. The trial had been set down for 10 days. The barrister agreed to go to court to do what he could to assist in a possible plea to lesser charges in the proposed indictment. Initially, there was some discussion with the Crown regarding a possible plea to some of the counts. The matter proceeded, however, before a jury for three days until a plea bargain was entered for one matter only. The client pleaded guilty to a technical affray, was convicted and ordered to perform 100 hours community service. The barrister was paid \$500 for 70 hours work.

A barrister agreed to assist a client in a re-trial of a matter remitted to the District Court by the Court of Criminal Appeal. The client had been convicted in 2004 of over 30 charges of doing acts as an officer of a body corporate with the intention to cheat or defraud a former employer of \$2.2m. Despite being an undischarged bankrupt Legal Aid had been refused for the re-trial. The client was prepared to represent himself, knowing the maximum penalty was 10 years. The barrister appeared on over 10 interlocutory applications and was successful in obtaining two adjournments, whilst also arguing the case for a grant of legal aid. He was able to gain access to a large quantity of commercial documents which had been resisted and had not previously been made available to the client. A grant of legal aid was made and the barrister appeared at the trial as junior counsel to a more senior criminal barrister. In all, the barrister provided over 200 hours of assistance in addition to that which was funded by legal aid.

A young man made application to the scheme in relation to two charges for alleged breaches of his Fauna Keeper's Licence brought against him by the Department of Environment & Conservation. A barrister agreed to appear on his behalf at the hearing in the Local Court at Parramatta and was successful in having one charge dropped and a small fine imposed on the other charge. The client's dream of being a keeper at Taronga Park Zoo was kept alive.

A solicitor from an inner city church's Legal Counselling Referral Centre referred a young man on a Disability Support Pension to the scheme for assistance in relation to three charges brought against him by NSW Police. The client had been granted legal aid but did not want to plead mental health as a defence, which he had been advised to do. The barrister appeared on his behalf at the hearing in the Local Court. By consent, all charges were withdrawn; there was a costs order against the police.

### Volunteers encouraged

The executive director and the manager of the scheme spoke to readers about the scheme at both of the bi-annual Bar practice courses, with a pleasing response in each instance. The president and the executive director, by circular and personal representation, have also encouraged members to participate in all schemes administered by the association and in the various court appointed pro bono schemes.

### Barristers' Referral Service

The Barristers' Referral Service is aimed at addressing the increasing number of requests to the association for assistance in obtaining the services of a barrister. Enquiries have been directed to the association's web site under 'Find a Barrister', which has been visited approximately 23,000 times over the last twelve months. This category of assistance is invaluable for many applicants who have not qualified for assistance through LARS on financial grounds. If the enquirer does not have access to the Internet, staff fax or post to them a list of barristers in the relevant area of practice.

### Duty barrister schemes

The manager and staff of LARS manage the Duty Barrister Scheme which operates at the Local and District courts at the Downing Centre.

Barristers are rostered to attend each day at the courts. The schemes are promoted to readers at each of the Bar practice courses, which resulted in additional volunteers being added to the roster.

A new co-ordinator of the scheme has been appointed. She is a barrister who is keen to raise the profile of the scheme even further with the judges and magistrates. There have also been some physical improvements made to the support facilities for the scheme. The Duty Barrister Room has been painted and tea and coffee facilities are now available. A computer is soon to be installed.

The duty barrister scheme operating at the Australian Industrial Relations Commission has been discontinued with the advent of the new industrial relations laws.

### Court appointed Pro Bono Schemes

The manager of LARS assists with the administration of the court appointed legal assistance schemes concerning day to day queries which may arise, together with the provision and updating of the list of barristers who have volunteered their services. Barristers now support pro bono schemes in the Federal Court, Federal Magistrates Court, Supreme Court, Land & Environment Court and District Court. The executive director

## Legal Assistance Referral Scheme - continued

has ongoing discussions with members of the judiciary and court staff in relation to these schemes, which impose a significant burden on members of the Bar and Bar Association staff.

### Interaction with other pro bono service providers

LARS works closely with the Law Society Pro Bono Scheme. There is almost daily contact between the two schemes.

The manager of the scheme met with customer service officers at LawAccess to outline the scheme's guidelines and give feedback as to the outcomes of the referrals which had been made. The executive director is a board member of LawAccess. The scheme's manager is also a member of the LawAccess NSW Operations Committee. The manager has acted for the executive director at meetings of the trustees of the Pro Bono Disbursement Fund when he is interstate. She also attends the Law & Justice Foundation's quarterly NSW Legal Referral Forum.

The Bar Association is a member of the NSW Legal Assistance Forum (NLAF). The scheme's manager attends board meetings and is a member of the Coalition of Aboriginal Legal Services' working party set up, inter alia, to compile a list of service providers in civil law. The Bar Association's director, legal is the association's representative on NLAF's working party investigating conflicts of interest.

In September the Bar Association hosted the annual conference of the Coalition of Aboriginal Legal Services. It was held in the association's common room over a two day period.

There is also a quarterly meeting between representatives of LARS, the Law Society Pro Bono Scheme and PILCH. From time to time, a representative from the National Pro Bono Resource Centre attends.

There have been many difficult phone calls, which are often multiple calls from the one person, or from different individuals, which are dealt with by the scheme. Reception staff of the association also have to deal with the applicants who attend unannounced. There have been several unpleasant scenes where senior staff or security have had to intervene.

The Bar Association invited Dr Jonathan Phillips, a consultant psychiatrist, to address its staff members who deal with difficult members of the public. Dr Phillips gave some welcome practical suggestions to assist staff members to deal with these situations at less cost to themselves.

The Bar Association continues to bear a significant portion of the costs for the administrative infrastructure need to support the operation of the scheme. The staffing component of this support, in terms of time and salary, is significant.

### Conclusion

The pro bono landscape has changed significantly since the inception of the scheme in 1994. There are now many more organisations, including courts, offering assistance. LARS is a scheme which operates at the coalface of offering legal services to people in need of legal help. We feel that the scheme embodies and reflects the strongly held view of the profession that a person's rights and access to justice should not be diminished because of impecuniosity.

The seemingly general increase in the numbers of unrepresented litigants, due in the main to the lack of legal aid funding, has contributed significantly to the workload (and stress) of LARS and other Bar Association staff who manage walk-in applicants.

## Legal Aid Committee

The focus of the Legal Aid Committee continued to be the maintenance of a good working relationship with the New South Wales Legal Aid Commission.

Consultations between the association and the commission continue to be productive, with one particular ongoing concern, namely fees for counsel in criminal matters, being addressed.

In consultation with the association, a review of the legal aid fee structure has commenced and hopefully will ensure that barristers receive more appropriate remuneration for all the legal aid work.

In addition, travel allowances have been increased.

## Legal Assistance Referral Scheme statistics

	2004-2005	2005-2006
<b>High Court</b>		
Application for special leave	4	7
Original jurisdiction	5	3
<b>Total</b>	<b>9</b>	<b>10</b>

<b>Federal Court</b>		
Full Bench appeals	5	5
Immigration	29	26
Administrative	1	4
Discrimination	1	1
Intellectual property	-	3
Veterans & Social Security entitlements	3	-
Industrial relations	-	-
Trade practices	4	4
Native title	-	2
Bankruptcy	4	7
<b>Total</b>	<b>47</b>	<b>52</b>

<b>Federal Magistrates Service</b>		
Discrimination	1	1
Family law – access	-	1
Family law – child support	-	-
Family law – residency	1	-
Immigration	32	14
Bankruptcy	-	1
<b>Total</b>	<b>34</b>	<b>17</b>

<b>Supreme Court</b>		
Court of Appeal	5	4
Court of Criminal Appeal	2	7
Common Law	12	16
Administrative	1	-
Equity	27	23
Criminal	4	2
Commercial	-	-
Family provisions	2	2
Defamation	2	-
Professional negligence	-	1
<b>Total</b>	<b>55</b>	<b>55</b>

	2004-2005	2005-2006
<b>Family Court of Australia</b>		
Full bench appeals	1	2
Access	8	3
Residency	7	7
Child support	2	-
Spousal maintenance	1	-
Property settlement	2	8
Other (costs hearing)	1	2
<b>Total</b>	<b>22</b>	<b>22</b>

<b>District Court</b>		
Criminal	13	10
Civil	14	10
Commercial	2	-
Medical Tribunal	-	-
Care proceedings	2	1
Defamation	2	-
Professional negligence	-	-
Victims compensation	1	-
<b>Total</b>	<b>34</b>	<b>21</b>

<b>Land &amp; Environment Court</b>	6	7
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<b>NSW Industrial Relations Commission</b>	3	6
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<b>Local Court</b>		
Criminal	19	16
Civil	13	9
Family matters - access	1	-
<b>Total</b>	<b>33</b>	<b>25</b>

<b>Children's Court</b>	6	2
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<b>Coroner's Court</b>	4	1
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<b>Tribunals</b>		
Administrative Appeals Tribunal	5	5
Administrative Decisions Tribunal	12	12
Social Security Appeals Tribunal	1	-
Mental Health Review Tribunal	-	-
Consumer Trader & Tenancy Tribunal	4	4
Equal Opportunity Tribunal	-	-
Victims Compensation Tribunal	1	-
Anti-Discrimination Board	-	-
Licensing	1	-
<b>Total</b>	<b>24</b>	<b>21</b>

## Legal Assistance Referral Scheme Statistics - continued

	2004-2005	2005-2006
<b>Referral source</b>		
Member of public	68	45
Instructing solicitor	40	43
Community legal centre	40	34
Law Society Pro Bono Scheme	36	36
Judge	24	18
Member of the Bar	19	8
Law Access	17	16
Legal Aid	8	22
Registrar	7	9
Welfare/community groups/ social worker/other	7	4
Non-instructing solicitor	5	3
Pro bono director – large firms	4	1
Director of Public Prosecution	2	1
PIAC	1	-
Attorney-General's Department	-	-
Member of parliament	-	4
Web site – approx hits	1,300	3,000

<b>Client location</b>		
Sydney Metropolitan Area		
West	75	80
North	24	20
South	40	37
East	16	14
Inner City	38	27
Central Coast	14	5
Country	22	27
ACT	-	1
Interstate	6	6
Villawood Detention Centre	32	22
Baxter Detention Centre	1	1
Prison	10	13
Overseas	-	-
<b>Total</b>	<b>278</b>	<b>253</b>

<b>Type of work done</b>		
Merit assessment	135	115
Advice (over and above initial merit assessment)	73	62
Conferences	76	53
Appearances	57	45
Appearances at hearing	49	38
Other (including second opinion & preparation of submissions)	6	19

These figures reflect that barristers have been involved in more than one of the listed categories per matter.

	2004-2005	2005-2006
<b>Rejection / no action</b>		
Outside guidelines	45	43
Too late notification	10	3
No further information received/ no further contact from client	31	36
Requires a solicitor	21	24
Eligible for legal aid	4	5
Referred to a community legal centre	-	4
Briefed barrister privately	4	3
Briefed solicitor privately	2	7
Conflict of interest	-	-
Matter discontinued	1	3
Subject to Federal Court Refugee Review Tribunal Legal Advice Scheme	24	10
Subject to Federal Court Pro Bono Scheme	1	-
Required a migration agent	-	-
<b>Total</b>	<b>143</b>	<b>138</b>

<b>Turnaround time</b>		
Same day	30	18
Less than a week	28	22
1 – 2 weeks	29	26
2 weeks plus	48	49

<b>Basis brief accepted</b>		
No fee – merit assessment	135	115
No fee – continuing involvement	38	59
Reduced fee	26	31
Speculative/costs recovery	21	25
Market rates	-	-

<b>Refused legal aid on basis of</b>		
Merit	22	17
Financial	33	39
Outside guidelines	223	197

<b>Matters considered by a barrister to have legal merit/prospects of success</b>		
Yes	85	78
No	50	37



# Reports

## Questions as to professional conduct

### Professional Conduct Department

#### Legislative change

The commencement of operation of the *Legal Profession Act 2004* and the *Legal Profession Regulation 2005* on 1 October 2005 brought forth a significant number of challenges over the last 12 months. The department devoted considerable energy and resources to preparing for the commencement of the new legislation and to informing members of the Bar Council and its professional conduct committees of the changes introduced by the legislation, and of new provisions which in some cases impose additional obligations on the council as well as practitioners. The department also assisted in the presentation of seminars on the new legislation to the Bar generally.

Whilst the *LPA 2004* and the *2005 Regulation* addressed a number of problems in the previous legislation, many of which had been highlighted through the council's experience in exercising its statutory obligations over the last few years, not surprisingly, in applying some provisions in the new legislation, difficulties emerged that require remedy by way of further amendment to the legislation. As in past years, the department has provided support to the executive director and the council in the formulation of proposals for amendments to the legislation.

A number of amendments to the legislation have already been made. Section 14 of the *LPA 2004* provided that a person must not engage in legal practice in New South Wales for fee, gain or reward unless the person is an Australian legal practitioner (that is, holds a current local or interstate practising certificate). Pursuant to clause 1 of schedule 2 of the *Legal Profession Amendment Act 2006*, which commenced on 2 June 2006, the words 'for fee, gain or reward' were omitted from section 14. This restored the position that existed under the *Legal Profession Act 1987* so that persons are prohibited from engaging in legal practice without being the holder of a current practising certificate, whether or not for fee, gain or reward. The amendment ensures that persons providing legal services hold a current practising certificate and as such are qualified lawyers who carry professional indemnity insurance and undertake continuing legal education: an important consumer protection.

#### Action against persons practising without holding a current practising certificate

The *Legal Profession Amendment Act 2006* also amended section 696 so that the council may investigate and prosecute offences committed by any person, including lay persons, under Part 2.2 of the *LPA 2004*, which deals with unqualified legal practice. In the 12 months to 30 June 2006, the department has spent considerable time in investigating an increasing number of instances where lawyers (admitted to the Supreme Court) who do not hold current practising certificates and lay persons (not admitted to the Supreme Court and who do not hold current practising certificates) have acted or held themselves out as a

barrister or engaged in legal practice in contravention of the *LPA 1987* or the *LPA 2004*.

Some of these matters were satisfactorily resolved with the provision of an undertaking to desist from engaging in the conduct of concern. In two cases, offending conduct by lay persons was referred to the prothonotary of the Supreme Court of New South Wales.

In October 2005, the Supreme Court heard an application made by the Bar Council for an injunction restraining William Roy Davison from practising as a barrister in contravention of the *LPA 2004*. At the time of the hearing, Mr Davison was a lawyer (admitted to the Supreme Court) but did not hold a practising certificate. The council had cancelled Mr Davison's practising certificate from midnight on 9 November 2001 and had instituted proceedings in the Administrative Decisions Tribunal against him which resulted in an order being made by the tribunal on 7 November 2005 that his name be removed from the roll of legal practitioners: *The Council of the New South Wales Bar Association v Davison* [2005] NSWADT 252. Mr Davison has appealed against the tribunal order.

Subsequent to the tribunal decision, the Supreme Court delivered its judgment in *The Council of The New South Wales Bar Association v Davison* [2006] NSWSC 65 on 28 February 2006. The court declared that, since on or about 10 November 2001 until 30 September 2005, Mr Davison practised as a barrister without being the holder of a current practising certificate in contravention of s25(1) of the *LPA 1987* and the court made an order pursuant to s720(1) of the *LPA 2004* restraining Mr Davison from practising as a barrister in contravention of s14(1) of the *LPA 2004*.

The court noted that in accordance with s14(3) of the *LPA 2004*, nothing in its order is intended to interfere with the performance of any general legal work by Mr Davison for the corporation by which he is employed, insofar as it is done by him in his capacity as an employee and in the ordinary course of his employment and for which he receives no fee, gain or reward for so doing other than his ordinary remuneration as an employee.

On 19 July 2006, in *The Council of the NSW Bar Association v Davison* [2006] NSWSC 699, the Supreme Court declared the conduct of Mr Davison was done wilfully and without reasonable excuse, and accordingly, Mr Davison was guilty of professional misconduct within the meaning of s25(4) of the *LPA 1987* from on or about 10 November 2001 until on or about 14 September 2005.

Access to the three *Davison* judgments is available on the association's web site. The judgment of the Supreme Court of 28 February 2006 contains a very useful review of what constitutes legal work.

In the annual report 2004-2005, a report was included on the decision of the Court of Appeal in *Prothonotary of the Supreme*

## Professional Conduct Department – continued

*Court of New South Wales v McCaffery* [2004] NSWCA 470, in which the court declared McCaffery guilty of professional misconduct pursuant to s25(4) of the *LPA 1987* in that on 29 occasions, in a period of 16 months, he practised as a barrister whilst not holding a current practising certificate as a barrister in contravention of s25(1) of the *LPA 1987*.

Whilst most of the investigated incidents of persons either practising as a barrister or holding themselves out as a barrister without being the holder of a current practising certificate are not on the same scale as in *McCaffery or Davison*, the Bar Council regards any flouting of the statutory requirement to hold a practising certificate very seriously. There are important practical reasons for this, not the least of which is the need to comply with legislative requirements concerning compulsory professional indemnity insurance.

### Integrity, good fame and character

The Bar Council appeared as contradictor in an application for admission as a lawyer made by Joseph Morrissey that was referred by the Legal Profession Admission Board to the Supreme Court for determination. The Bar Council was the appropriate professional body to assist the court as Mr Morrissey indicated that he intended, if his application for admission was successful, to apply for a practising certificate as a barrister. The decision in *Morrissey v The New South Wales Bar Association* [2006] NSWSC 323 was delivered on 26 April 2006. The court found Mr Morrissey is not a fit and proper person to be admitted as a legal practitioner and that his character is marked by wilful disobedience of court orders and rules, episodes of violence and a failure to make appropriate disclosure and a lack of candour when dealing with colleagues. The court also found that Mr Morrissey is not a person in whom the bench and legal practitioners could repose their trust. In particular, breaches of trust by Mr Morrissey in relation to those practitioners who were asked to provide references for him in support of his application for admission were so great that his application must be rejected.

The *Morrissey* judgment is a stark reminder of the need for 'and obligation on all members of the profession to act with integrity and honesty'. This is essential for the legal profession to play its proper role in the judicial system and to retain the respect of the community it serves. Access to the judgment is available on the association's web site.

### Work of the department

As shown by the tables appearing at the end of this report, 62 conduct complaints were made in the year ended 30 June 2006. Of these, 55 conduct complaints were referred by the commissioner to the council for investigation and seven complaints were made by the council. Of the 32 notifications made to the council pursuant to the notification requirements under the *LPA 2004* and the *2005 Regulation*, 16 related to tax offences, acts of bankruptcy and indictable or serious offences

in respect of which the council is required to make a determination as to an applicant's or barrister's fitness and propriety to hold a practising certificate. The categories of conduct complaints and notifications and other statistical information are set out in the tables at the end of this report.

In the 12 months to 30 June 2006, four professional conduct committees met throughout the year to investigate complaints about conduct and notification matters. The work of the committees is reported upon later in this report.

In addition to facilitating the investigation of and reporting to the Bar Council on conduct complaints and notifications, the department has been closely involved in handling complaints against barristers referred by the council to the Administrative Decisions Tribunal, arising from conduct complaints made in previous years as well as in the current year. Tables setting out the results of disciplinary cases in the New South Wales Court of Appeal and the Supreme Court and proceedings brought by the council in the tribunal determined in the last four years appear at the end of this report.

Towards the end of the year, the department also reviewed all applications for renewal of practising certificates in relation to which conduct or discipline issues arose. Further, in some cases where barristers failed to complete 10 points of continuing professional development, practising certificates were issued subject to conditions requiring the outstanding points be completed by a certain date. The department monitors compliance with these conditions as well as compliance by barristers who have financial management and/or medical reporting conditions attached to their practising certificates. Just prior to 30 June 2006, 22 barristers held practising certificates subject to financial and/or medical reporting conditions requiring the provision to the council of quarterly reports from approved accountants in whose hands barristers have placed control of their financial affairs and/or reports from medical practitioners.

### Listing on the web site of recent Bar Council, tribunal and court decisions

Under s577, the legal services commissioner must keep a register of disciplinary action taken against Australian legal practitioners which is to be made available for public inspection on the Internet. An Australian legal practitioner is an Australian lawyer (that is, a person admitted to the legal profession) who holds a current local or interstate practising certificate. Disciplinary action includes any decision to suspend, cancel or refuse to grant or renew a practising certificate, the removal of a name of a practitioner from an Australian roll, any orders made by a tribunal or court following a finding of unsatisfactory professional conduct or professional misconduct, and the reprimanding or making of a compensation order against a practitioner. The commissioner is required to identify the name of the person against whom disciplinary action was taken and to provide particulars of the action taken.

## Professional Conduct Department – continued

Pursuant to s578 of the *LPA 2004*, the council may publicise disciplinary action taken against an Australian legal practitioner including the name and other identifying details of the person against whom the disciplinary action was taken. Disciplinary action taken against barristers is publicised by the council on the association's web site.

### Ethical guidance for members

The council neither provides 'ethical rulings' nor advice to members. Rather, it assists members seeking guidance on ethical matters by referring the inquiring member to a silk on one of the professional conduct committees. Discussion with senior counsel is available to assist members in reaching a conclusion. Ultimately however the decision and responsibility must be that of the individual barrister. The department's staff is able to provide the names and telephone numbers of senior members of professional conduct committees who are able to give guidance on ethical matters. The names of senior counsel on committees are also available from the association's web site. As soon as practicable after speaking with senior counsel, a barrister wishing to have a record of his or her discussion with senior counsel should send a letter to the senior counsel recording the facts and guidance given. A copy of the letter may also be sent to the director, professional conduct. An article entitled *Urgent ethical guidance for members*, published in the February 2006 edition of *Bar Brief* (No. 129), is available on the association's web site.

### Role of the department

The Bar Council has a statutory obligation to deal with all complaints and notification matters regarding barristers under the *Legal Profession Act 2004* and the *Legal Profession Regulation 2005*. The council's role is monitored by the commissioner, an independent overseer of the council's statutory duties, and ultimately by the attorney general. The association and the commissioner continue to work cooperatively in the referral, investigation and review of disciplinary matters.

The department facilitates the investigation of and reporting to the council on conduct complaints and notification matters. It provides advice and policy support to the council in respect of the administration and carrying out of the council's functions and the preparation of submissions to government on the disciplinary regime of the profession.

The department also facilitates the provision of guidance to members on ethical issues and responds, on a daily basis, to numerous inquiries from the public about the Bar and the conduct of barristers.

### Responding to complaints

Members the subject of a complaint are urged to obtain independent advice before responding to any complaint or correspondence from the department and/or the legal services commissioner. Advice may be available through a professional indemnity insurer's solicitors but, if not, then a silk (who is not a member of a professional conduct committee or council) should be approached for advice. Most professional indemnity policies require a barrister to notify his or her insurer on receipt of a complaint.

The policy of the council is to require a barrister to personally sign any correspondence responding to enquiries from the department. Extensions of time will be granted for replies to complaints if such a need is established but the council expects barristers to give priority to responding to conduct complaints.

Members served with notices pursuant to s152 of the *LPA 1987* and s660 of the *LPA 2004* requiring the provision of information and production of documents necessary for the investigation of a conduct complaint made against them should respond to such notices promptly. A barrister who fails to comply with a s152 or s660 notice, without reasonable excuse, is guilty of professional misconduct: s152(4) *LPA 1987*/s676 *LPA 2004*. Such failure can lead to the council making a further complaint against the barrister which may ultimately be referred to the Administrative Decisions Tribunal. Decisions of the tribunal regarding the failure to respond to s152 notices are available on the association's website.

Further, under s672(5) of the *LPA 2004*, the council may on its own initiative, or must, if directed to do so by the commissioner, suspend a local legal practitioner's practising certificate while a failure by the practitioner to comply with a requirement in a notice issued under the *LPA 2004* continues.

Recommended reading for any barrister against whom a complaint is made is listed on the association's web site.

### Community and academic members

Each of the investigating professional conduct committees has been privileged to have as participants both academic and community representative members. Three new community members were appointed at the start of 2006 to replace community members whose terms of appointment expired and to meet the number of community members required on each professional conduct committee under the *LPA 2004*.

On Professional Conduct Committee #1, John Freeman, David Kaye and Geraldine Walsh continued to serve as community members. Dorne Boniface from the University of New South Wales continued as the academic representative.

Michelle Sanson of the Faculty of Law at the University of Technology continued as the academic representative on Professional Conduct Committee #2. Michael Branagan, Bronwyn Preston and Mary Werick continued to serve as community members.

## Professional Conduct Department – continued

Helga Esamie and Peter Cassuben joined Professional Conduct Committee #3 as community members at the start of 2006. Nicholle Nobel and Ian Fitzgerald continued to serve as community members and Bernard Dunne from the Faculty of Law at the University of Sydney continued as the academic representative.

Andrew Buck of Macquarie University, Division of Law, joined as the academic member on Professional Conduct Committee #4 in July 2005. John Girdwood and Lyndsay Connors continued as community members. Judith Butlin joined as a community member at the start of 2006.

The Bar Council and the association express their gratitude to all community and academic members. All have been enthusiastic participants in the deliberations of the professional conduct committees and their insight is greatly appreciated. The contribution the community and academic members make is integral in maintaining the quality of the Bar's complaint handling process.

### Barrister members

The council again expresses its appreciation to all barrister members of the professional conduct committees. All have devoted many hours of their time on a voluntary basis. Their service demonstrates the continued commitment of the profession to ensuring complaints regarding the conduct of barristers are fully investigated and appropriate disciplinary action is taken in the interests of maintaining public confidence in the profession. The participation of barrister members in this process is vital to setting and maintaining appropriate standards and the work of barrister members in this regard is valued highly.



Barristers in Queens Square. Photo: Tamara Voninski/Fairfaxphotos

### Committee workload

#### Notification matters

In the financial year to 30 June 2006, a total of 32 notifications were made. Sixteen notifications related to tax offences, acts of bankruptcy and indictable or serious offences requiring the council to make a determination under s38FC of the *LPA 1987* or s68(3) of the *LPA 2004*. Such determinations must be made by the council within three months of the date on which notification is given to the council. An extension of one month can be sought from the legal services commissioner.

A further 12 notifications were made to the Bar Council in the reporting year 2005-2006. These notifications are not included in the figures in Table 3 as in each case the offence notified was dealt with in the reporting year by way of dismissal under s19B(1)(c) of the *Crimes Act 1914* (Cth), s10(1)(a) of the *Crimes (Sentencing Procedure) Act 1999* (NSW) or the former s556A(1)(a) of the *Crimes Act 1900* (NSW). Offences dealt with by way of dismissal under these provisions (as opposed to discharge) are not required to be disclosed. This is a matter on which the council has made submissions to the attorney general for amendments to be made to the *LPA 2004* and *2005 Regulation* to make this clear.

#### Conduct complaints

Of the 62 new complaints, 60 were referred to the professional conduct committees for investigation from 1 July 2005 to 30 June 2006 and two were referred back to the commissioner. During the year, the committees investigated and reported to the council in respect of 16 of the new conduct complaints, in addition to a further 40 complaints carried forward from the previous year. Of the total of 56 complaints dealt with by the council during the year, 39 complaints were dismissed pursuant to s155(4) *LPA 1987* or s539(1)(a) *LPA 2004* on the basis that there was no reasonable likelihood that the Administrative Decisions Tribunal would make a finding of unsatisfactory professional conduct or professional misconduct. Four complaints were withdrawn. Six complaints have been referred to the tribunal for hearing and determination. Of the 39 dismissed complaints, 12 have been the subject of an application for review by the legal services commissioner. As at 25 August 2005, the legal services commissioner has upheld the council's decisions in eight matters. No determination has yet been made in relation to the other four matters under review.

During the year, no consumer disputes were referred to mediation, no matters were referred to mediation under s336 or Division 5 of Part 4.3 and the council made no compensation orders under s540(2)(c).

Statistical information collated from the council's investigation of complaints is set out in the tables at the end of this report. The information contained here and in the tables is provided in accordance with ss597 & 700 of the *LPA 2004*.

## Professional Conduct Department – continued

### *Applications to the Legal Profession Admission Board*

Professional Conduct Committee #2 reports to the council on applications made to the LPAB for admission or re-admission as lawyers and applications for early declarations under s13 *LPA 1987/s26 LPA 2004*. The committee, having considered the application, makes a recommendation to council to oppose or not oppose the application. The LPAB is advised of the council's resolution and considers this prior to coming to its own conclusion. In 2006, PCC#2 reported to the council on three applications for re-admission and two s13 early declaration applications.

### **The educative value of the committees' work**

The following aspects of a barrister's practice have been identified, via the complaints investigation process, as recurring problem areas.

#### ❖ *Direct access matters*

Rules 74, 75, 76, 77 and 80 of the *New South Wales Barristers' Rules* are particularly relevant in direct access brief matters. The *New South Wales Barristers' Rules* are on the association's web site. The absence of a solicitor to file and serve documents necessitates more vigilance on the part of the barrister to ensure that the client or some other person files and serves court documents.

Direct access matters demand direct, effective and timely communication with clients about the nature of the work the barrister is able to perform, and what work might be better performed by a solicitor in light of the client's expectations. The council urges barristers undertaking direct access work to confirm in writing all telephone conversations with the client and all matters which are discussed in conference. Discussions with opponents should also be communicated to the client. Communication (whether oral or written) needs to be clear and expressed in plain language to avoid the possibility of misunderstandings arising.

It is also imperative that barristers comply with the requirements under the *LPA 2004* regarding costs disclosure to clients in direct access matters.

#### ❖ *Communication with clients*

As always, clear communication and provision of quality service in all matters (whether instructed by a solicitor or acting directly) is likely to lead to fewer misunderstandings and, ultimately, to fewer complaints. One area of particular concern is failure to ensure terms of settlement accurately reflect the agreement reached between parties. Another is failure to ensure that the effect of the terms of settlement is properly explained to clients.

#### ❖ *Courtesy*

Barristers should remain courteous at all times in their dealings with others including clients, other barristers, solicitors, mediators, arbitrators and judicial officers.

### **Fee recovery assistance**

During the year the association received five requests to assist barristers in the recovery from solicitors of unpaid fees, compared to 14 requests in the previous year. A total of \$63,617 was recovered on behalf of members for the financial year ended 30 June 2006. The association was unable to recover fees in three of the 11 matters finalised. Two requests for assistance remain open.

The basis upon which the association can assist in members' fee recovery is set out in an article entitled 'Fee recovery assistance' which was published in the March 2006 edition of *Bar Brief* (No. 130) and which is available on the association's website. Where members were first instructed in a matter on or after 1 October 2005 (when the *LPA 2004* commenced operation), the provisions of Part 3.2 of the *LPA 2004* apply. Where members were first instructed in a matter before 1 October 2005, the provisions of Part 11 of the *LPA 1987* apply. Familiarity with the new costs disclosure provisions in the *LPA 2004* is essential. Members should be aware that the disclosure obligations under the *LPA 2004* are more onerous than under the *LPA 1987* and that infringement of the *LPA 2004* provisions may amount to professional misconduct or unsatisfactory professional conduct.

The association has a panel of solicitors to which members can be referred should the association's efforts be unsuccessful in recovering fees from solicitors. The panel undertakes fee recovery work for barristers at reduced rates. Enquiries about the rates charged and all enquiries about fee recovery should be made to the Professional Conduct Department.

Greg McNally as the fees convenor is consulted about difficult matters. The association is, as always, indebted to McNally for his continued assistance in this area.

## Professional conduct statistics

**Table 1**

**Results of disciplinary cases in the New South Wales Court of Appeal/Supreme Court determined in the years ended 30 June 2005 and 30 June 2006**

**New South Wales Court of Appeal / Supreme Court**

Financial Year 2006		Orders
26.04.06	Morrissey, Joseph D	Morrissey's application for admission as a lawyer to Supreme Court of NSW rejected. 3.05.06: Morrissey declared not a fit and proper person for admission.
28.02.06	Davison, William R	Declaration Davison practised as a barrister without holding pc in breach of LPA. Injunction restraining Davison from acting as barrister. 19.07.06 Declaration Davison guilty of professional misconduct.
Financial Year 2005		Orders
21.02.05	Abdul-Karim, Michael S	Abdul-Karim's appeal against ADT decision of Appeal Panel (to dismiss his appeal against ADT order for removal of name from roll) dismissed.

**Table 2**

**Results of disciplinary action taken by the Bar Council in the Administrative Decisions Tribunal determined in the years ended 30 June 2005 and 30 June 2006**

**Administrative Decisions Tribunal**

Financial Year 2006		Previous Findings	Penalty
08.03.06	Meakes, Timothy	2 x upc	Reprimand. Appeal by the Bar Council to Court of Appeal.
03.02.06	Osei, Kofi A	pm & upc	No penalty orders yet made. Application by Osei to re-open case.
05.04.06	Hart, John P	pm & 4 x upc	Reprimand. Fine \$4,000.
07.11.05	Davison, William R	pm	Removal name from Roll. Appeal by Davison to Court of Appeal.
08.02.06	Sahade, Marcel V	pm	Reprimand & fined \$10,000. Appeal by the Bar Council to Court of Appeal, cross appeal by Sahade.
09.01.06	Santisi, Frank	upc	Reprimand & undertake modules Engagement, Management and Maximising Costs Recovery and Risk Awareness conducted by LawCover.
Financial Year 2005		Previous Findings	Penalty
08.09.04	Brezniak, Daniel James	upc	Reprimand.
31.08.04	Donnelly, Bruce Leicester	pm	PC not to issue before 26.02.05.

## Professional conduct statistics - continued

**Table 3**

**Notifications of offences and acts of bankruptcy made to the Bar Council between 1 July 2005 and 30 June 2006 (compared to previous year)**

	2005-2006 (By barristers and applicants for pc)	2004-2005 (By barristers)
Tax offences	8*	8^
Acts of bankruptcy	5#	5
Indictable/serious offences	3	2
Prescribed concentration of alcohol	10 <sup>a</sup>	6 <sup>+</sup>
Traffic offences	3	0
Fare evasion	1	0
Other	2~	1
<b>Total</b>	<b>32</b>	<b>22</b>

\* Of the eight notifications of tax offences, one was made by an applicant for a practising certificate. Of the remaining seven notifications made by barristers, one barrister notified the Council of eight tax offences and one barrister notified the Council of three tax offences. These have been treated as one notification of tax offences in each case.

# Of the five notifications of acts of bankruptcy, two were made by applicants for a practising certificate. Of the remaining three notifications made by barristers, one barrister notified the Council of the execution of a s188 authority for the purposes of entering into a Part X agreement. The Part X proposal was rejected and the barrister then notified the Council of the presentation of a debtor's petition. This has been treated as one act of bankruptcy.

<sup>a</sup> Of the 10 notifications of prescribed concentration of alcohol offences, four were made by applicants for a practising certificate. Of the remaining six notifications made by barristers, one barrister also notified the Council of three tax offences and another barrister also notified a tax offence and a traffic offence. These have been treated as separate notifications.

~ Both notifications of other offences were made by applicants for a practising certificate.

- A further four notifications of tax offences (one of which was a notification of 6 tax offences), one notification of an indictable offence, three notifications of PCA offences, two notifications of traffic offences and two notifications of other offences were made to the Bar Council by barristers in the reporting year 2005-2006. These notifications are not included in the figures as in each case the offence notified was dealt with in the reporting year by way of dismissal under s19B(1)(c) of the *Crimes Act 1914* (Cth), s10(1)(a) of the *Crimes (Sentencing Procedure) Act 1999* (NSW) or the former s556A(1)(a) of the *Crimes Act 1900* (NSW). Offences dealt with by way of dismissal under these provisions are not required to be disclosed.

<sup>^</sup> Of the eight notifications of tax offences, one barrister notified the Council of five tax offences, one barrister notified four tax offences, one barrister notified three tax offences and two barristers notified two tax offences. These have been treated as one notification of tax offences in each case. Two barristers made two notifications of tax offences on different dates. These have been treated as separate notifications.

<sup>+</sup> Of the six notifications of prescribed concentration of alcohol offences, one barrister notified the Council of two PCA offences, an indictable offence and one other offence. These have been treated as separate notifications.

**Table 4**

**Number of complaints received by complaint type between 1 July 2005 and 30 June 2006 (compared to previous year)**

Complaint type	2005-2006	2004-2005
Acting contrary to/failure to carry out instructions	2	0
Acting without instructions	2	2
Breach of s152 <i>Legal Profession Act 1987</i>	2	1
Breach costs disclosure provisions Part 11 <i>Legal Profession Act 1987</i>	4	2
Breach of <i>Barristers' Rule 35</i> (Clyne case)	4	1
Breach of <i>Barristers' Rule</i> (Other)	10	2
Breach of confidentiality	3	2
Conflict of interest	1	1
Conspiracy to pervert course of justice	1	2
Delay/failure to provide chamber work	1	1
Failure to adduce evidence available	2	5
Failure to advise properly or at all	1	1
Failure to appear	1	2
Failure to explain terms of settlement (properly or at all)	3	1
Incompetence in court	3	1
Incompetence in & out of court	1	4
Incompetence out of court/in legal practice	1	2
Misleading conduct/dishonesty	11	6
Obstruct/delay proceedings	0	1
Other unethical conduct	3	3
Over zealous cross-examination (harranging a witness)	1	0
Overcharging and/or overservicing	2	2
Personal conduct	2	2
Practising without a practising certificate	0	1
Pressure to change plea/plead guilty/to settle	0	1
Rudeness/discourtesy	1	1
<b>Total</b>	<b>62</b>	<b>47</b>

## Professional conduct statistics - continued

**Table 5**

**Complaints received between 1 July 2005 and 30 June 2006 by complainant type (compared to previous year)**

	2005-2006	2004-2005
Bar Council	7	4
Barrister	1	1
Client/former client	17	25
Instructing solicitor	6	2
Legal services commissioner	0	2
Government department/statutory body	1	0
Opposing client	11	6
Opposing solicitor	12	2
Witness	3	2
Police	0	1
Other	4	2
<b>Total</b>	<b>62</b>	<b>47</b>

**Table 6**

**Total number of complaints remaining under investigation as at 30 June 2006 (compared to previous year)**

	2005-2006	2004-2005
Less than six months	27	23
Between six and less than nine months	8	9
Between nine and less than twelve months	9	6
Between twelve and less than eighteen months	1	8
Between eighteen and less than twenty four months	3	4
Twenty four months and over	4	3
<b>Total</b>	<b>52</b>	<b>53</b>

**Table 7**

**Results of investigations of complaints under Part 10 of the *Legal Profession Act 1987* and Chapter 4 of the *Legal Profession Act 2004* commenced and completed between 1 July 2005 and 30 June 2006 (compared to previous year)**

	2005-2006	2004-2005
<b>Result of investigation</b>		
Complaint under investigation	44	38
Withdrawn – s140(1) <i>LPA 1987</i> /s512(1) <i>LPA 2004</i>	3	2
Dismiss – s139(1)(a) <i>LPA 1987</i>	1	0
Dismiss – s155(4) <i>LPA 1987</i> /s539(1)(a) <i>LPA 2004</i>	8*	7
Dismiss – s155(3)(b) <i>LPA 1987</i>	1	0
Refer to tribunal (pm) – s155(2) <i>LPA 1987</i>	1	0
Refer to tribunal (upc/pm) – s155(2) <i>LPA 1987</i>	1	0
Reprimand – s155(3)(a) <i>LPA 1987</i>	0	0
Caution – s540(2)(a) <i>LPA 2004</i>	1	0
Referred to LSC	2	0
<b>Total</b>	<b>62</b>	<b>47</b>

\* As at 30 June 2006, no applications for review by the legal services commissioner were made in respect of decisions made by the Bar Council in 2005-2006 to dismiss a complaint pursuant to s155(4) *Legal Profession Act 1987* or s539(1)(a) *Legal Profession Act 2004*.

## Professional conduct statistics - continued

**Table 8**

**Results of investigations of complaints under Part 10 of the *Legal Profession Act 1987* and Chapter 4 of the *Legal Profession Act 2004* carried forward or commenced and completed between 1 July 2005 and 30 June 2006 (compared to previous year)**

	2005-2006	2004-2005
<b>Result of investigation</b>		
Complaint under investigation	52	53
Withdrawn – s140(1) <i>LPA 1987</i> /s512(1) <i>LPA 2004</i>	4	6
Dismiss – s139(1)(a) <i>LPA 1987</i>	2	0
Dismiss – s155(4) <i>LPA 1987</i> /s539(1)(a) <i>LPA 2004</i>	39*	32+
Dismiss – s155(3)(b) <i>LPA 1987</i>	1	0
Dismiss – s155A <i>LPA 1987</i>	1	1
Refer to tribunal (pm) – s155(2) <i>LPA 1987</i>	1	2
Refer to tribunal (upc) – s155(2) <i>LPA 1987</i>	0	1
Refer to tribunal (upc/pm) – s155(2) <i>LPA 1987</i>	5	2
Reprimand – s155(3)(a) <i>LPA 1987</i>	2	4
Caution – s540(2)(a) <i>LPA 2004</i>	1	0
<b>Total</b>	<b>108</b>	<b>101</b>

\* In the reporting period 2005-2006, 12 decisions made by the Bar Council in 2005-2006 to dismiss a complaint pursuant to s155(4) of the *Legal Profession Act 1987*/s539(1)(a) of the *Legal Profession Act 2004* were the subject of an application for review by the legal services commissioner. As at 30 June 2006, seven of those decisions were upheld by the LSC. After 30 June 2006, a further one of those decisions was upheld by the LSC. As at 25 August 2006, four decisions remain under review. In the reporting period 2005-2006, one application for review by the LSC was also made in respect of a decision made by the Bar Council in 2004-2005 to dismiss a complaint pursuant to s155(4). That decision was upheld by the LSC.

+ In the period 2004-2005, 12 decisions made by the Bar Council in 2004-2005 to dismiss a complaint pursuant to s155(4) of the *Legal Profession Act 1987* were the subject of an application for review by the legal services commissioner. As at 30 June 2005, four of those decisions were upheld by the LSC. In the reporting period 2005-2006, the remaining eight decisions were upheld by the LSC.

**Table 9**

**Number and type of complaints in respect of which proceedings were instituted in the Administrative Decisions Tribunal by the Bar Council between 1 July 2005 and 30 June 2006 (compared to previous year)**

	2005-2006	2004-2005
<b>Proceedings instituted in the Tribunal by the Bar Council</b>		
Conspiracy to pervert course of justice	1	1
Breach of s152 of <i>LPA 1987</i>	1	0
Breach of <i>Barristers' Rule 36</i>	1	0
Incompetence in court	0	1
Misleading conduct/dishonesty	1	0
Other unethical conduct	0	2
Overcharging	0	1
Professional misconduct arising from tax offences/bankruptcy	0	1
<b>Total</b>	<b>4</b>	<b>6</b>