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Highlights

2004

July

2004 Tutors & Readers Dinner
Launch of the In-Home Emergency
Child Care Scheme

August

Bar Practice Course 02/04

September

Bar Association Professional
Standards Scheme approved
Senior counsel appointments

October

Bar Council elections

November

Annual General Meeting
Bar exams

December

Indigenous Barristers Trust
official function



2005

January

Indigenous Pre-Law Day
Bar Association Professional
Standards Scheme commences
2005 committees announced
New silks ceremony, High Court

March

Working with statutes conference
Maurice Byers Address

April

Executive visits to Orange,
Newcastle and Lismore
CPD mini-conferences
Indigenous Barristers Trust
fundraiser

May

Bench & Bar Dinner
Bar Association media awards
announced
Bar Practice Course 01/05

June

Australian & Irish Bar Conference

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 three presidents and 103 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 office bearers

Ian Harrison SC was elected president of the New South Wales Bar Association in November 2003. He was educated at the University of Sydney, where he graduated with a Bachelor of Arts degree in 1972 and a Bachelor of Laws in 1975. He lectured at the University of New South Wales Law School between 1975 and 1980.

Ian was called to the Bar in 1977, where his principal areas of practice have been common law and equity. He took silk in 1995. Ian Harrison has played an active part in the affairs of the Bar Association. He was elected to Bar Council in 1994 and 1995. Between 1998 and 2001 he was chairman

of the Professional Conduct Committee #4. In 1999 he was treasurer of the Bar Association. In 2000/2001 he was junior vice-president, before rising to senior vice-president in 2002/2003 and president in 2003/2004.

He has also served on a range of other legal professional bodies and inquiries. In 1995 he was made a member of the Costs Assessors Rules Committee. Between 1998 and 2000 he was a member of the NSW Legal Profession Admission Board. In 1996-1997 Ian conducted the Australian Federal Police Corruption Inquiry for the Commonwealth attorney-general.

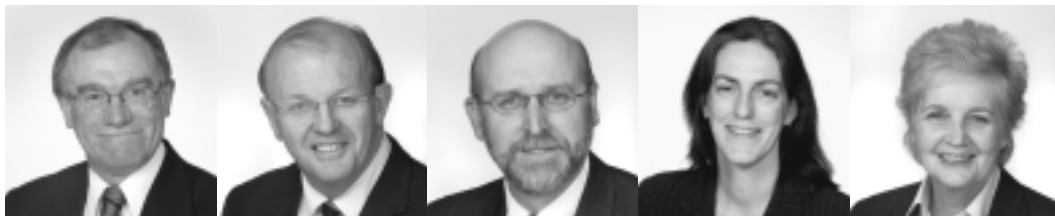


President
Ian Harrison SC



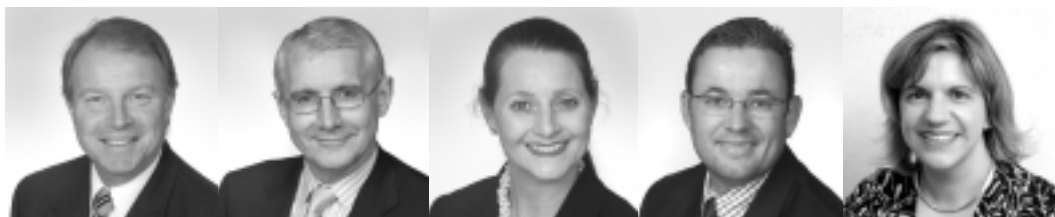
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1. Michael Slattery QC
Senior Vice President
2. Anna Katzmann SC
Junior Vice President
3. Tom Bathurst QC
Treasurer
4. Robert Toner SC
Secretary
5. Philip Selth
Executive Director



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. Virginia Lydiard



1	2	3	4	5
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1. Stuart Torrington
2. Chris Simpson
3. Kate Traill
4. Lachlan Gyles
5. Rena Sofroniou



1	2	3	4	5
6				

1. Angela Pearman
2. Rachel Pepper
3. Michael McHugh
4. Elizabeth Beilby
5. Elizabeth Frizell
6. Harriet Grahame



Bar Association staff

Office of the Executive Director

Executive Director

Philip Selth BA (Hons) LLB

Executive Assistant

Kathy O'Neill

Director, Legal

Jennifer Pearce BEc LLB

Projects Officer

Kim Kemp LLB

Administration Department

Administrative Support Manager

June Anderson

Adele Connor BA LLB MPS

Administrative Officer (Records)

Kim Ellis

Reception Officer

Barbara Coorey B Comm LLB

Administrative Assistant

Patrina Malouf

Bar Manager

Tony Mitchell

IT Consultants

Darren Covell

Matthew Vickers

Library

Librarian

Lisa Allen B App Sc(Info) M Inf Stud

Assistant Librarian

Jennifer Hughes BA DIM

Library Technician

Alice Uribe BA Grad Dip IM

Jeanine Metcalf BA

Finance Department

Finance Manager

Basil Catsaros B Comm ACA

Deputy Finance Manager

Tess Santos B Sc (Bus Admin)

Certification Officer

Barrie Anthony JP

Legal Assistance Referral Scheme

Legal Assistance Manager

Heather Sare

Administrative Assistant

Lisa West

Professional Conduct Department

Director, Professional Conduct

Anne Sinclair BA MLM

Deputy Director, Professional Conduct

Helen Barrett LLB

Jocelyn Sparks LLB (Hons)

Assistant to the Director, Professional Conduct

Lorraine Haycock

Assistant

Barbara Stahl

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 BEc

Education Assistant

Irene Puntillo

Public Affairs

Public Affairs Officer

Chris Winslow BA(Hons) MINTS DIM

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 statistics

There are 2683 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	1828
Female	320
Total	2148

Number of senior counsel (QC or SC)†

Male	307
Female	13
Total	320

Number of 'junior' barristers‡

Male	1521
Female	307
Total	1828

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

‡ 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.

Practising address of members who hold a NSW practising certificate

New South Wales	2008
Victoria	1
ACT	42
Queensland	74
South Australia	0
Western Australia	2
Northern Territory	1
Tasmania	0
Overseas	20
Total	2148

Number of honorary life members and non practising members

(including members interstate & overseas)

Male	436
Female	99
Total	535

(Includes 24 honorary life members who do not have a current NSW PC)

Occupation of non practising members

Judge	165
Magistrate	15
Statutory/government officer	5
Judicial officers	6
Member of parliament	2
Academic (non practising)	13
Interstate barrister	115
Overseas barrister	13
Former barrister	88
Former judge	76
Law student	2
Clerk	22
Miscellaneous	13

Practitioner statistics

As at 30 June 2005

Practitioners holding NSW practising certificates

(including practitioners based interstate & overseas)

Male	1853
Female	323
Total	2176

Number of practitioners who are senior counsel

(QC or SC)

Male	309
Female	13
Total senior counsel	322

Number of junior barristers

Male	1544
Female	310
Total junior barristers	1854

Location of holders of NSW practising certificates

	Juniors		Silks		Total
	Male	Female	Male	Female	
New South Wales	1434	297	287	12	2030
ACT	32	7	4	0	43
Victoria	1	0	0	0	1
Queensland	62	4	10	0	76
South Australia	0	0	0	0	0
Western Australia	2	0	0	0	2
Northern Territory	1	0	0	0	1
Tasmania	0	0	0	0	0
Overseas	12	2	8	1	23
Total					2176

Overseas practitioners by country of residence

	Juniors		Silks		Total
	Male	Female	Male	Female	
USA	1	0	0	0	1
UK	2	1	5	1	9
Hong Kong	1	0	3	0	4
New Zealand	5	1	0	0	6
Solomon Islands	1	0	0	0	1
Bermuda	1	0	0	0	1
Kazakhstan	1	0	0	0	1
Total					23

President's report



As 2005 draws to a close, the legal profession in New South Wales is on the threshold of becoming part of a truly national profession. Together with the legal profession of Australia, from 1 October this year, the conduct of legal practices across the country becomes subject to the provisions of the state equivalents of the *Legal Profession Act*

2004. This Act, and cognate legislation in the other states and territories, represents the culmination of extensive consultation with government and countless hundreds of hours of work by the respective professional associations. The disparate approaches to like problems confronting regulation of the legal profession will at last be embodied in a uniform trans-national approach. The travelling practising certificate, once thought to be unachievable, will at last become a reality. Philip Selth's report deals in some detail with the way in which this has come about and the long and hard road to its achievement. It is to be hoped that the just, quick and cheap delivery of legal services and the corresponding opening up of access to justice will be two of the significant results of these reforms.

After two years as president I remain more convinced than ever of the importance of the independent Bar. So much has been said and written on this topic that a comprehensive summary lies beyond the scope of this report. The sole practitioner rule and the cab rank rule lie at the heart of the independent Bar and the reasons why it remains so important. Popular opinion appears often either to misunderstand or to misstate the role of barristers in the community. High profile and difficult cases often serve to produce and to perpetuate these misunderstandings. Public recognition and expression of the rights of victims of crime is an issue which is regularly the subject of public debate. High profile cases concerned with vicious and degrading sexual assault and cases involving the abuse of children come immediately to mind. It isn't difficult to imagine the suffering of people whose lives have been torn apart by unspeakable criminal acts. It is easy to understand public outrage at the way in which legal process seems to prolong this suffering during lengthy trials, painful cross-examinations and the creation of generalised dissatisfaction with penalties and sentences.

Judges and the legal profession are inevitably isolated as apparently logical recipients for much of this concern. Nor could the courts or the profession complain if relevant failings by either of them are identified. Too often, however, sight is often lost of the fact that those accused of crimes are not guilty until they are convicted. We are in this country the beneficiaries of a system of justice with no equal in the world. Despite foreshadowed proposals by the federal government to eliminate or diminish protections for accused persons, the law continues

to proceed upon the basis of the presumption of innocence, the right to a fair trial and proof beyond reasonable doubt. Even the most evil among us are entitled to these protections, alike with the wrongly accused. As unfashionable, unpopular or unpleasant as our task may be, barristers must remain resolute in providing representation of the highest calibre even when public sentiment urges that an accused should be delivered to a gaoler without trial or the right to exercise legitimate avenues of appeal. The pressure on barristers in these circumstances is immense, often intolerable, but no more or less than the inevitable consequence of our calling. Even the harshest critics of barristers resort to them in times of need.

It is therefore particularly encouraging to see that lawyers are joining the ranks of barristers in record numbers. Reading courses are now regularly filled to overflowing and the Bar Association has responded accordingly. The reader's course offered by the New South Wales Bar Association is at the forefront of equivalent legal education worldwide and has been used both here and overseas as a model for the training of professional advocates. The tireless and invaluable work of Phil Greenwood SC, Peter Taylor SC and Rena Sofroniou, together with our own Chris D'Aeth and his team cannot pass either unnoticed or without recognition by me and grateful thanks of the highest order. Moreover, voluntary assistance from members both within and beyond the profession makes possible what without it would be simply impossible. On behalf of the Bar Association I extend my gratitude to all of those who consistently contribute to the legal education and training of new barristers year after year and, in particular, in 2005.

As unfashionable, unpopular or unpleasant as our task may be, barristers must remain resolute in providing representation of the highest calibre even when public sentiment urges that an accused should be delivered to a gaoler without trial or the right to exercise legitimate avenues of appeal.

It is also particularly pleasing for me to observe that those coming to the Bar consist of what is approaching equal numbers of women and men. The make-up of the 2005 Bar Council reflects this trend for what I suspect is probably the first time in the history of the Bar Association. This is so notwithstanding the current under-representation of women as members of the Bar as a whole. I take this opportunity to urge members of the Bar Association to encourage all those who aspire to becoming barristers, from whatever group, large or otherwise, within the community to do so. Only in this way can the make-up of the profession also change and the fundamental, and often misunderstood, interests of traditionally

President's report – continued

under-represented groups in the community come to be an influential component of the New South Wales Bar and beyond.

I have attempted wherever possible in the course of the many opportunities with which the last two years have presented me to promote barristers quite differently to popular stereotype. The battleground of litigation is definitively competitive and, together with the public nature of our work, is apt to produce large egos. I have attempted to remind barristers at all times that the theatricality and pomposity which often accompanies a courtroom performance has, or ought to have, no place outside the courtroom. This is particularly important in our dealings with members of the public who become our clients and the many members of the disinterested public whose contributions to our task, and the disruption to whose lives, we should never underestimate. It is a privilege to be a barrister and if we individually or collectively lose sight of that fact we run the serious risk of imperilling that very privilege.

It is also particularly pleasing for me to observe that those coming to the Bar consist of what is approaching equal numbers of women and men.

One very important achievement this year has been the acquisition of an electronic vote counting package. As is well known, the counting of votes at the annual elections is a time consuming and expensive process. Staff of the Bar Association are generally tied up for as much as a week with the corresponding disruption to ordinary work. The new system will also be adaptable to other uses such as surveys and the silk selection process. The ballot paper this year will therefore be slightly different as a result but should not cause any confusion to most of us! The inspiration to move into this technology will be repaid many times over.

I have also encouraged barristers to become members of the Bar Association even though it is not compulsory. It is often not well understood precisely how much work is done by members of the Bar Association staff on behalf of members generally and, as well, the community at large. I owe a debt of gratitude to each and every member of the Bar Association staff for their hard work, perseverance under significant pressure and unfailing loyalty to me at all times. If it were possible I would mention every staff member individually and praise their individual efforts on behalf of all barristers in the past year.

As a representative of that staff I must especially thank Philip Selth, the executive director, for his efforts above and beyond the call of duty. Philip has worked tirelessly during my term as president, often at personal cost to himself but always for the betterment of the profession. From the simplest task, to the most

sophisticated dealings with government, Philip has worked endlessly, and has produced results from which we will continue to benefit for years to come. He has been an unfailing supporter and I cannot thank him enough for his persistence and wise counsel.

I should also like to thank members of the Bar Council for their work during the past two years. Not all of that work has been pleasant and only occasionally is it inherently rewarding. I cannot thank them enough. In particular, I have been encouraged and supported at all times by Michael Slattery QC, the senior vice-president, without whose advice, support and assistance the job could not have been done. Anna Katzmann SC, Tom Bathurst QC and Bob Toner SC have similarly been unfailing in their willingness to share a considerable work load in a way I cannot adequately repay. In addition, the invaluable work of all of the Bar Association's committees cannot pass unrecognised. The association simply could not function without their important voluntary contributions and it is equally important that I acknowledge those efforts here.

Finally, I should like to thank the Bar generally for the support I have received. A passing word of approval or encouragement in Phillip Street, or a handwritten note from time to time, have continued to provide me with the determination to persevere with the task. It is my earnest hope that the difficult times for so many of us over the past few years might make way for the regeneration of formerly busy practices in the coming years.

Ian Harrison
President

Executive director's report



The National Practice Model Laws Project

In my 2003 and 2004 report I referred to the work being undertaken by the Standing Committee of Attorneys-General, Law Council of Australia and officers of the Bar Association, the New South Wales Attorney General's Department, Law Society of New

South Wales and the legal services commissioner to implement uniform legislation across Australia for the regulation of the legal profession. At the same time, a raft of amendments to both the *Legal Profession Act 1987* and the *Legal Profession Regulation 2002*, which had been suggested by the New South Wales Law Reform Commission, the Bar Association and others, was also being considered.

Thankfully, at the end of the 2004-2005 financial year, the end of this massive project was in sight.

The *Legal Profession Bill 2004* was introduced and passed in December 2004. In his second reading speech on 7 December the attorney general, the Hon Bob Debus MP, told the Legislative Assembly that:

The Legal Profession Bill repeals and replaces the current Legal Profession Act 1987. This Bill adopts the national model legal profession provisions, ensures that a national approach to the regulation of the profession is taken and removes barriers to legal practitioners practising across state and territory borders. It establishes a regulatory framework that meets the needs of the profession, while at the same time protecting the interests of consumers. It is the culmination of many years' work and co-operation between the governments of each state and territory in Australia, the Commonwealth government and the Australian legal profession.

The Bill, 462 pages in length (excluding the Explanatory Memorandum) is probably the most voluminous bill introduced into the New South Wales Parliament.

The attorney general acknowledged, both in the parliament and in correspondence with the president, his appreciation for the 'support and effort' the Bar Association has dedicated to this project.

The attorney general was not the only speaker that day who expressed appreciation for the work the Bar Association has put into this project. The shadow attorney general, Andrew Tink MP, also referred to the contribution of the Bar Association and others who had worked on the legislation. 'It is important when introducing a Bill of this size that we know where most of the work and inspiration comes from. It comes from the profession itself.'

Mr Barrie Collier MP, like the two previous speakers a member of the Bar Association, pointed out that the provisions of the national model legislation 'will remove barriers and facilitate legal practices across state and territory boundaries. The

provisions benefit legal practitioners and legal practices, and reduce compliance costs. They will also benefit the consumers of legal services.' Mr Collier went on to quote from a briefing note the association had offered members on both sides of the parliament:

A major benefit of the Bill is the elimination of 'bumps in the road' to there being a national profession and practitioners being able to practice in different State's jurisdictions ...

The New South Wales Bill goes further than the Model Bill in some areas to ensure that the amendments that have been made to the Legal Profession Act in recent years to address in particular some professional conduct issues are not lost...

Ms Virginia Judge MP, building on the 'bumps in the road' analogy, commented that the legislation 'also removes the potholes'.

The Legislative Council passed the Bill with minimal debate in the early hours of 9 December 2004.

Over the next six months officers of the Bar Association – and many others – continued work on the *Legal Profession Act 2004* and proposed amendments which it had not been possible to include in the Bill before it was introduced into parliament the previous December. In June 2005 the *Legal Profession Amendment Bill 2005*, this time a mere 65 pages, was introduced to amend the unproclaimed 2004 Act. The amendments were, as noted on the front page of the Bill, of a 'minor, clarifying or machinery nature'. Again, the Bar Association's work on the legislation was publicly acknowledged.

Mr Barrie Collier MP... pointed out that the provisions of the national model legislation will remove barriers and facilitate legal practices across state and territory boundaries. The provisions benefit legal practitioners and legal practices, and reduce compliance costs.

As with the original Bill, both sides of the parliament, as well as the crossbenchers in the Legislative Council, supported the legislation.

The attorney general reminded the Legislative Assembly when introducing the 2005 Bill that an undertaking of this scale 'is necessarily to be regarded as a work in progress', and gave notice that he would be proposing further amendments 'to maintain uniformity with the national model and to improve and streamline the operation of this new Act, as necessary.'

The Bar Association (and the Law Society) has already taken up with the attorney general a few matters that we believe require further consideration. One such matter is the new costs disclosure and assessment regime, which may require 'tweaking' in light of experience in its implementation.

Executive director's report - continued

Another issue under consideration at the end of the financial year is the new provision (section 14) that allows persons not holding a practising certificate to practice if they do not charge a fee. While clearly pro bono work needs to be supported, very serious problems for the consumer can arise if someone who does not hold a practising certificate provides legal advice that is wrong, especially if the giver of the advice does not have professional indemnity insurance.

In cases where, say, a retired judge or barrister wishes to undertake pro bono work, for example for the association's Legal Assistance Referral Scheme or as a 'duty barrister', the Bar Association has a procedure in place where the pro bono provider can hold a practising certificate at a reduced rate - but nonetheless, they still hold professional indemnity insurance and meet the standard continuing professional development requirements. During the past year the association had to deal with several cases of persons purporting to be a barrister yet not holding a practising certificate. That is, practising in breach of the *Legal Profession Act 1987*. Where the matter could not be resolved by the association, the apparent breaches were referred to the prothonotary of the Supreme Court.

It would be appreciated if members who encounter problems in implementing the new Act would let the association know so that action can be taken to try to resolve that problem. It needs to be recognised, however, that as the New South Wales legislation is based on a national Model Bill, amendment of the New South Wales legislation may not always be possible, at least without time-consuming consultation with all other states and territories.

It would be remiss of me if I did not here record my appreciation to those members of the Bar Association who generously provided their help to clarify what were at times very complex drafting instructions or draft legislation. I am conscious that some of the changes suggested, for a range of reasons, could not be adopted.

While not always agreeing with the Bar Association's proposals for the legislation, the attorney general went out of his way to listen to our arguments. The Bar Council has expressed its appreciation to the attorney general for his consideration – and tolerance of views being put to him, at times very strongly. The Bar Council is also appreciative of the assistance given by members of the attorney general's office, staff of his department and the Parliamentary Counsel's Office. The debate was at times robust, but in the end the legislation that has emerged, while not perfect, is a major improvement on its predecessor. The door is open to further improvements if a reasonable case for them can be advanced.

Walker SC noted that the ATO's position on s16 seemingly meant that it was illegal for Taxation officers to discuss a reported High Court case by name, and with reference to the facts, at public seminars about the law of taxation. He questioned whether the parliament had intended to be this silly.

The 2004 and 2005 Acts were unproclaimed as at 30 June, as model regulations were being drafted to accompany the new legislation. The *Legal Profession Act 2004* and the *Legal Profession Regulation 2005* are to commence on 1 October 2005.

Professional Standards Scheme

The Bar Association's Professional Standards Scheme limiting the liability of our practising members pursuant to the *Professional Standards Act 1994* commenced on 19 January 2005. The scheme's cap of \$1m was determined by the statutorily independent Professional Standards Council after it obtained actuarial advice. The council recommended to the attorney general that the scheme be tabled in the parliament and then gazetted.

Early in 2005 there was some uninformed criticism of the level of the cap. The suggestion was that the Bar Association had itself set the level of the cap, and that the \$1m was too low. The Bar Association is not aware of any successful claim against a New South Wales barrister for \$1m or more.

A detailed report on the scheme appears elsewhere in this annual report.

The Bar Association's dealings with the Australian Taxation Office

A considerable amount of time and effort has continued to be expended this financial year by the Bar Council and association staff in following up with the Australian Taxation Office a request first made in November 2000 by then president Ruth McColl SC that the Taxation Office provide certain information



Barristers in Queens Square. Photo: Tamara Voninski/Fairfaxphotos

Executive director's report - continued

to the Bar Association. The Bar Association has not sought confidential information about a barrister's taxation affairs. Rather, the association has been pressing for an amendment to 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.

The Bar Association has made numerous attempts to persuade the ATO and the federal government of the need to amend section 16. In December 2002, for example, the then president, Walker SC, wrote a lengthy letter to the commissioner of taxation about the ATO's refusal to share publicly available information with the Bar (eg successful prosecutions and the ATO's filing of a creditor's petition against barristers). Mr Walker challenged the ATO's view that it was prohibited from telling the Bar Association the result of a successful prosecution in open court. Walker SC noted that the ATO's position on s16 seemingly meant that it was illegal for Taxation officers to discuss a reported High Court case by name, and with reference to the facts, at public seminars about the law of taxation. He questioned whether the parliament had intended to be this silly. The ATO responded that it was 'actively pursuing a solution which will enable lawful disclosure of information to professional associations like the New South Wales Bar Association'.

In July 2004 the House of Representatives Standing Committee on Legal and Constitutional Affairs reported on its inquiry into the exposure draft of the *Bankruptcy Legislation Amendment (Anti-Avoidance and Other Measures) Bill 2004*. (An account of the ATO's and Bar Association's involvement with this inquiry was given in my 2004 report.) In its report the committee recommended that sub-section 16 (4) of the *Income Tax Assessment Act 1936* be amended 'to authorise the commissioner of taxation to provide publicly available information to prescribed industry or professional organisations'.

The government's formal response to the committee's recommendation in respect of s16 reads in part:

The Treasury, in consultation with the Attorney-General's Department, is currently weighing up the various considerations involved in providing publicly available information to prescribed industry and professional associations, including the rights of individuals concerning access to their taxation information as recommended in the report.

In December 2004, after further correspondence with the ATO, I met with senior officers of the Taxation Office, Commonwealth Treasury and the solicitor-general, David Bennett AO QC, to discuss the problems raised by s16. Mr Bennett subsequently provided the Taxation Office with a detailed advice, a copy of which was provided to the Bar Association.

At first glance, the solicitor-general's advice seemed to show an administrative way forward. Unfortunately, after yet further discussions with ATO officers, both parties agreed that a legislative amendment (as had been recommended by the House of Representatives committee in July 2004) was needed. In May 2005 the president, Harrison SC, the attorney general, the Hon Bob Debus MP, and the president of the Australian Bar Association, Ian Viner QC, all wrote to the federal attorney-general asking that the necessary amendment be enacted. The president of the Law Council of Australia, John North, wrote in similar terms to the Commonwealth treasurer.

...some five years after the Bar Association first sought an amendment to the Income Tax Assessment Act 1936 to allow the ATO to provide publicly available information to bodies such as the Bar Association, the matter is still under consideration in Canberra.

The president's letter to Mr Ruddock reads in part:

The Bar Council now has statutory responsibilities to satisfy itself that a barrister is a fit and proper person to hold a practising certificate, and to remain on the Roll of Legal Practitioners, if, among other matters, they have been made bankrupt or been convicted of a taxation offence. Even a cursory look at the professional conduct section of the association's webpage shows the amount of effort which the Bar Council has put in since being given the necessary statutory authority to take action against the few barristers who brought the profession into disrepute because of their failure to meet their social and statutory obligations to pay tax.

However, unless the ATO can pass to the association and other regulatory bodies the publicly available information, we are dependent on the practitioner informing the association of the action taken against them by the ATO. Unfortunately, a few practitioners, having flouted the Commonwealth taxation laws, see no reason to obey the New South Wales disclosure legislation.

It is clearly in all our interests that the ATO be able to provide publicly available information to the regulatory bodies. ...

You are shortly to introduce amendments to the *Bankruptcy Act 1966* aimed in part at preventing high income earners from using the bankruptcy laws to avoid their taxation obligations. You and the media have referred to the disgraceful conduct of a few barristers (now all either non-practising or struck-off) as being a catalyst for the legislation. We cannot rewrite the past, however much we

Executive director's report - continued

would like to do so. But I suggest it is almost as scandalous that the Commonwealth's taxation legislation prevents the ATO from providing the regulatory bodies with publicly available information so that they can take action should a legal practitioner flout the taxation and bankruptcy laws. We have done our best to put our house in order. We now ask that the Commonwealth acknowledge our work and move to remove the statutory bar on the ATO assisting the profession to take action against the (very few) practitioners who breach both Commonwealth and state laws.

In early July the attorney-general replied advising that as the *Income Tax Assessment Act 1936* fell within the portfolio of the minister for revenue and assistant treasurer, he had raised the matter with that minister. Mr North was advised by the minister for revenue's office that 'the Treasury is considering a range of alternatives which may achieve the intended outcome'.

That is, some five years after the Bar Association first sought an amendment to the *Income Tax Assessment Act 1936* to allow the ATO to provide publicly available information to bodies such as the Bar Association, the matter is still under consideration in Canberra.

The Bar Association staff

The hardest part to draft of my annual report is this section. It is very difficult to say what I wish to say without repeating my comments in past years. As I said last year:

In each annual report I have drafted since I took up duty with the Bar Association in November 1997, I have written of the association's staff putting in long hours of very competent, dedicated effort to provide a quality service to members and others, a service that usually goes unappreciated. It is probably *de rigueur* for the chief executive officer of any organisation to thank his or her staff in the annual report. This is not such a case. Neither the Bar Council nor I could carry out our responsibilities without the support of the staff the association is so lucky to have.

This repetition is in no way an indication that my views held last year are held less firmly this year. If anything, they are held more strongly. The staff are aware of this. But my appreciation needs to be on the public record.

Further thanks

The Bar Association staff are of course not the only persons who so strongly support the work of the association. The Bar Council and I rely upon, depend upon, the assistance readily given, often at considerable personal inconvenience, by so many members of the association. Committee members,

section members, those who present our training and professional development programs, those who draft the several hundred submissions and reports the association makes each year to governments, parliaments, regulatory bodies, law reform agencies and other organisations, the duty barristers and those who provide legal assistance and so many others. The list goes on and on. There are also those others with whom the association works on a daily basis, for example staff of Counsels' Chambers, clerks and chambers' reception staff. Many do so without any public recognition. But the Bar Council, and I, who do know who they are, are grateful for their help, support, and tolerance.

I wish also to thank the 2004 and 2005 Bar councils for their support of the staff and my work over the past year. As I have said before, much of the work of the Bar Association cannot be publicised. The respect so many have for this work would quickly be dissipated if our justifiable pride in what the association does in some areas was to outweigh the frequent requirement for confidentiality and discretion. Trust cannot be developed by way of the media or gossip around legal precincts. Public thanks may not be possible, but hopefully my thanks here will in some small way atone for that omission.

I should also like to record my thanks for the unstinting personal support I have received from the president, Ian Harrison SC, be it late on a Sunday night when the media are chasing a story or early in the morning over a cup of coffee discussing how the association might handle a request for a submission to a parliamentary committee, an ethical problem raised by a member, or an ill-informed, intemperate letter of abuse from a member of the public who disagreed with a barrister's duty to appear for someone charged with a sexual assault. The president having the role of counsellor to the executive director and staff is not prescribed in the association's Constitution. The fact that Harrison SC sees this as being an integral part of his role is appreciated.

P A 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. An indication of their hard work may be seen in the committee reports, beginning on page 29.

Bar News Committee

Andrew Bell (Editor)
Keith Chapple SC
Rena Sofroniou
Arthur Moses
Chris O'Donnell
David Ash
Michael Kearney
Matthew Darke
Christina King
Jodi Steele

Bar Association staff member

Chris Winslow

Criminal Law Committee

Stephen Odgers SC (Chair)
Anthony Bellanto QC
Malcolm Ramage QC
Paul Byrne SC
Tim Game SC
Paul Conlon SC
James Bennett SC
Philip Boulten SC
John Stratton SC
Carolyn Davenport SC
Gregory Smith SC
Glenn Bartley
Linda McSpedden

Greg Scragg

Richard Button

Sue Kluss

Mark Buscombe

Sally Dowling

Maria Cinque

Matthew Johnston

Gaby Bashir

Michael Coroneos

Bar Association staff member

Adele Connor / June Anderson

Equal Opportunity Committee

Virginia Lydiard (Chair)
Angela Pearman (Deputy Chair)
Angela Bowne SC
Liz Olsson SC
Robert Newlinds SC
Linda McSpedden
Susan Kluss
Janet Oakley
Julia Baird
Sandra Duggan
Phillipa Gormly
Sally Dowling
Trish McDonald
Rachel Pepper
Julia Lonergan

Kate Eastman

Kathy Sant

Michelle Painter

Cameron Moore

Andrew Pickles

David Price

Lincoln Crowley

Normain Laing

Bar Association staff member

Adele Connor/June Anderson

Family Law Committee

Grahame Richardson SC (Chair)
Robert Lethbridge SC
Christopher M Simpson
Margaret Cleary
Andrew Givney
Warwick Tregilgas
Peter Cook
Paul Sansom
Richard Schonell
Neil Macpherson
Neil Jackson
Bar Association staff member
June Anderson

Committees of the Bar Association - continued

Legal Aid Committee

Tim Game SC (Chair)
 Geoff Lindsay SC
 Peter Zahra SC
 Phillip Boulten SC
 Stephen Hanley
 Paul King
 Mark Buscombe
 Luke Brasch
 Harriet Grahame

Bar Association staff member

June Anderson

Mediation Committee

Robert Angyal SC(Chair)
 Steven Rares SC
 Ian Bailey SC
 Michael McGrowdie
 Michael Eagle
 Richard Bell
 Samuel Reuben
 Mark Brabazon
 Mary Walker
 Geraldine Hoeben
 Katherine Johnson
 Susan Phillips
 Hugh Stowe
 Harry Woods
 Rashelle Seiden
 Dominic Williams
 Jane Rawlings

Bar Association staff member

Kim Kemp

Personal Injuries Litigation Committee

Larry King SC (Chair)
 Andrew Morrison SC
 John Agius SC
 William Kearns SC
 Stephen Campbell SC
 Philip Doherty SC
 Simon Harben SC
 Ian Cullen
 Brian Ferrari
 Jim Gracie
 Michael Jenkins
 William Fitzsimmons
 Julia Lonergan
 Andrew Stone

Bar Association staff member

Kim Kemp

Professional Conduct Committee #1

Anna Katzmann SC (Chair)
 Stephen Robb QC
 Steven Rares SC
 Larry King SC
 Phil Greenwood SC
 Michael Bozic SC
 Stuart Torrington
 Lindsay Ellison
 Michael Loewenstein
 Janet Oakley
 Richard McHugh
 Vicki Hartstein
 Ian Tonking
 Frank Veltro
 Elizabeth Beilby
 Philippe Gray-Grzeszkiewicz
 Edward Muston

Academic member

Dorne Boniface

Lay members

John Freeman
 David Kaye
 Geraldine Walsh

Committee Secretary

Jocelyn Sparks

Professional Conduct Committee #2

Robert Toner SC (Chair)
 Ian Temby QC
 Robert Kaye SC
 Phillip Mahony SC
 Andrew Colefax SC
 Peter Hamill SC
 Mark Speakman SC
 Geoff Underwood
 Kim Morrissey
 Christopher M Simpson
 Mark Stevens
 Michael Jenkins
 Richard Weinstein
 Gail Furness
 Rachel Pepper
 David Ash

Vahan Bedrossian

Academic member

Michelle Sanson

Lay members

Michael Branagan
 Bronwyn Preston
 Sue Thaler

Mary Werick

Committee Secretary

Helen Barrett

Committees of the Bar Association - continued

Professional Conduct Committee #3

Tom Bathurst QC (Chair)

Martin Einfeld QC

John Maconachie QC

David Davies SC

John Sheahan SC

Hayden Kelly SC

James Stevenson SC

Craig Leggat

Ian Davidson

David Jordan

Angela Pearman

Andrew Stone

Louise Byrne

Michael McHugh

Elizabeth Frizell

Paul Bolster

Harriet Grahame

Academic member

Bernard Dunne

Lay members

Ian Fitzgerald

Nicholle Nobel

Penny Standard-Hoschke

Committee Secretary

Jocelyn Sparks

Professional Conduct Committee #4

Bernie Coles QC (Chair)

Philip Hallen SC

David J Russell SC

James Bennett SC

Daniel Feller SC

Brendan Hull

Peter Tomasetti

Virginia Lydiard

Lachlan Gyles

Rena Sofroniou

Igor Mescher

Patrick Griffin

Carol Webster

Kenneth Gilson

Sigrid Higgins

Kevin Andronos

Academic member

Francine Feld

Lay Members

Lyndsay Connors

John Girdwood

Matthew Smith

Committee Secretary

Helen Barrett

Taxation Committee

Anthony Slater QC (Chair)

Holger Sorensen

Kevin Connor

Mark Brabazon

Christopher Bevan

Igor Mescher

Peter Fraser

Mark Richmond

Narelle Butler

Brett Young

Michelle Hirschhorn

Bar Association staff member

Kim Kemp

Young Barristers Committee

Hugh Stowe (Chair)

Harry Woods

Trevor Hall

Stephen Loughnan

Christopher Wood

Christina King

Alastair Vincent

Andrew Justice

Jacob Horowitz

Karen Viglianti

David McBride

Margaret Holz

John-Paul Redmond

Jehane Ghabrial

Madeleine Avenell

David Jay

Kate Welshman

Soruban Siva

Bar Association staff member

Travis Drummond

Defamation Working Party

Steven Rares SC (Chair)

Tom Hughes AO QC

Alex Shand QC

Robert Stitt QC

Maurice Neil RFD QC

John Sackar QC

Stuart Littlemore QC

Terrence Tobin QC

Bruce McClintock SC

Guy Reynolds SC

Desmond Kennedy SC

Tim Hale SC

Tom Molomby SC

Scot Wheelhouse SC

Peter Gray SC

Tom Blackburn SC

Clive Evatt

Robert Campbell

Brian Kinsella

Paul Lakatos

David Caspersonn

Mark Lynch

Bruce Connell

David O'Dowd

Kieran Smark

Lucy McCallum

Richard McHugh

Committees of the Bar Association - continued

Michael Rollinson

Alec Leopold

Alister Henskens

Robert Glasson

Richard Lancaster

Matthew White

Kevin Andronos

Angus Gemmell

Co-ordinators

Human Rights

Nicholas Cowdery QC

Industrial Relations Commission Duty Barrister Scheme

Ingmar Taylor

Downing Centre Duty Barrister Scheme

Kate Trill

Indigenous Barristers Strategy Working Party

Chris Ronalds (Chair)

Chris Hodgekiss SC

Andrew Haesler SC

David Frearson SC

Mullenjaiwakka

Tony McAvoy

Lincoln Crowley

Norman Laing

Professor David Barker (UTS)

Professor Larissa Behrendt (UTS)

Associate Professor Jill Hunter (UNSW)

Bar Association Staff Member

Travis Drummond

Limited Liability Working Party

Tom Bathurst QC

David Davies SC

Andrew Bell

Alister Abadee

Bar Association staff member

Kim Kemp

Sections of the Bar Association

Administrative Law

Convenor: Alan Robertson SC

Secretary: Stephen Lloyd

Maritime, Air & Transport Law

Convenor: Brian Rayment QC

Secretary: Gregory Nell

Family Law

Convenor: Grahame Richardson SC

Secretary: Neil Jackson

Trade Practices & Consumer Protection Law

Convenor: Jeffrey Hilton SC

Secretary: Andrew Ogborne

Common Law

Convenor: Anna Katzmann SC

Secretary: Andrew Stone

Corporations, Securities & Insolvency Law

Convenor: Tom Bathurst QC

Secretary: Rodney Smith SC

Intellectual Property Law

Convenor: David Yates SC

Secretary: Richard Cobden

Criminal Law

Convenor: Tony Bellanto QC

Secretary: Glenn Bartley

Constitutional Law

Convenor: Stephen Gageler SC

Secretary: Kate Richardson

Environmental, Local Government & Valuation

Convenor: Malcolm Craig QC

Secretary: Sandra Duggan

Construction Law

Convenor: Glen Miller QC

Secretary: Kerrie Leotta

New South Wales members appointed to the Bench



Supreme Court of New South Wales

The Hon Justice C R Hoebe AM RFD

The Hon Justice P A Johnson

The Hon Justice P M Hall

The Hon Justice M F Latham

The Hon Justice J Basten

The Hon Justice S C Rothman

Industrial Relations Commission of New South Wales

The Hon Justice A F Backman

District Court of New South Wales

His Hon Judge B J Knox SC

His Hon Judge B H Donovan QC

His Hon Judge R A Hulme SC

Local Court of New South Wales

Ronald Maiden

Jane Culver

Gordon Lerve

Graham Blewitt AM

Gregory Hart

Federal Court of Australia

The Hon Justice P R Graham

The Hon Justice R F Edmonds

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

Dominic Toomey

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 Technology, Sydney, Faculty Board

Geoff Lindsay SC

University of NSW, Faculty of Law

Rachel Pepper

University of Wollongong Faculty of Law, Visiting Committee

Bruce Collins QC

University of Sydney, Law Extension Committee

Peter Hamill SC

Anthony O'Brien

Court committees and working parties

Commonwealth courts and tribunals

Federal Court of Australia Court User Committee

Malcolm Oakes SC

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 Committee

John Maconachie QC

Russell McIlwaine SC

Guy Reynolds SC

Supreme Court Rule Committee

Michael Slattery QC

Geoff Lindsay SC

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 Users Group

Peter Kite SC

Court committees and working parties – continued

Trish McDonald

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

Brian Ferrari

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

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)

Council of Law Reporting

Naida Haxton (editor)

Lee Aitken (consulting editor)

Francis Douglas QC

Bret Walker SC

Christopher Birch SC

Noel Hutley SC

Ian Jackman SC

Christine Adamson SC

Timothy Castle

Judicial Commission of New South Wales

Steven Rares SC

Legal Aid Commission

Board members

Geoff Lindsay SC

Alternate: Phillip Boulten SC

Administrative Decisions Tribunal

Legal Services Division

Robert Macfarlan QC

John McCarthy QC

Sharron Norton SC

David Officer QC

Lionel Robberds QC

Wendy Robinson QC

John West QC

Alison Stenmark SC

Equal Opportunities Division

Jane Needham SC

General Division

Jane Needham SC

Mark Robinson

Motor Accidents Authority

Senior Assessors Service

Peter Capelin QC

Larry King SC

Ross Letherbarrow SC

Margaret Holz

Claims Assessment and Resolution Service

Robert Tonner

Robert Quickenden

Christopher Hickey

William Fitzsimmons

John Tancred

Helen Wall

Margaret Holz

Legal Aid Commission - Legal Aid Review committees

Committee No.1

John McCarthy QC

1st alternate: Paul Menzies QC

2nd alternate: Paul Blacket 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

Other appointments

Australasian Dispute Resolution Centre

Richard Bell

Public Interest Law Clearing House

Geoff Lindsay SC
Harriet Grahame

Trustees of the Pro Bono Disbursement Fund

Philip Selth

Motor Accidents Assessment Service Users Group (MAAS)

Ross Letherbarrow SC
Hugh Marshall SC
Andrew Stone

Australian Advocacy Institute

Her Honour Judge Ann Ainslie-Wallace

NSW Attorney General's Department working parties

Evidence Act working party
Stephen Odgers SC

Civil procedure working party
Michael McHugh, Greg George,
Hamish Stitt

NSW AGs Department, Legal Technology Reference Group
Jeffrey Kildea

Law Council of Australia committees

Access to Justice Committee

Christopher Whitelaw

Advisory Committee on Indigenous Legal Issues

Michael Slattery QC
Dr Sarah Pritchard
Anthony McAvoy

ALRC Working Group

Bret Walker SC

Alternative Dispute Resolution Committee

Mary Walker

Australian Young Lawyers Committee

Hugh Stowe

Criminal Law National Liaison Committee

Tim Game SC (Chair)
Bret Walker SC
Stephen Odgers SC

Equalising Opportunities in the Law Committee

Julia Lonergan

Healthcare Liability Committee

Michael Slattery QC
Colin O'Connor QC

Model Equal Opportunity Briefing Policy Committee

Michael Slattery QC

National Profession Reference Group

Bret Walker SC

National Profession Working Groups for Admission, Practice, Complaints & Discipline

Philip Selth

Public Liability Reference Group

Ian Harrison SC

Law Society of New South Wales committees

Criminal Law Committee

Matthew Johnston
Michael Coroneous

Personal Injury Committee

Andrew Stone

Court liaison members 2005

Federal courts and tribunals

High Court

David Jackson QC

Federal Court

Malcolm Oakes SC

Family Court

Grahame Richardson SC

Migration & Refugee Review tribunals

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 - Defamation List

Steven Rares SC

Supreme Court of NSW - Criminal Matters

Tim Game SC

Supreme Court of NSW - Admiralty List

Sandy Street SC

Land and Environment Court

Malcolm Craig QC

Industrial Relations Commission of NSW

Max Kimber SC

Local Court

Kate Traill

Reports

Promoting the interests of local practising barristers

Professional Standards Scheme

One of the Bar Association's notable achievements in 2004-2005 was the approval of its Professional Standards Scheme, which commenced on 19 January 2005. The object of the scheme is to limit the amount of damages payable for occupational liability to \$1m.

Occupational liability is defined as 'civil liability arising (in tort, contract or otherwise) directly or vicariously from anything done or omitted by a member of an occupational association acting in the performance of his or her occupation'. Section 5 of the *Professional Standards Act 1994* lists the types of occupational liability not covered under the scheme.

Persons covered

The Bar Association's scheme applies only to its members who hold a New South Wales barrister's practising certificate and have approved professional indemnity insurance (s17). The scheme is not retrospective and only limits a member's liability for acts which occurred after it came into force and whilst they were covered.

If a barrister is sued by a client for something they did in their professional capacity; and provided that member had:

- ❖ disclosed to the client that their liability was limited by a scheme (s33), and
- ❖ complied with all other requirements under the Act;

then the client will not be able to claim more \$1m in damages.

Members' mandatory obligations

There are certain obligations to which each member covered by the scheme must adhere. The most obvious is the use of the mandatory disclosure statement, which requires members to advise all clients (including briefing solicitors) of the cap in their liability by virtue of the scheme. The Act requires that:

if a person's occupational liability is limited in accordance with this Part [Part 2], all documents given by the person to a client or prospective client that promote or advertise the person or person's occupation, including official correspondence ordinarily used by the person in the performance of the person's occupation and similar document, must carry a statement to that effect (s33).

The disclosure statement will be sufficient if it uses the words specified in clause 9 of the *Professional Standards Regulation 2004*, i.e. 'Liability limited by a scheme approved under professional standards legislation'.

The Professional Standards Council, the statutorily independent body that maintains the scheme, has issued a Policy Statement on Disclosure of Limited Liability giving guidance to persons covered by a scheme about how they can meet their mandatory obligations to disclose that they have limited liability. Disclosure should be made irrespective of the jurisdiction in which the service is provided. A copy of the policy statement is posted on both web sites of the Professional

Standards Council and the Bar Association. A copy of this material was also sent to all members on 3 November 2004.

History

Although the Bar Council first considered a professional standards scheme in the late 1990s, a formal application was decided upon at the Strategic Planning Day in May 2001, which was attended by Bar councillors, representatives of the regional Bars, chairs of committees and convenors of sections.

In support of the application, Bar Council resolved to develop a programme of mandatory continuing professional development; an essential risk management procedure required for approval of any professional standards scheme. CPD commenced on 1 July 2002

Members were asked in the September/October 2001 edition of *Bar Brief* for their comments on Bar Council's proposal to apply for recognition of a professional standards scheme. Support for the application was widespread, justifying the considerable amount of work required.

Eliminating problems with the legislation

Once it was clear the Bar Council had the support of members, work began on the application itself and on eliminating problems identified with the legislation. For example, the Act did not apply to liability for damages arising from any negligence or other fault of a legal practitioner in acting for a client in a personal injury claim (s5 (1) (b)). The Bar Council did not wish to implement a scheme if it did not protect all members.

A formal submission seeking the repeal of s5(1)(b) of the Act was made to the attorney general in December 2001. Following discussions and consultation with the Bar Association, the attorney agreed to that request. The resulting *Professional Standards Amendment Bill 2004*, which provided for the repeal of s5 (1) (b), was passed by the New South Wales Parliament on 26 October 2004 and came into effect on 3 November 2004 - shortly before the commencement of the association's scheme.

Claims data required to accompany application

In making a determination as to the limitation of liability, the Professional Standards Council must have data on the number and amounts of claims made against persons within the occupational association concerned. In order to calculate a limit which will cover the majority of claims, and adequately protect consumers, the council requires applications to be accompanied by at least 10 years worth of claims data.

This information was not readily available at the time Bar Council decided to apply. Beginning in 2001, the attorney general was consulted on ways to require insurers to provide the claims data required. The result was a condition placed on the attorney's approval of all professional indemnity insurance policies for New South Wales barristers in the 2002-2003 practice year. This required insurers to provide claims data required for the Bar Association's application, and for its ongoing risk management strategy.

The insurers acceded and, using the data provided, the association sought a \$1m limit. This amount exceeded all reported claims that had been made against barristers, excepting one well-known case in the 1990s, which was reversed on appeal. An independent actuary analysed the claims data, and concurred that the requested limit of \$1m was appropriate.

The claims data provided to the Professional Standards Council was inclusive of defence costs. The cap under the scheme is only in respect of the damages payable to a claimant.

Lodgment of the application

The application was lodged with the Professional Standards Council on 6 November 2003, but more work was required to see the process through to its conclusion. The council responded with a request for additional information about the Bar Association's complaints and discipline processes, claims data and risk management strategies.

The scheme was approved by the council on 6 September 2004 and gazetted on 19 November, before entering into force on 19 January 2005. Unless the association applies for a renewal, it will automatically cease on 18 January 2010. It is reviewed regularly and the association must report annually to the Professional Standards Council on the implementation and monitoring of its risk management strategies, their effect and any proposed changes. It must also report annually on claims and compliance of members of their obligations under the Act.

The Bar Association pays an annual fee to the Professional Standards Council of \$35 per member covered by the scheme.

Information seminars

The Bar Association held information seminars for members on 11 and 15 November 2004 to ensure all members were aware of their obligations under the Act, including the requirement to advise clients of the cap in liability through the operation of the scheme. These sessions were conducted by the secretary of the Professional Standards Council and were videotaped. Copies of the information session videos are available from the Bar Library.

Matters still requiring attention

Trade Practices Act 1974

Currently plaintiffs may be able to sidestep the limit on damages by suing under the *Trade Practices Act 1974*, which is not affected by state law. The Bar Association and the Law Council pressed for amendments to the Trade Practices Act in 2003 and 2004 to make claims under that Act arising from the work of professional persons subject to the 'cap' provisions of the Professional Standards Act.

The *Treasury Legislation Amendment (Professional Standards) Act 2004*, which was passed in 2004 and came into effect on 13 July 2004, ensures that state professional standards law cannot be bypassed by litigants attempting to access uncapped payouts under the *Trade Practices Act 1974*, *Australian Securities and Investments Commission Act 2001* and the *Corporations Act 2001*. However, in order for the association's scheme and any other scheme to be recognised under these Commonwealth Acts, they must be prescribed under their respective regulations.

On 25 November 2004 the Bar Association applied to Mr Mal Brough, Minister for Revenue and Assistant Treasurer, for its scheme to be prescribed under the regulations. In March 2005 the association provided Treasury with a copy of the application for a professional standards scheme, so it could assess whether to grant prescription. Neither the association's scheme nor any other existing scheme has been prescribed. Nor has Mr Brough indicated whether or when prescription is likely to occur.

Prescription would forestall alternative claims under Commonwealth legislation, intended to bypass limitations on the claim they wish to make. For example, barristers do not have capped liability under s52 of the Trade Practices Act for any alleged misleading and deceptive conduct arising from incorrect advice. Until the scheme is prescribed, the potential of these alternative claims undermines its operation. The Bar Association will keep members informed of the progress in this matter in 2005-2006.

Members covered by the scheme who are interstate practitioners

The Bar Association has requested that the council consider whether its scheme provides protection for barristers who hold a NSW practising certificate, yet live and practise interstate. There is no provision in the Act or the scheme itself specifically excluding interstate or overseas work or interstate or overseas based barristers from being covered by the scheme. It requires only that the person be a member of the association, the holder of a New South Wales practising certificate and the holder of approved professional indemnity insurance at the time of the act or omission giving rise to liability. Members will be notified of the advice received from the Professional Standards Council on this issue when it is at hand.

Recognition of scheme in other states/territories

This issue is currently before the association's Limited Liability Committee. The other states and territories of Australia have not yet taken steps to enable schemes to be approved in those jurisdictions, nor to enable schemes approved in this state to be recognised there. It is hoped that national arrangements will be in place soon after 1 January 2006, although this will depend upon action being taken in a timely way interstate.

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 families. The assistance is provided in strict confidence. The Bar Association covers costs associated with the initial consultation, assessment and referral to a specialist practitioner by the BarCare counsellor.

	2004-2005	2003-2004
Number of members seen	15	21
Female	4	6
Male	11	15
Most common age brackets	35-44 years & 55-64 years	45-54 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/relationship
Number of family members seen	4	0
Number of members who continued with treatment after the initial consultation	14	11

The counsellors report that BarCare 'continues to work satisfactorily, but does rely on ongoing marketing to maintain momentum'. They have recommended further measures, such as articles in Bar News, to 'de-stigmatise the process of counselling' and to give barristers 'subliminal' reminders that the service 'can be taken up when the time is right'.

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

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



Picture by PETER J. CHAFFIN/PHOTOS

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 2004-2005 the Management Committee approved nine grants (totalling \$68,856). No new loans were made, however two loans were waived – an amount totalling \$51,326.

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 \$5,000 and above

Francis Douglas QC
Craig Leggat

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

Bret Walker SC

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

Paul Byrne SC
Philip Doherty SC
Tim McKenzie
Gregory Melick SC
Michael Slattery QC

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

Paul Brereton SC
Ian Davidson
Peter Deakin QC
John Durack SC
Anna Katzmann SC

Simon Kerr
Stephen Loughnan
John Murphy
Bruce Oslington QC
The Hon George Sharpe
Clive Steirn SC
Winston Terracini SC
John Webster SC
John West QC

Contributions \$500 to \$999

David Ash
Philip Bates
Thomas Bathurst QC
Richard Battley
Peter Bodor QC
Campbell Bridge SC
David Buchanan QC
Stephen Campbell SC
David Catterns QC

Richard Cavanagh
Jeremy Clarke
Ian Cullen
Mark Dempsey SC
The Hon R J Ellicott QC
John Fernon
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Michael Green
Simon Harben SC
Christopher Hoy
Bennett Ingram
William Kearns SC
Larry King SC
Terrence Lynch
Shaun McCarthy
Rory McCrudden
Peter McGrath
Anthony McQuillen
Ian Neil

Contributions to the Barristers' Benevolent Association – continued

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His Honour Judge
S Norrish QC
The Hon B S J Okeefe AM QC
James Poulos QC
Steven Rares SC
John Robson SC
Eugene Romaniuk
Frank Santisi
Angela Seward
Jeffery Sewell
Julian Sexton SC
Terence Tobin QC
Paul Webb QC

Contributions \$100 to \$499

The Hon Justice M Adams
Kelvin Andrews
Paul Barnes
James Barnett
John Bartos
Philip Beale
Richard Beasley
Robert Beech-Jones
Andrew Bell
Richard Bell
Dennis Benson
Peter Biscoe QC
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Andrew Campbell
Grant Carolan
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Ross Carruthers
David Caspersonn
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Paul Cattini
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Stephen Flett
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Garry Foster
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Mark Gilbert
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Allan Goldsworthy
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Gregory Jones
David Jordan
Sheila Kaur-Bains
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Gregory Kenny
John Keogh
Victor Kerr
Shaun Kerrigan
Stuart Kettle
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Jeffrey Kildea
Paul King
Peter Kintominas
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Andrew Kostopoulos
Peter Krebs
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Allen Lakeman
Ian Lawry
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John Levingston
Leonard Levy SC
Paul Livingstone
William Lloyd
Michael Loewenstein
James Loxton
George Lucarelli
Mark Lynch
Robert Macfarlan QC
John Maconachie QC
Philip Mahony SC
Nicholas Manousaridis
Michael Maxwell
Mark McDermott

Contributions to the Barristers' Benevolent Association – continued

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Terence McGill	David Price	Kenneth Stewart
Ian McGillicuddy	Dominic Priestley	Hamish Stitt
Gordon McGrath	Jonathon Priestley	Robert Stitt QC
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The Hon Justice H Nicholas	James Sainty	Oswald Watt
Geoffrey Nicholson QC	Gregory Scragg	Carol Webster
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Gregory Niven	Bernard Sharpe	John Whittle SC
Paul Nolan	Wayne Sharwood	Michael Williams SC
Jon North	James Sheller	Terrance Willis
Malcolm Oakes SC	The Hon C S C Sheller AO QC	Dennis Wilson
Peter O'Connor	Christopher Simpson	John Wilson SC
Gary O'Gorman	Rodney Skiller	The Hon Justice L Wright
Peter O'Loughlin	Anthony Slater QC	
Elizabeth Olsson SC	The Hon J P Slattery AO QC	Contributions \$25 to \$99
David O'Neil	David Smallbone	Michael Adamo
Robert O'Neill	The Hon Justice R F Smart	Neil Adams
Andrew Pickles	Rena Sofroniou	Michael Allen
Ian Pike	Mark Southwick	David Andrews
Borys Pluznyk	Stephen Stanton	His Honour Judge C J Armitage

Contributions to the Barristers' Benevolent Association – continued

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Contributions under \$25

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 Lawrence Yan- Kwok Ma
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 David McBride
 Charles Moschoudis
 Allison Silink
 Paul Smith
 Josephine Thornton
 James Trevallion
 Michael Tubbs
 James Whyte
 Christopher Wood
 Harry Woods

The Bar Library

During 2004-2005, the Bar Library continued to provide a wide range of information services to members.

Patronage continues to grow, despite the prevalence of online subscription resources. In 2004-2005, loans averaged 65-70 per day - an increase on the 55-60 of the previous year. This rising demand for loans underlines the need for equitable use of the library's resources. To counteract the widespread impression that items need only be returned upon sustained request, library staff will continue to stress the importance of return dates for items on loan.

In addition to meeting demand for hard copy items, the library must respond to users' requirements for online information. The library conducts courses in electronic legal research and the number of subscriptions to online commercial legal databases has been increased.

The Bar Library also provides a vital reference service to assist members with their legal research. This service is particularly important for those barristers who are not practising in Sydney's central business district. The librarians logged 4161



reference enquiries in the year past, compared with 3292 reference inquiries in 2003-2004. Responses to approximately 1600 of these enquiries (38 per cent) were delivered by e-mail, resulting in significant productivity gains over equivalent responses using photocopies and faxes.

An important service provided by the Bar Library is orientation and training sessions for new members and their staff. Further, where chambers or individual barristers have been granted access to the Law Courts Library, the Bar Library conducts orientation tours of that library for clerks and junior clerks. Such tours are a continuing part of the co-operative arrangements between the two libraries, which also includes providing interlibrary loans on request and sharing of resources.

Equal Opportunity Committee

In 2004-2005 the Equal Opportunity Committee continued to develop new and existing initiatives designed to promote equal opportunity for any person practising at, or wishing to come to, the New South Wales Bar.

The Equitable Briefing Policy

The Equal Opportunity Committee has actively promoted the Equitable Briefing Policy for female barristers, which was formally adopted by Bar Council in June 2004. This policy is in the form of the Law Council's Model Equal Opportunity Briefing Policy for female barristers and advocates, which the Standing Committee of Attorneys-General adopted earlier in 2004. The president wrote to the attorney general and a number of the larger law firms and business houses and to date the attorney general, Blake Dawson Waldron, Mallesons, Clayton Utz, IAG (Insurance Australia Group), the ACCC and the National Australia Bank have adopted the policy. The president also wrote to Gordon Salier, then president of the Law Society of New South Wales, asking him to encourage all members to adopt the policy. On Friday, 20 May 2005, the National Australia Bank hosted a very successful function in conjunction with the Bar Association inviting members to meet the NAB legal staff. On 29 March 2005 Michael Slattery QC gave an interesting address about the policy to the crown prosecutors' conference. There, he also spoke about the Sexual Harassment Policy, explaining why both were adopted by Bar Council.

The Sexual Harassment Policy

The Sexual Harassment Policy was adopted by Bar Council on 17 June 2004. In 2005, letters were sent from the president to the following people inviting them to participate on the Model Sexual Harassment & Discrimination Policy Panel:

Senior counsel

Neil Williams SC
Jane Needham SC
Alexis Todd SC
Sharron Norton SC
Paul Menzies SC

Independent members

Maggie Smyth
Zita Antonious

Clerks

Paul Daley
Nick Tiffin
Belinda Lyus.

All have accepted such invitation.

The following chambers have adopted the policy.

- ❖ Arthur Phillip Chambers, Parramatta;
- ❖ Seven Wentworth Chambers;
- ❖ Martin Place Chambers;
- ❖ Sixth Floor St James Hall Chambers;
- ❖ Tenth Floor St James Hall;
- ❖ William Deane Chambers;
- ❖ 9th Floor Windeyer Chambers; and
- ❖ Ada Evens Chambers.

Barristers with Special Needs Strategy

The committee continues to monitor the needs of disabled barristers, and on 8 June 2005 it ran a very successful continuing professional development seminar, entitled 'Disability Discrimination and the Bar'. The speakers were Julia Haraksin, co-ordinator of the Disabilities Strategic Plan at the NSW Attorney General's Department, Paul Lynch, crown prosecutor and Matthew Laffan, a solicitor at the Office of the Director of Public Prosecutions. Mark Robinson chaired the session and Angela Pearman was the moderator. The seminar was well attended by members of the Bar and others will be organised in the future.

Welcome to the Bar

The 'Welcome to the Bar' visits by final and penultimate year female university students, organised by Julia Baird, Sally Dowling and Julia Lonergan continued in the calendar year. Students from the University of Western Sydney visited the Bar on 22 April 2005. Sixteen students attended and spent the morning with committee members, who took them to their chambers and to various courts. They met with the Hon Justice Branson, the Hon Justice Bergin, the Hon Justice McCall AO, the Hon Justice Bell and the Hon Justice Bennett AO, to whom the Equal Opportunity Committee is most grateful for their giving up their time. As usual, a number of the students reported back with enthusiasm, expressing their gratitude and wish to maintain contact with members of the Bar.

The Mentoring Scheme

In 2001 the Equal Opportunity Committee introduced a voluntary mentoring scheme for female barristers, which aims to assist the development of their practices, particularly in their second and third years at the Bar. The scheme has continued and is administered by a sub-committee comprising Julia Baird, Sandra Duggan and Michelle Painter. The scheme is offered twice a year on dates that are chosen to coincide with the conclusion of the barrister's first year of practice.

The scheme operates on a voluntary basis – both in respect to those seeking to be mentored and those offering to mentor. The scheme operates by assigning each eligible female barrister a senior practitioner mentor (i.e. a silk or senior junior) who practices either in the barrister's current area of practice or an

Equal Opportunity Committee - continued



area of practice to which the barrister aspires. In the last 12 months 70 per cent of female barristers from the previous readers programme participated in the scheme. The scheme will continue to be offered.

The Equal Opportunity Committee is grateful to all of the mentors who continue to give so generously of their time to assist female barristers at the New South Wales Bar.

In-Home Emergency Child Care Scheme

On 15 July 2004, the commonwealth sex discrimination commissioner, Pru Goward, launched the In-Home Emergency Child Care Scheme. The scheme is designed to assist barristers with young families to meet both childcare and practice commitments, as well as to remove a perceived barrier to women's entry to the Bar. The scheme was conceived by former chair of the Equal Opportunity Committee, Michael

Slattery QC, who, along with Jane Smyth, a specialist childcare consultant, engaged the services of McArthur Management, a well-qualified child care provider, which now runs the scheme.

The viability of the scheme, including the ability to recruit and retain qualified staff, depends upon regular usage. While the level of use has been low, McArthur is happy to continue working with the Bar Association to promote and provide the scheme. To encourage greater utilisation, and with Michael Slattery QC's approval, it has now been extended to the Law Society and to all clerks and court staff.

On 23 June 2005 a seminar was conducted to promote the scheme to the Bar. Barristers Jane Needham SC, Simon Benson, Duncan Miller, Kieran Smark, Jeremy Morris and Angela Pearman shared their experiences using the scheme.

Regular promotion in *Bar Brief* will commence in the 2005-2006 reporting year. The Law Society has also commenced promotion. The committee will also look at ways of promoting the scheme to all court staff.

The EO Committee is still looking at ways of extending the scheme to assist barristers with the care of elderly or sick relations.

Functions organised by the committee

On 22 November 2004 the committee arranged for Anne Summers to speak at the Bar Association about her most recent book *The End of Equality*. Anne Summers is an Australian author, journalist and speaker on political and social issues, former advisor to prime ministers Paul Keating and Bob Hawke and former editor of the *Good Weekend Magazine*. In speaking about her book, Ms Summers talked about work, babies and women's choices with particular focus on the impulse towards equality that propelled so many women to aspire towards the top.

The committee is grateful for the support given to it by the president and the senior vice-president of the NSW Bar Association and the executive director.



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

Indigenous Barristers' Strategy Working Party

Background

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

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

Fundraising

As part of the fundraising strategy, Aboriginal actor and producer Leah Purcell produced a short promotional DVD on opportunities in the legal profession for Indigenous law students and law graduates with a special emphasis on opportunities at the NSW Bar.

On Wednesday, 13 April 2005 a cocktail party to raise funds for Indigenous Barristers' Trust was held at Sydney's Sky Phoenix restaurant. More than 150 guests attended, including the patron of the trust, the Hon Sir Gerard Brennan AC KBE, Attorney General Bob Debus, and the Hon Dr Andrew Refshauge MP, Deputy Premier and Minister for Aboriginal Affairs. The highlight of the evening was a heartfelt and insightful speech by Noel Pearson in which he expressed the view that the original decision in Mabo had been misunderstood by the community, and that the opportunity for attitudinal change towards native title was lost. He also raised concerns that the *Native Title Act 1993 (Cth)* had been interpreted by courts in a way that diminished Indigenous land rights. Guests were also treated to the premiere of Leah Purcell's DVD about the trust.

A link to that video is now on the Bar Association's home page at www.nswbar.asn.au

Opportunities for Indigenous law students

The students participating in the University of NSW Indigenous Pre-Law Program attended the Bar Association for a day during their course in December 2004 and were taken to chambers and introduced to the work of a barrister. They visited courts and spoke with judges who shared their experiences as both barristers and judges. This visit is an annual event and is important in exposing new Indigenous law students to the career opportunities available at the Bar.

A new Indigenous barrister, Norman Laing, commenced his readership in 2004. He was provided with opportunities during his reading period by the NSW Public Defenders Office and particularly through the assistance of Andrew Haesler SC.

Law students were assisted in finding part-time employment with ten barristers during the year. Further employment opportunities are being sought from interested barristers. One recent law graduate and several other Indigenous law students worked at the Crown Prosecutors Office.

Replication in other states

The working party has been working closely with the Victorian and Queensland Bars and their members are actively pursuing similar strategies to those started by the NSW Bar.



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

Continuing professional development in 2004-2005

Three years have passed since participation in 10 hours of continuing professional development became a prerequisite for the renewal of a barrister's practising certificate in New South Wales. The Bar Association has a strong commitment to providing members with a quality in-house programme, together with accreditation of seminars and conferences run by other CPD providers.



In-house CPD

The in-house programme is a service provided to members of the Bar Association and funded by a component of practising certificate fees. It would not be possible to offer such a range and quality of events without the contributions made by members of the CPD working parties, which provide invaluable assistance to the Professional Development Department. The Bar Association wishes to thank the working party members for their assistance, as well as all those who presented in-house seminars and workshops during the 2004/2005 practising certificate year.

The in-house programme delivered 180 hours of CPD seminars in 2004/2005 through a combination of seminars and mini-conferences.

The Bar Association's regional mini-conference programme again delivered high quality CPD in four regional centres - Lismore, Orange, Newcastle, Canberra and two metropolitan

centres in Sydney (Parramatta and the downtown CBD). The regional mini-conferences are traditionally held on Saturdays in March/April and June each year and provide the opportunity for barristers to obtain 10 CPD points across all four strands. The mini-conferences have proven to be a popular aspect of the programme. The mini-conference held at the University of Technology, Sydney on 4 June 2005 was particularly well-subscribed. At each of the mini-conferences either the president or the senior vice-president of the Bar Association has been available to act as a master of ceremonies. The involvement of a member of the executive has been an invaluable addition to the conference day, particularly in the regional centres.

The mini-conferences also provide a forum for interaction between the Bar, students and academics at the host universities. On the Friday afternoon preceding each of the mini-conferences, the director of the Professional Development Department spoke to law students about a career at the Bar. Local barristers also attended the seminar and were on hand to answer questions from the students. Further strengthening the bond between the Bar and students are the academic prizes sponsored by the Bar Association at each of the nine law schools in NSW. Each university now offers four Bar Association prizes in courses that represent the four CPD strands.

Accredited seminars and conferences

In addition to the in-house programme the Bar Association accredited numerous seminars, as well as local and overseas conferences organised by commercial and academic CPD providers. A close working relationship between the Bar Association and external CPD providers ensures Bar Association members have access to a wide range of CPD seminars.

Education for new barristers

The review of the professional development calendar referred to in the 2003/2004 annual report was put into practice in 2004/2005. Again, it would not be possible for the Bar Association to conduct the various activities on the calendar without the tireless efforts of:

Education, training and professional development programmes – continued



- ❖ the Bar Examinations Working party (convened by David Davies SC);
- ❖ the barristers who set the various examinations papers and undertake the mammoth task of the marking thereof;
- ❖ Bar Practice Course convenors Phillip Greenwood SC, Peter Taylor SC and Rena Sofroniou; and
- ❖ all those who give generously of their time to present sessions in the Bar Practice Course, act as group leaders and judges for the various practical advocacy sessions.

The Bar Association extends its sincere gratitude to everyone involved.

The Bar examinations

Bar exams were held in November 2004. One hundred and fourteen candidates registered for the November 2004 exams. This represents a 12 per cent decrease over the same period in 2003.

The Bar Practice Course

Bar Practice Courses were held in August 2004 and May 2005. Forty-three new barristers completed the August 2004 course and 53 completed the May 2005 course, representing a six per cent decrease compared to 2003/04.

The May 2005 course was the first Bar Practice Course held in accordance with the new calendar. Feedback suggests that the later scheduling of the course provided greater opportunity for increased participation from the Bench and Bar alike. In particular, a number of the practical advocacy sessions benefited from a stronger degree of participation from members of the Bench. It is hoped that this trend will continue.

The May 2005 course was also rationalised from five weeks to four weeks, with additional material to be taught in extension sessions scheduled throughout the remainder of the reading year. Readers will also be required to complete a further two practical advocacy workshops to be held on Saturdays in August 2005 and February 2006. This will provide readers with the opportunity to come together as a group throughout the reading year and to obtain further practical instruction as their skills develop.

Plans for 2005/2006

Bar exams are scheduled to take place in July 2005 and February 2006. The Bar Practice Course will be held in October 2005 and May 2006. During the weeks of the Bar exams and Bar Practice Course there will again be no in-house CPD activities offered by the Bar Association.

The mini-conference programme will again be a feature of the 2005/2006 CPD year. It is anticipated that the conferences will take place in the period March/April 2006 and June 2006. Details will be included on the Bar Association's web site at www.nswbar.asn.au as soon as the dates for the mini-conferences are set.

A number of important legislative initiatives are due to commence in 2005/2006. These include the commencement of the *Legal Profession Act 2004*, the adoption of uniform civil procedure rules and the likely commencement of new procedures for indictable criminal matters. The Bar Association is committed to ensuring its members stay abreast of all important legislative and procedural changes which affect practice as a barrister in NSW.

Anyone interested in participating in any element of the CPD programme is invited to contact the Professional Development Department: professionaldevelopment@nswbar.asn.au



Working with statutes at the Westin, Sydney

Beginning on Friday, 18 March 2005, the Bar Association hosted a two-day seminar on statutory interpretation and related topics. The aim of the seminar was to develop understanding and skills in the all important task of interpreting legislation in court and in advice. The conference concluded on Saturday 19 March with an informal dinner at Fort Denison, where the guest speaker was the Hon Bob Debus MP, New South Wales Attorney General.

Reports

Making recommendations and promoting the administration of justice

Family Law Committee

The past year has carried substantial reform in the family law jurisdiction. Significant changes to both substantive law and procedure are pending or have been implemented.

On 17 December 2004 Part VIIIAA of the Family Law Act became operative. This part includes extensive provisions, which broaden the scope of the Family Court's power to make orders in property settlement proceedings that affect the interests of third parties. There are potentially significant ramifications for the broader commercial community, including the banking sector.

These powers include s90AE(1), which confers on the court powers to make orders directed to:

- ❖ a creditor of parties to a marriage to substitute one party for both in relation to the debt owed to the creditor;
- ❖ a creditor of one party to a marriage to substitute the other party, or both parties, to the marriage for that party in relation to the debt owed to the creditor;
- ❖ a creditor of the parties to the marriage that the parties be liable for a different proportion of the debt owed to the creditor than the proportion the parties are liable to before the order is made.

Significantly, the power is conferred to order a director of a company, or a company to register a transfer of shares between one party to a marriage and the other. This power, as with the entirety of the provisions of this part of the Act, is expressed with paramountcy, despite anything to the contrary in any other law or 'anything in a trust deed or other instrument' (s90AC(1)).

The potential application of these provisions is wide ranging.

The Australian Government has released an exposure draft of the *Family Law Amendment (Shared Parental Responsibility) Bill 2005*. The limited scope for which submissions about the Bill were invited is a clear indication that the thrust of the substantive changes to law that are intended. The amendments will impose significant changes to the way that parenting disputes are determined and the manner in which a case is to be conducted in court. It will impose limitations upon the ability of most parties to make an application to a court before undergoing other processes, and involves substantial reforms.

As part of the package, the government announced its intention to establish 65 Relationship Centres across Australia, which will provide a mandatory alternate resolution process for all but a very limited category of case. Litigants will not be entitled to approach the Family Court or the Federal Magistrates Court until obtaining a certificate of their participation.

The procedural reforms include amendments to the Evidence Act, greater participation of judges in the manner in which a case will be conducted and in determining the issues to be adjudicated and substantial revision of the statutory criteria to be considered.

The *Bankruptcy & Family Law Legislation Amendment Act 2005* has been enacted with staged commencement of different sections.

This legislation will provide a formal regime to address a number, but not all, of the difficult and conflicting areas of interaction between bankruptcy and family law. There are significant amendments reducing the former protection of financial arrangements established between spouses utilising a financial agreement. This affords creditors a much stronger position.

The Family Court takes on an extensive jurisdiction to deal with all aspects of bankruptcy proceedings where a relevant interaction arises. This may involve a significant expansion and change of the nature of the previous case load of the Family Court and those who practice in it. Similarly it will undoubtedly include a significant involvement in proceedings in the Family Court by practitioners who hitherto confined their practice to the bankruptcy jurisdiction of the Federal Court.

Legislation has been passed by each of the states and territories referring to the Commonwealth their power to legislate on matters of property settlement between de facto marital couples. The Commonwealth is yet to enact legislation pursuant to this referral, however it is envisaged that this will occur in the near future, thus enlivening the ability of the Family



Photo: Fiona-Lee Quimby/New Image Library

Family Law Committee - continued

Court and the Federal Magistrates Court to resolve financial disputes between de facto spouses. This will undoubtedly place further demands on already strained resources. However, it has been a cumbersome and unduly expensive process for de facto parents with proceedings in the Family Court to be compelled to litigate over financial matters in the state courts.

This committee has provided submissions in relation to the proposed parenting reforms and has continued to consult with the court, including providing representatives to the court's case management committee.

The last quarter of 2005 will see the first appointments of federal magistrates sitting in family law in Sydney.

The foregoing reforms will necessarily invite extensive considerations of continuing professional development and this committee will provide a commitment to supporting those functions.



Barristers pass each other on the spiral stair case of the Family Court complex, Melbourne. Photo: Michael Clayton-Jones/Fairfaxphotos

Criminal Law Committee

The committee's report for 2003-2004 began: 'The demands on the committee to respond to proposed changes in the area of criminal law and sentencing, at both Commonwealth and state level, are as heavy as ever'. In this regard, nothing has changed.

In the last twelve months, submissions have been prepared in areas as diverse as:

- ❖ the law relating to manslaughter;
- ❖ pre-trial disclosure;
- ❖ forensic procedures;
- ❖ non-publication orders in criminal proceedings;
- ❖ bail laws;
- ❖ jury duty;
- ❖ rules of evidence in sexual assault trials;
- ❖ the Criminal Appeal Act; and
- ❖ prison conditions – particularly at the High Risk Management Unit in Goulburn Correctional Centre.

In June 2005 Bar Council, in consultation with the Criminal Law Committee of the Law Society, made a submission to the New South Wales Government, calling for the repeal of the *Crimes (Sentencing Procedure) Amendment (Existing Life Sentences) Act 2005*. To date there has been no response. Another substantial and noteworthy submission was prepared by Sally Dowling regarding proposed reforms to fraud offences.

A key issue in the first part of 2005 has been proposals emanating from the Attorney General's Department for major reform of procedures relating to the processing of indictable

matters, specifically designed to encourage pleas of guilty in the Local Court rather than in the District or Supreme courts. A sub-committee was established to negotiate with interested stakeholders, including the DPP, Law Society of NSW, NSW Legal Aid Commission and the police. After lengthy discussions, legislation was drafted designed to ensure that the 'utilitarian discount' for a plea of guilty in the Local Court would be substantially greater than for one in the higher courts. However, at the end of the reporting year, the reforms are not proceeding, partly because of disputes over the nature of the 'brief' that must be provided to an accused person in the Local Court. It may be that the proposal to introduce legislative amendments will be abandoned and administrative arrangements adopted in their stead.

The continuing negotiations over criminal case processing have overlapped with discussions between this committee and the Legal Aid Committee with the Legal Aid Commission over the question of legal aid fees and briefing practices, particularly in the Local Court. It is likely that this will continue to be an important issue during the second half of 2005.

The committee's mode of operation is changing, partly due to the increasing need for rapid responses to issues. In past years, the committee has met on regular occasions; usually every month. In the first half of 2005, there has been much greater use of e-mail to debate and resolve issues within days of them arising, permitting a very fast response in the making of submissions and reducing the need for face to face meetings. Naturally, some issues do require traditional debate and meetings of the committee will continue, albeit at less frequent intervals.

Personal Injuries Litigation Committee

During 2004-2005 the Personal Injuries Litigation Committee met regularly to discuss and consider submissions to be made in respect of two critical issues:

- ❖ the New South Wales Legislative Council's inquiry into personal injuries litigation: and
- ❖ the state government's proposal regarding the care for those catastrophically injured in motor accidents.

The Legislative Council inquiry

The inquiry by the Legislative Council's General Purpose Standing Committee No.1 into personal injuries compensation legislation was welcomed by the Bar Association and the wider legal profession. It was seen as an opportunity to convey, directly to members of parliament, concerns about the harshness and inconsistency underlying the 'tort law reform' process. Hitherto, problems with motor accidents, workers' compensation and personal injury laws had been the subject of some media attention. Yet this had been largely ignored by the state government and relevant agencies.

The committee invested considerable effort in drafting its submission. Topics were assigned to individual members or teams of members to produce first drafts. The senior vice-president, Michael Slattery QC, attended meetings and settled a final draft bringing together all the components after full discussion with the committee. On Monday, 2 May 2005 Slattery QC and Philip Selth the executive director of the Bar Association, gave evidence before the inquiry, speaking to the submission and expanding upon it under questioning.

The key concerns of the Bar Association, as expressed in that submission, included:

- ❖ the inconsistency and inequity of different thresholds for the recovery of damages under different compensation regimes for workplace injuries, motor accidents and other classes of claims;
- ❖ evidence that changes to the workers compensation damages regime had not been attended by any reduction in workers compensation premiums;
- ❖ the fact that in the workplace once a high threshold is reached damages are limited to economic loss;
- ❖ evidence of abnormal profits by motor vehicle insurers; and
- ❖ the difficulty experienced in obtaining from insurers any reliable premium, claims and expense ratio data

Consequently, the association's submission recommended that the regime laid down by the *Civil Liability Act 2002* should be adopted as a common whole-body impairment threshold for

non-economic loss - applied across motor accidents, workers compensation and civil liability legislation. It would be the same as the regime laid down by the 1995 amendments to the now repealed *Motor Accidents Act 1988*, which the government did not give sufficient time to work before the Motor Accidents Compensation Act 1999 was enacted, but which were acknowledged by many insurers as well as legal practitioners to be workable.

It remains to be seen whether the parliamentary Inquiry results in any changes to personal injury legislation. It is hoped that a report will be forthcoming towards the end of the 2005 calendar year.

Care for the catastrophically injured

The second major matter under consideration was the government's proposal to introduce no fault liability in respect of medical expense and care in catastrophic injury cases.

This proposal is only beginning to take shape and the consultation process is in its infancy. At the suggestion of Andrew Stone, the Motor Accidents Authority invited members of the committee to attend the first meeting to discuss the proposal. The MAA indicated that the views of the Bar Association will be sought and considered.

The significance of this proposal is self-evident. The rights of members of the public who suffer catastrophic injuries require careful scrutiny, even though there are not (relatively speaking) many such cases in any given year. Some 200 catastrophic injuries happen annually in New South Wales. What is proposed will give a basic level of care and medical treatment to all of them, and to that extent, the proposal is attractive. But the initial indications are that it will be based upon a model or norm so far as care is concerned. Plainly this has the potential to deprive plaintiffs of the justice which they now receive based on their own proven needs. It has been suggested that the new scheme will be funded by increase in third party premiums, possibly extending to about \$35 per vehicle, per annum. This figure is somewhat higher than the figure first mentioned in the media. At the meeting with the MAA, to which members of the committee were invited, the possibility of an alternative system was raised whereby plaintiffs who can prove fault get the benefit of the existing scheme, whilst others can rely on the no fault scheme. A preliminary estimate suggests that this would cost another \$10 per vehicle per annum.

This proposal in respect of care and medical expense – and a further proposal in respect of no fault liability in infants' cases if it comes to light – will be closely monitored by the committee and the Bar Council. Members of the association will be kept abreast of developments.

Mediation Committee

Objectives of the committee

At its first meeting for 2005, the Mediation Committee affirmed its existing 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 New South Wales; 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, the Australian Dispute Resolution Association and the Institute of Arbitrators and Mediators Australia
- ❖ Setting up 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 other 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 continuing professional development 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 29 June 2005. The Hon Justice Bryson of the Court of Appeal spoke on the impact on mediation of the *Civil Procedure Act 2005*; the chair presented a paper on preparing clients for mediation; and members of the committee presented a simulated and frequently hilarious family provision mediation.

The committee has organised a second CPD seminar for 13 September 2005 on conferencing in criminal matters between offenders and victims.

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

Public Affairs

The constitution of the Bar Association includes as one of its core objects 'making recommendations in respect of legislation, law reform, rules of court and the business and procedures of courts'. Knowledge of, and support for, the association's consultations with the executive and judiciary in support of this important role is widespread among members.

Acceptance of the need to engage the mainstream media, to provide journalists with comment or background briefings on law reform proposals, bills and specific cases, is less widespread. Some members 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.

Throughout 2004-2005 the Bar Association provided journalists with comment and background briefings in response to varied issues, including;

- ❖ anti-terrorism laws;
- ❖ advocates' immunity;
- ❖ the role of defence counsel in sexual assault cases;
- ❖ sentencing of corporate criminals; and
- ❖ laws relating to 'good Samaritans'.

It is important to remember that 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. But without an informed response, the cumulative effect on the public's confidence in the legal system can be damaging.

For example, in May 2005, the Court of Appeal held that Hungry Jack's did not owe a duty of care to a young man who, under attack, sought refuge in one of their restaurants, only to be denied any assistance by a security guard. Few in the legal profession would have thought the judgment was remarkable.

But John Morrison, on ABC's Statewide Drive radio programme, asked whether the 'age of the good Samaritan ... might be over' and that it 'suggests other problems in the law'. The inference was that fear of litigation prevented people from helping one another.

Ian Harrison SC responded by phoning into Mr Morrison's radio show. He told the estimated audience of 80,000 listeners that the case was 'not a new development. It's simply a reaffirmation of something that's been the law for centuries'. He proceeded to clarify a number of points for listeners by explaining that:

The Civil Liability Act has recently brought in protection for people who are good Samaritans. If good Samaritans in the old days attempted to help someone but made a bit of a meal of it so that they either injured somebody differently or

exacerbated the injuries that they were suffering, in the course of the rescue attempt, they could then be sued. With some limitations which aren't relevant, good Samaritans are now protected from personal liability unless they cause the hazard that causes them to rescue.

I think what people fail to realise is that when people are confronted with a decision about whether or not to rescue somebody, the law will protect them if they don't. As an example, assuming that you're at Kiama near the blowhole or on the rough coast of New South Wales in a storm and you see somebody washed off the rocks. They're swirling in a sea of foam and you're not much of a swimmer yourself. If the law were that you were compelled to rescue them and you did so, you may imperil yourself with consequences for you and your family. You can choose to do it and you may succeed or you may fail but the law stands back from saying, 'Sorry, chaps, you've got to jump in, that's your obligation.' The law doesn't go that far. And it's partly born of the wisdom that in many circumstances those who are imperilled are there through circumstances that are often caused by themselves.

In March 2005 the High Court handed down its decision in *D'Orta-Ekenaike*, which maintained advocates' immunity. The media coverage was largely confined to reporting the judgment (and Kirby J's dissent) and the criticisms from a number of other professional associations. *The Sydney Morning Herald* reported that:

The chairman of the medico-legal section of the Royal Australasian College of Surgeons, Dr Tony Buzzard, said he was 'unsympathetic' to the court's reasoning: 'What about someone going into an operating theatre at 2am, dragged out of bed for a ruptured aorta?' The president of the NSW Teachers Federation, Maree O'Halloran, said teachers also made decisions in a split second yet increasingly faced lawsuits from parents.

Dr Buzzard was expressing the simplistic view that advocates' immunity from suit for courtroom was at odds with their role in litigation to hold doctors and other professionals legally accountable for their mistakes. Ian Harrison SC responded on behalf of the Bar Association during an interview on Radio National's Law Report. The president told an estimated audience of 85,000 listeners that the immunity was not a special privilege for advocates, but a result of a wider policy to ensure finality in court proceedings and avoid repeat litigation by disgruntled clients. He added that any attempt to re-litigate cases in which a barrister could not call a judge or juror as a witness would be inherently unfair. In response to Dr Buzzard's comments, Harrison SC said that he:

...completely misses the point, with great respect. If the doctor performs an operation under those circumstances, first: the likelihood is that he's not going to be found to have committed some breach of duty if the circumstances were so terrible that nobody could have done anything to save his

Public Affairs - continued

patient. More particularly, assume that it was an ordinary operation which he was performing, or even an emergency operation, and somebody says, 'you made a mistake'. He can call the person who's assisting him, he can call the anaesthetist, he can call the attending nurse, he can call everybody that was present there who can say: well, I was there, I saw you, I'm an expert as well and you did an absolutely perfect job and this allegation against you that you made a mistake can be disproved.

On the contrary a barrister in court who has a judge up there hearing his case is not able when he's sued for alleged incompetence in a case – misconduct of a case – he can't call the judge. The judge may have thought that the decision was correct but he's not available to be called... that's what people don't seem to understand. The principle that underpins the immunity is that we cannot re-litigate fairly unless all players have a say.

The Bar Association also responded to criticism through an 800 word opinion page article in the legal affairs section of the *Australian Financial Review*, which was published 18 March 2005.

The Australian media has long subjected the legal profession and the courts to intense scrutiny. Many high profile cases, particularly criminal trials, have always been covered in sensational style. Nevertheless, the year past had its disturbing developments so far as media coverage of legal affairs is concerned. News Limited papers, in particular, have shown an increased willingness to pursue aggressively and relentlessly what it perceives to be misconduct, mismanagement or extravagant expenses by members of the judiciary. In many cases, stories were published well after the 'news cycle' had moved on to other subjects.

As early as July 2004, *The Australian* was giving front page coverage to travel expenses of High Court judges. As the year progressed, the News Limited papers turned their attention to the predicaments of the Hon Justice Jeff Shaw and Judge Dodd of the District Court. The campaign widened to include articles on alleged inefficiency and backlogs in the nation's courts; supposedly the result of overly-generous leave time for judges and court recesses over the Christmas – New Year season. *The Australian's* journalists quoted selectively, and in many cases mistakenly, from old data published by the Productivity Commission. Feature articles were reinforced by editorials proclaiming the paper's self-appointed role as the watchdog of the judiciary. *The Australian's* articles became the subject of a complaint by the attorney general to the Press Council of Australia.

In late March 2005, the president hit back at the attacks upon the judiciary when he was interviewed by Geraldine Doogue on the Radio National Weekend Breakfast programme.

I gave a speech recently at the swearing in of a judge and I suggested that he could avoid the pitfalls of one particular newspaper's continual campaign about judges if he worked



Media scrum surrounds the victims in the trial of Bilal Skaf.
Photo: News Image Library

seven days a week, accepted no pay, took no holidays, had no faults in his private or professional life and never travelled overseas. That's what judges these days seem to have to do or refrain from doing in order to not fall foul of this campaign.

Whatever agenda [*The Australian*] has is beyond me. It's becoming slightly comical and almost a parody of itself these days because it's so concerted, illogical and ill-founded.

We have the best judges in the world, or at least as good as the best judges in world in this country. If the allegations were being made that judges were subject to corruption or taking graft or any of that sort of thing, I could well understand it. But if a judge has a problem with a health related issue, like alcoholism or something similar, depression, then he or she is entitled to be treated like any other member of the community rather than these broad ranging tabloid assaults on every judge that's ever sat.

Proactive media strategy has gained ground.

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 behaviour of the media.

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 reporting, 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.

Public Affairs - continued

Advertisements announcing the awards were placed in *The Walkley Magazine* in early 2005. A panel of judges, comprised mainly of ex-journalists now practising at the Bar, met between March and May 2005 to assess the entries.

The winners were announced at an informal ceremonial lunch in the Sheraton on the Park, at which representatives of the Bar Association, including President Ian Harrison SC, Senior Vice-President Michael Slattery QC and the chair of the Bar Association's Criminal Law Committee, Stephen Odgers SC had the opportunity to meet journalists from various media organisations, including the ABC's Kerry O'Brien and Sally Loane.

The awards were an outstanding success – prompting a number of journalists to make preliminary enquiries about next year's awards.



Speakers Program

In early 2005 Bar Council approved the formation of a revamped Speakers Program. The aim of the scheme is to hold occasional lectures to educate the public and promote informed media commentary on the role of the legal profession in our system of justice, as well as other important issues of public law. It is designed to be flexible enough to allow the timing of lectures and the topics for discussion to be determined in response to particular issues and controversies as they arise.

The inaugural lecture was delivered by Chester Porter QC during Law Week, on Wednesday, 18 May 2005 in the Dixon Room of the Mitchell Library. The topic was 'EZY trials for guilty people': a reference to frequent calls for changes to the conduct of criminal trials, which would prevent 'tricky lawyers' using 'technicalities' to have 'guilty people' acquitted. Porter QC, with customary eloquence, warned that conviction of the 'guilty' on inadequate evidence will inevitably be followed by conviction of the innocent'. The talk was well attended and there have been a number of requests to borrow the DVD of the lecture. In many respects, the Law Week lecture has become the model for the program.

By the end of the reporting period, plans for two more public lectures later in 2005 were well advanced. Michael Pelly, a legal reporter at the *Sydney Morning Herald*, will deliver a talk entitled: 'Are lawyers from Mars and journalists are from Venus?' Subsequent to that, Henry Ergas, an economist from consulting firm CRA International will deliver a talk on the economics of tort reform entitled 'Socially desirable litigation'.

The Speakers Program is fortunate in that it can draw upon the wealth of specialist legal knowledge residing at the NSW Bar. Nevertheless, it is possible that expanded contacts with policy institutes and peak industry and professional organisations may lead to co-hosting and promotion of lectures.

Media training

Frequently, the Bar Association is asked to comment at a time of intense media interest; particularly in respect of the criminal justice system and the role which barristers play. A 'media frenzy' is often the result of an article or wire story that has been filed without due regard to either the transcript or the judgment. Talkback radio shows pick up the issue and open their lines to callers, some of whom may be quite ill-informed. If it is thought that public confidence in the legal profession or the administration of justice is being undermined, the president, or another representative of the association, has alternative but to respond.

In order to increase the effectiveness of its media response, the Bar Association began media training for its president and senior vice-president in 2003-2004. This year, the training was extended to the two most senior members of the association's Criminal Law Committee. Two experienced journalists from a leading communications consulting firm, in conjunction with the public affairs officer, created a number of scenarios to which the committee's representatives had to respond – on behalf of the Bar Association.

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 article, together with the journal's opinion pieces, has become much sought-after by senior legal affairs journalists in the metropolitan and national daily papers.

Publication of the Summer 2004/2005 edition marked the end of Justin Gleeson SC's five year term as editor. Gleeson SC was responsible for giving *Bar News* a consistent and forceful presence, bringing as he did, equal amounts of verve and *chutzpah* to the position. He has been replaced by Andrew Bell, who enters the role with a great many ideas and new directions to take the journal. Members should look forward to future editions.

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 (see diagram below). 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 25,000 work hours.

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 \$1000 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 financially qualified 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 2004-2005

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

For the 2004 – 2005 financial year, 278 formal applications for assistance were received and processed. This is approximately a nine per cent increase on last year's figures. Of these applications, 135 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.

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

- ❖ The significant drop in the number of country-based applicants. This could be attributed to LawAccess' higher profile in country areas in being able to refer clients to more appropriate service providers in the first instance.
- ❖ The highest referral source to the scheme was members of the public – this could be attributed to the more than doubling of the number of hits on 'legal assistance' on the association's website.
- ❖ 80 per cent of the applications to the scheme were refused legal aid as being outside the commission's guidelines.
- ❖ 59 per cent of the matters referred to barristers were considered to have legal merit/prospects of success.

For the period in question, barristers contributed approximately 2,675 work hours through the scheme, with 18 matters still in the court system.

Since the scheme's inception, barristers have contributed approximately 25,000 work hours.

There was one complaint made by an applicant dissatisfied with the manner in which the scheme dealt with the applicant's matter. This complaint was resolved to the satisfaction of the applicant and the Bar Association.

Listed below are some results achieved through the scheme:

- ❖ Following a grant of special leave to appeal from a decision of the full Federal Court of Australia, a judge of the High Court of Australia referred a refugee claimant living in the country to the scheme for assistance.

Legal Assistance Referral Scheme - continued

A barrister prepared submissions and travelled to Canberra to argue before a full bench that the Refugee Review Tribunal had denied the appellant procedural fairness. The tribunal member had told the appellant at the end of the hearing that she would write to him about matters of concern arising from his oral evidence, and give him an opportunity to respond within 21 days. However, without contacting the appellant, the tribunal made a decision affirming the decision to refuse him a protection visa.

The court allowed the appeal with costs.

- ❖ A judge of the Court of Appeal referred a self-represented litigant to the scheme in relation to an appeal from a summary dismissal of proceedings in the District Court. The applicant had been successful in obtaining leave to appeal from the court and required legal assistance to argue the case.

The initial proceedings in the District Court related to the death of the client's wife. He had sued his wife's general practitioner and specialist regarding the treatment afforded to his late wife.

A barrister agreed to represent the client before the Court of Appeal. A decision was handed down in the client's favour and the matter was remitted to the District Court. Following the success in the Court of Appeal, a solicitor is now representing the client in the re-hearing of the matter before the District Court.

- ❖ A twelve year old girl and her grandmother sought assistance in relation to Hague Convention proceedings in the Family Court of Australia. These proceedings had been initiated by the mother's second husband in the USA. He was seeking return of the girl's half-sister. The mother had indicated if the half-sister was sent to the USA, she would accompany her. The father and brother of the young girl resided in Sydney. The young girl could be forced to choose between going with her mother and half-sister to the USA or staying with her father and brother in Sydney.

A barrister agreed to appear for the young girl. Prolonged litigation ensued, which has included many appearances before the Family Court of Australia, including the full bench. The barrister was successful before the full bench, following which the Commonwealth Attorney-General's Department recommenced the matter in the court below. The matter has proceeded to the full bench of the Family Court for a second time. If unsuccessful, the barrister expects to seek leave to appeal to the High Court of Australia.

To date, the barrister has spent over 400 hours on the matter.

- ❖ A judge in the District Court at Gosford referred a country-based defendant, without legal representation, to the scheme in relation to a forthcoming trial. The defendant was facing four counts of sexual assault against his step-daughter. The defendant did not qualify for legal aid on a financial basis.

A Sydney-based barrister represented the defendant in a four day trial on a reduced fee basis. The defendant was acquitted on all counts.

- ❖ The pro bono scheme of the Law Society of New South Wales referred a woman to the scheme in relation to an inquest into the death of her husband, following an overdose of drugs. The woman and her husband had been celebrating a friend's birthday with a group of people at various popular Sydney night spots. The husband was found deceased the next day, the cause of death being a suspected drug overdose. The inquest proceeded on the basis there were persons who may have been criminally responsible for the husband's death. The woman could have faced manslaughter charges for acting negligently in allegedly failing to discharge her duty of care to her husband by providing or obtaining appropriate medical care for him. There were strong public interest factors and much publicity was given to the circumstances surrounding the death and actions and conduct of the group on the night, together with the lethal effect of the substance (GHB/liquid ecstasy) consumed on the night by the husband.

A barrister spent over 200 hours on the matter. The matter was referred to the DPP, who decided not to proceed with any charges.

- ❖ A community legal centre referred a twenty old man to the scheme for assistance in relation to an all grounds appeal from the decision of a magistrate. The young man had lost his driver's licence for exceeding the speed limit and having worn tyres. As a result of the loss of licence, he had to leave his job.

A barrister appeared before the chief judge of the District Court who found the prosecution case was not made out beyond reasonable doubt and upheld the appeal.

Volunteers encouraged

The manager of the scheme spoke to readers about the scheme at the bi-annual Bar Practice Course, with a pleasing response in both instances. 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.

In May this year, the Bar Association hosted a function at the Supreme Court of NSW, chaired by President Ian Harrison SC, to promote the scheme to NSW community legal centres, legal aid offices and any court or tribunal which does not have a formal legal assistance scheme. The gathering was well-attended and provided an opportunity for valuable discussions with representatives of organisations committed to social justice for the disadvantaged members of our community.

Legal Assistance Referral Scheme - continued

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 510,000 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 a list of barristers in the relevant area of practice.

Duty barrister schemes

The manager and staff of LARS manage the operation of the duty barrister schemes which operate at the Local and District courts at the Downing Centre and the Australian Industrial Relations Commission.

Barristers are rostered to attend each day at the courts. A barrister spoke to readers at each Bar Practice Course about the schemes, which resulted in additional volunteers being added to the roster.

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 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.

The Federal Court of Australia Refugee Review Tribunal Legal Advice Scheme

This scheme was introduced in 2000 under the auspices of the Department of Immigration & Multicultural Affairs, the Federal Court of Australia, the Bar Association and the Law Society. It caters for unsuccessful applicants in the Refugee Review Tribunal who receive legal advice as to the prospects of success of an appeal. The Bar Association and the Law Society provide a list of panel members who practise in the area of migration law, judicial review and administrative law to the Federal Court and Federal Magistrates Court. In July last year the Federal Court called for an expansion of panel members. Prospective panel members were required to pass an exam which was set and marked by two senior members of the Bar. The manager of LARS assisted with these processes.

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 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. She was also a member of the Law & Justice Foundation's Gateways to the Law Committee and attends its quarterly NSW Legal Referral Forum.

The Bar Association is a member of the newly formed NSW Legal Assistance Forum.

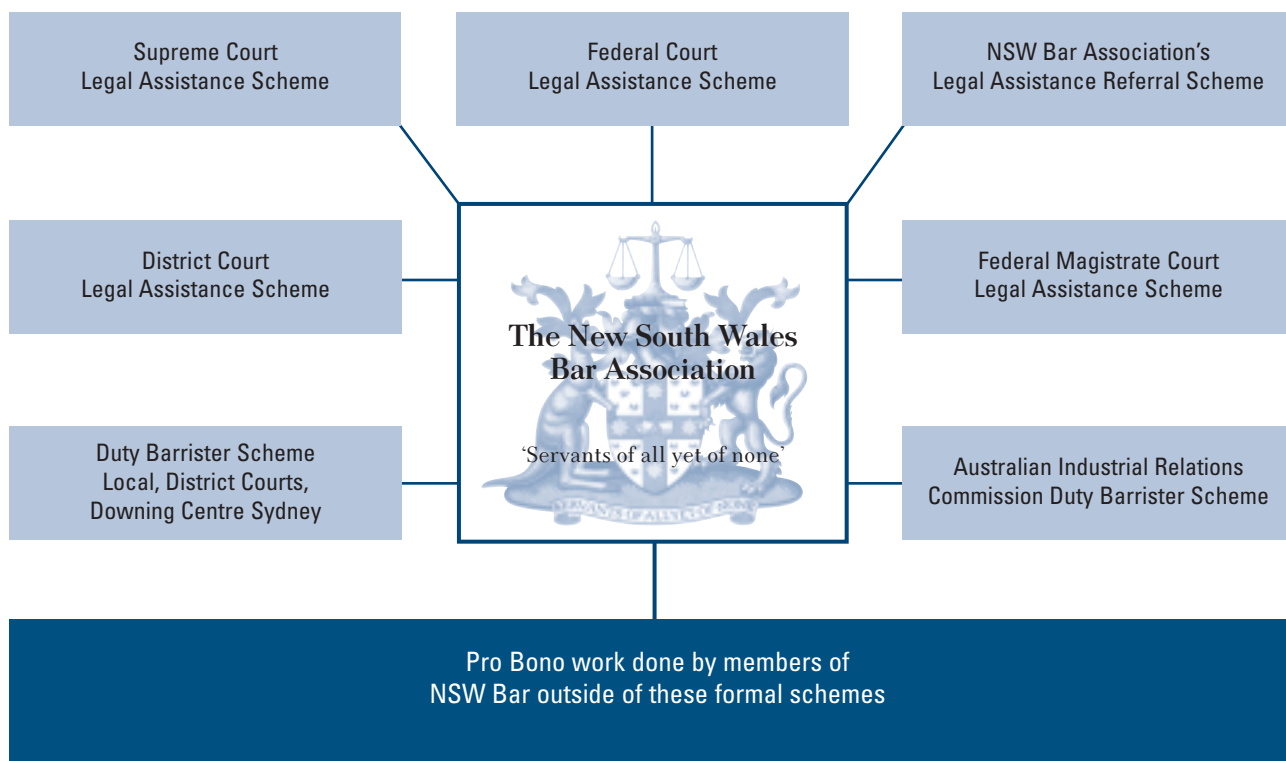
There have been many difficult phone calls, which are often multiple calls from the one person, or from different individuals, which are dealt with by the scheme. Reception staff of the association also have to deal with the applicants who attend unannounced. There have been several unpleasant scenes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

The Bar Association continues to bear a significant portion of the costs for the administrative infrastructure needed 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.

Pro bono schemes



Legal Assistance Referral Scheme statistics

	2003-2004	2004-2005
High Court		
Application for special leave	7	4
Original jurisdiction	6	5
Total	13	9

Federal Court		
Full Bench appeals	5	5
Immigration	22	29
Administrative	4	1
Discrimination	-	1
Veterans & Social Security entitlements	-	3
Industrial relations	-	-
Trade practices	3	4
Native title	2	-
Bankruptcy	2	4
Total	38	47

Federal Magistrates Service		
Discrimination	2	1
Family law - access	-	-
Family law - child support	-	-
Family law - residency	-	1
Immigration	4	32
Bankruptcy	2	-
Total	8	34

Supreme Court		
Court of Appeal	5	5
Court of Criminal Appeal	5	2
Common Law	27	12
Equity	20	27
Criminal	2	4
Commercial	2	-
Family provisions	-	2
Administrative	1	2
Defamation	1	2
Professional negligence	2	-
Total	65	56

	2003-2004	2004-2005
Family Court of Australia		
Full bench appeals	-	1
Access	6	8
Residency	10	7
Child support	3	2
Spousal maintenance	-	1
Property settlement	6	2
Other (costs hearing)	-	1
Total	25	22

District Court		
Criminal	12	13
Civil	20	14
Commercial	5	2
Medical Tribunal	2	-
Care proceedings	2	2
Defamation	1	2
Professional negligence	2	-
Victims compensation	-	1
Total	43	44

Land & Environment Court	5	6
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NSW Industrial Relations Commission	2	3
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Local Court		
Criminal	15	19
Civil	11	13
Family matters - access	0	1
Total	26	33

Children's Court	1	6
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Coroner's Court	3	4
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Tribunals		
Administrative Appeals Tribunal	4	5
Administrative Decisions Tribunal	13	12
Social Security Appeals Tribunal	-	1
Mental Health Review Tribunal	1	-
Consumer Trader & Tenancy Tribunal	5	4
Equal Opportunity Tribunal	1	-
Victims Compensation Tribunal	2	1
Anti-Discrimination Board	3	-
Licensing	-	1
Total	29	24

Legal Assistance Referral Scheme Statistics - continued

	2003-2004	2004-2005
Referral source		
Member of public	52	68
Instructing solicitor	34	40
Community legal centre	41	40
Law Society Pro Bono Scheme	40	36
Judge	25	24
Member of the Bar	18	19
Law Access	15	17
Legal Aid	12	8
Registrar	11	7
Welfare/community groups/ social worker/other	3	7
Non-instructing solicitor	6	5
Pro bono director – large firms	-	4
Department of Public Prosecution	-	2
PIAC	-	1
Attorney-General's Department	1	-
Web site – approx hits	1,300	3,000

Client location

Sydney Metropolitan Area		
West	104	75
North	23	24
South	22	40
East	17	16
Inner City	10	38
Central Coast	12	14
Country	38	22
ACT	-	-
Interstate	14	6
Villawood Detention Centre	10	32
Baxter Detention Centre	-	1
Port Hedland Detention Centre	3	-
Prison	5	10
Overseas	-	-
Total	258	278

Type of work done

Merit assessment	119	135
Advice (over and above initial merit assessment)	73	73
Conferences	85	76
Appearances	42	57
Appearances at hearing	51	49
Other (including second opinion & preparation of submissions)	5	6

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

	2003-2004	2004-2005
Rejection / no action		
Outside guidelines	46	45
Too late notification	6	10
No further information received/ no further contact from client	39	31
Requires a solicitor	24	21
Eligible for legal aid	4	4
Referred to a community legal centre	1	-
Briefed barrister privately	4	4
Briefed solicitor privately	2	2
Conflict of Interest	3	-
Matter discontinued	-	1
Subject to Federal Court Refugee Review Tribunal Legal Advice Scheme	10	24
Subject to Federal Court Pro Bono Scheme	-	1
Required a migration agent	-	-
Total	139	143

Turnaround time

Same day	9	30
Less than a week	26	28
1 – 2 weeks	36	29
2 weeks plus	48	48

Basis brief accepted

No fee – merit assessment	119	135
No fee – continuing involvement	48	38
Speculative/costs recovery	16	21
Reduced fee	21	26
Market rates	-	-

Refused legal aid on basis of

Merit	13	22
Financial	55	33
Outside guidelines	190	223

Matters considered by a barrister to have legal merit/prospects of success

Yes	85	85
No	34	50

Reports

Questions as to professional conduct

Professional Conduct Department

The role of the department

The department facilitates the investigation and reporting to the Bar Council of conduct complaints against barristers referred to the council by the legal services commissioner or made by the council itself. The department also performs this role in respect of indictable offences, tax offences, acts of bankruptcy and other notifiable events required to be disclosed to the council under the *Legal Profession Regulation 2002* (notification matters). With the commencement of the new legislation on 1 October 2005, disclosures of these matters will be required under the *Legal Profession Regulation 2005*. The department provides advice and policy support to the council in respect of the administration and carrying out of the council's functions under Parts 3 and 10 of the *Legal Profession Act 1987* (Act), and the preparation of submissions to governments on the disciplinary regime of the profession. One of the key objectives of the department is to promote a better understanding of good client service and communication on the part of the association's members. Such an understanding is imperative if the Bar is to flourish as a respected and efficient provider of legal services to the public. 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.

Bar Council has a statutory obligation to deal with all complaints and notification matters regarding barristers. This statutory role is monitored by the commissioner, an independent statutory overseer of the council's statutory duties, and ultimately by the attorney general of New South Wales.

Changes in the public's expectations, combined with a failure by some barristers to act in accordance with their professional standing, brought barristers under particularly close scrutiny by the government, the profession and the community in the past few years. The association and the commissioner continue to work cooperatively in the referral, investigation and review of disciplinary matters. Should the current co-regulatory system not satisfy either the consumers of legal services or the government, the alternative will be a completely government regulated profession. It is therefore in members' interest to work with the department in the investigation of any complaint or notification matter and to assist colleagues in practising as barristers in such a way as to maintain the integrity of, and public's respect in, the profession.

Work of the department

As shown by the tables appearing at the end of this report, 47 conduct complaints were made in the year ended 30 June 2005. Forty-three conduct complaints were referred by the legal services commissioner to the council for investigation and four complaints were made by the council pursuant to s134 of the Act. Twenty-two notifications were made to the council pursuant to the requirements for disclosure of notifiable events under the *Legal Profession Regulation 2002*. Of the 22 notifications, 13 related to tax offences and acts of bankruptcy

in relation to which the council is required to make a determination as to a barrister's fitness and propriety to hold a practising certificate under Part 3 Division 1AAA of the Act. 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 2005, four professional conduct committees met throughout the year to investigate complaints about conduct and notification matters.

In addition to facilitating the investigation of and reporting to the Bar Council on conduct complaints and notifications, the department has devoted considerable energy and resources to the handling of 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.

In September 2003, the tribunal ordered that the name of Michael Saadey Abdul-Karim be removed from the Roll. Abdul-Karim's appeal to the tribunal appeal panel against this decision was dismissed on 17 February 2004. Abdul-Karim's subsequent appeal to the Court of Appeal was dismissed on 21 February 2005. Of the two tribunal decisions in the year to 30 June 2005, orders were made in one case for the barrister to be publicly reprimanded and, in the other case, that a practising certificate not be issued to the practitioner until 26 February 2005.

In the Bar Practice Course offered by the Bar Association in August 2004, the department conducted sessions on ethics and regulation of the profession. These sessions required readers to conduct mock hearings on three different factual scenarios regarding disciplinary and regulatory matters in respect of which they had drafted pleadings and prepared evidence in group sessions. The council and the department are very grateful to those barristers who volunteered to assist and generously devoted their time to act as group leaders and/or court or tribunal members. The department also assisted in the presentation of ethics seminars in the Bar Practice Course held in May 2005.

The department 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 in some cases medical reporting conditions attached to their practising certificates. Just prior to 30 June 2005, 28 barristers held practising certificates subject to financial reporting conditions requiring the provision to the

Professional Conduct Department – continued

council of quarterly reports from approved accountants in whose hands barristers have placed their financial affairs, and/or reports from medical practitioners.

Sections 25, 48B and 48C of the Act provide that barristers must not practise as or hold themselves out as a barrister without being the holder of a current practising certificate. Equivalent provisions contained in the *Legal Profession Act 2004* will apply from 1 October 2005. The word 'practise' includes any of the activities referred to in Rule 74 of the *New South Wales Barristers' Rules*. 'Practise' is not limited to advocacy and includes negotiation, representing a client in a mediation, giving legal advice (chamber work), advising on documents, acting as a referee, arbitrator or mediator and carrying out work properly incidental to the type of work referred to above. In order to avoid inadvertently breaching these provisions, it is important that barristers ensure applications for renewal of practising certificates are lodged before professional indemnity insurance cover has been obtained, if cover cannot be arranged before the date by which renewal applications are due. However, a practising certificate will not be issued until insurance is secured.

During the course of the past year, the department has spent considerable time in investigating an increasing number of instances where practitioners who are admitted to the Supreme Court, but do not hold a current practising certificate as a barrister, and in one case a person who is not admitted and does not hold a practising certificate as a barrister, have acted or held themselves out as a barrister in contravention of the Act. Some of these matters were satisfactorily resolved with the provision of an undertaking to desist from engaging in the conduct of concern. In other cases, the matters were referred to the prothonotary of the Supreme Court of New South Wales.

On 17 December 2004, the New South Wales Court of Appeal delivered judgment in a similar matter investigated in a previous year. In *Prothonotary of the Supreme Court of New South Wales v McCaffery* [2004] NSWCA 470, the Court of Appeal declared McCaffery guilty of professional misconduct pursuant to s25(4) of the Act in that on 29 occasions between 8 August 2002 and 11 December 2003 he practised as a barrister in contravention of s25(1) whilst not holding a current practising certificate as a barrister. The court further declared McCaffery guilty of professional misconduct in that he held himself out to be a barrister by rendering a tax invoice stating his title as 'barrister-in-law' and otherwise implying that he was a barrister and by causing or permitting his name and conduct details to be published in the list of barristers in chambers in the Mahlab law diary for the year 2003 and in the list of barristers in the Law Society's diary for the year 2003 whilst not holding a current practising certificate as a barrister. The Court of Appeal declared McCaffery is not a fit and proper person to remain on the Roll of Legal Practitioners of the Supreme Court of New South Wales and ordered that his name be removed from the Roll. A link to the *McCaffery* decision can be found on the Bar Association's web site.

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*, 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.

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

Pursuant to s171LB of the Act, the Bar Council must publicise disciplinary action taken against a barrister, including the name and other identifying details of the person against whom the disciplinary action was taken. Under s171LC of the Act, the legal services commissioner must keep a register of disciplinary action taken against barristers which is to be made available for public inspection on the Internet. 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. Disciplinary action includes any decision to suspend, cancel or refuse to issue a practising certificate and any orders of the Administrative Decisions Tribunal following a finding of unprofessional conduct or professional misconduct. Similar provisions will apply under the *Legal Profession Act 2004* from 1 October 2005.

Legislative changes

During the year, the department continued to provide support to the executive director and the council in the formulation of proposals for amendment to the legislation regulating the legal profession. In the latter part of 2004 Anne Sinclair, Director, Professional Conduct, worked closely with the executive director in responding to the Attorney-General's Department on the drafts of the *Legal Profession Bill 2004*. The Bill was enacted on 10 December 2004. In March 2005, Jennifer Pearce was appointed legal director to take on the role of assisting in the formulation of responses to proposed further changes to the legislation and the drafting of regulations at the state level, as well as to work with officers of the Law Council of Australia in relation to the National Model Laws Project and refinement of the *Legal Profession Model Bill*.

The *Legal Profession Act 2004* and the *Legal Profession Regulation 2005* will commence operation on 1 October 2005. The 2004 Act repeals and replaces the *Legal Profession Act 1987* and adopts national legal profession model provisions designed to achieve greater consistency and uniformity in the regulation of the legal profession across Australia and to provide consumers of legal services substantially similar protections regardless of the state or territory in which they reside. In addition, with the commencement of the new legislation, other important changes will be effected which address a number of significant problems in the legislation highlighted through the council's experience in the last few years in exercising its statutory obligations. The new legislation is discussed in detail in the executive director's report.

Professional Conduct Department – continued

The department is in the process of preparing for the implementation of the new legislation and in the month preceding the commencement of the new legislation will be involved in the presentation of seminars to Bar Association members and professional conduct committee members regarding the changes effected by the legislation.

Ethical guidance for members

The Bar 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.

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 a notice pursuant to s152 of the Act, and pursuant to s660 of the *Legal Profession Act 2004* from 1 October 2005, to provide information and furnish documents necessary for the investigation of a conduct complaint made against them must respond to such notices promptly.

A barrister who fails to comply with a s152 notice, without reasonable cause, is guilty of professional misconduct under s152(4) of the Act. Such failure can lead to the council making a further complaint against the barrister which may ultimately be referred to the Administrative Decisions Tribunal. A number of decisions of the tribunal available on the association's web site concern failure to respond to s152 notices.

Section 498(2) of the *Legal Profession Act 2004* provides that the failure to comply with the requirements of a notice under the 2004 Act is capable of being unsatisfactory professional conduct or professional misconduct whether or not the person is convicted of an offence in relation to the contravention. Further, under s672 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 the 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. Eight new community members were appointed at the start of 2005 in anticipation of the need to replace some community members on the expiry of their terms of appointment throughout the year and to meet the number of community members required on each professional conduct committee under the LPA 2004.

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

On Professional Conduct Committee #1, David Kaye continued to serve as a community member. Dorne Boniface from the University of New South Wales continued as the academic representative. John Freeman and Geraldine Walsh joined PCC#1 as community members at the start of 2005.

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 joined PCC#2 as community members at the start of 2005. Anna Fader continued as a community member until the expiry of her term of appointment in February 2005. Sue Thaler served as a community member for the full year until the expiry of her term of appointment in July 2005. Anna and Sue made a very significant contribution to the work of PCC#2. Their fellow committee members and the council are most appreciative of their assistance.

This year Nicholle Nobel and John White continued to serve as community members on Professional Conduct Committee #3. John's term of appointment expired in July 2005. The significant contribution made by John through his service as a community member on PCC#3, as well as initially on PCC#5, is greatly appreciated. Bernard Dunne from the Faculty of Law at the University of Sydney continued as the academic representative. Ian Fitzgerald and Penny Stannard-Hoschke joined as new community members at the start of 2005.

Francine Feld from the Faculty of Law, University of Western Sydney continued as Professional Conduct Committee #4's academic member for the full year until the expiry of her term of appointment in June 2005. Francine's work on the committee is very much appreciated. Andrew Buck joined PCC#4 as the academic representative in July 2005. John Girdwood continued as a community member and Matthew Smith transferred as a community member from PCC#4 to PCC#2. Lyndsay Connors joined as a new community member at the start of 2005.

Professional Conduct Department – continued

Barrister members

The council and the department again express their appreciation to all the 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 taken in the interests of maintaining public confidence in the profession. The participation of the 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.

Committee workload

Notification matters

In the financial year to 30 June 2003, a total of 22 notifications were made. Thirteen notifications related to tax offences and acts of bankruptcy requiring the council to make a determination under Part 3 Div 1AA of the Act. A determination under s38FC of the Act 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.

Conduct complaints

Forty-seven new conduct complaints were referred to the professional conduct committees for investigation from 1 July 2004 to 30 June 2005. During the year, the committees investigated and reported to the council in respect of nine of the new conduct complaints, in addition to a further 39 complaints carried forward from the previous year. Of the total of 48 complaints dealt with by the council during the year, 29 complaints were dismissed pursuant to s155(4) of the Act 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. Six complaints were withdrawn. Five complaints

have been referred to the tribunal for hearing and determination. Of the 29 dismissed complaints, 12 have been the subject of an application for review. As at 25 August 2005, the legal services commissioner has upheld the council's decisions in five matters. No determination has yet been made in relation to the other seven matters under review.

Statistical information collated from the council's investigation of complaints is set out in tables at the end of this report. The information is provided in accordance with s171MB of the Act.

Applications to the Legal Practitioners Admissions Board

It should also be noted that PCC#2 alone considers applications for admission or re-admission of legal practitioners which are usually made by way of an application to the Legal Practitioners' Admission Board under s13 of the Act. 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 which it considers prior to coming to its own conclusion as to whether the applicant should be admitted as a legal practitioner. Both the council and the Law Society Council make recommendations to the LPAB about certain classes of applications. In 2004, PCC#2 reported to the council on one application for re-admission and seven s13 applications.

The educative value of the committees' work

The following aspects of a barrister's practice have been identified, through 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 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. The *New South Wales Barristers' Rules* are on the association's web site.

Sections 175 and 176 of the Act prescribe the different disclosure relating to costs required to be made to clients in direct access matters and to an instructing solicitor. The new costs disclosures in the *Legal Profession Act 2004* will be the subject of a separate continuing professional development seminar presented by the association in the month preceding the commencement of the new legislation on 1 October 2005.

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.



Barristers in Queens Square. Photo: Tamara Voninski/Fairfaxphotos

Professional Conduct Department – continued

- *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.

Fees recovery assistance

During the year the association received 14 requests to assist barristers in the recovery from solicitors of unpaid fees, compared to 27 requests in the previous year. A total of \$45,318.79 was recovered on behalf of members for the financial year ended 30 June 2005. The association was unable to recover fees in three of the 19 matters finalised. Six requests for assistance remain open.

The basis upon which the association can assist in members' fee recovery has been set out in an article titled 'Changes in Fee Recovery Assistance for Members' which is available on the association's web site. Familiarity with the new costs disclosure provisions in the *Legal Profession Act 2004* will be essential to every part of a barrister's practice.

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 the fee recovery work for barristers at reduced rates. Enquiries can be made through Ms Jocelyn Sparks, Deputy Director, Professional Conduct.

Any enquiries about fee recovery or the operation of Part 11 of the Act should be made in the first instance to Ms Sparks. 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 2002, 2003, 2004 and 2005

New South Wales Court of Appeal / Supreme Court

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
Financial Year 2004		Orders
09.09.03	Stevens, Clarence J	Removal name from roll
19.08.03	Young, Andrew H	Removal name from roll
Financial Year 2003		Orders
04.04.03	De Robillard, C Roger	By consent de Robillard's s38B appeal dismissed, noting the issue of a conditional PC
19.12.02	Whitehead, Glenn N	By consent Whitehead's appeal upheld. Conditions attached to PC up to 30.6.06
11.12.02	Cameron, Robert W	By consent Cameron's s38B appeal dismissed. PC cancelled.
03.07.02	Wardell, Timothy	Wardell's s38B appeal dismissed
Financial Year 2002		Orders
28.06.02	Murphy, Barry	Bar Council's appeal against McClellan J's decision (to uphold s38B appeal) dismissed
21.11.01	Small, Trevor	Small's s38B appeal dismissed
20.08.01	Somosi, L Robert	Removal name from roll
23.07.01	Cummins, John D	Removal name from roll

Table 2

Results of disciplinary action taken by the Bar Council in the Administrative Decisions Tribunal determined in the years ended 30 June 2002, 2003, 2004 and 2005

Administrative Decisions Tribunal

Financial Year 2005		Previous Findings	Penalty
08.09.04	Brezniak, Daniel James	upc	Public reprimand
31.08.04	Donnelly, Bruce Leicester	pm	PC not to issue before 26.02.05
Financial Year 2004		Previous Findings	Penalty
17.2.04	Abdul-Karim, Michael S (Complaint by BC (P)) Appeal Panel	pm	Abdul-Karim appeal withdrawn
17.02.04	Abdul-Karim, Michael S (Complaint by Mr Hamod & Bar Council) Appeal Panel	pm & upc	Abdul-Karim's appeal to ADT Appeal Panel dismissed Abdul-Karim appealed to NSW Court of Appeal
05.11.03	Amor-Smith, John S	pm	Removal from roll
24.10.03 – not published	A barrister	upc	Public reprimand
24.10.03 (No.2)	Howen, Alexander S	pm	Public reprimand
24.10.03 (No.1)	Howen, Alexander S	pm	Public reprimand
03.09.03	Abdul-Karim, Michael S (Complaint by Mr Hamod & Bar Council)	pm & upc	Removal from roll
23.07.03	Bryson, John Henry Appeal Panel	pm	Bryson's appeal dismissed

Professional conduct statistics – continued

Table 2 – continued

Financial Year 2003		Previous Findings	Penalty
17.06.03	Abdul-Karim, Michael S (Complaint by Bar Council (P))	pm & upc	Education course, Bar exams
19.05.03	Smith, Mark D	upc	Public reprimand, compensation \$1,000
16.05.03	Thomas, Timothy L	upc	Public reprimand, compensation \$4,000
30.04.03	Tedeschi QC, Mark	No adverse finding	Information dismissed
10.04.03	Van Thieu Nguyen	pm	Public reprimand, fine \$15,000. Struck-off by ADT on 13.8.01
29.01.03	Bryson, John Henry	pm	Public reprimand, fine \$10,000
09.01.03	Donnelly, Bruce L	pm & upc	Public reprimand, education course, no PC prior to 1.3.03
26.09.02	Mitry, Richard	pm	Public reprimand, Bar Practice Course, CLE
18.09.02	Jobson, James A	upc	Public reprimand on one Information, other Information dismissed
13.09.02	Abdul-Karim, Michael S (Complaint by Mr Layouts)	upc	Public reprimand, compensation \$1,137
30.07.02	Greenaway, Richard A	upc	Public reprimand
Financial Year 2002			
12.12.01	Harrison, Thomas E	pm	Removal from roll
16.11.01	Di Suvero, Henry M	upc	Di Suvero's appeal against award of costs dismissed
17.10.01 – not published	A barrister	upc	Private reprimand
13.08.01	Van Thieu Nguyen	pm	Removal from roll

Table 3

Notifications of offences and acts of bankruptcy made by barristers between 1 July 2004 and 30 June 2005 (compared to previous year)

	2004-2005	2003-2004
Tax offences	8 [^]	8 [*]
Acts of bankruptcy	5	5 [#]
Indictable offences	2	0
Prescribed concentration of alcohol	6 [∞]	8
Traffic offences	0	3
Fare evasion	0	3
Other	1	3
Total	22	30

[^] 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.

^{*} Of the eight notifications of tax offences, one barrister notified the council of three tax offences and one barrister notified the council of four tax offences. These have been treated as one notification of tax offences in each case.

[#] Of the five notifications of acts of bankruptcy, one notified the council of an act of bankruptcy and one tax offence. This has been treated as one notification of an act of bankruptcy.

[∞] Of the six notifications of prescribed concentration of alcohol offences, one barrister notified the council of two PCA offences, an indictable offence and an other offence. These have been treated as separate notifications.

Professional conduct statistics - continued

Table 4

**Number of complaints received by complaint type between 1 July 2004 and 30 June 2005
(compared to previous year)**

	2004-2005	2003-2004
Complaint type		
Acting contrary to/failure to carry out instructions	0	3
Acting without instructions	2	0
Breach of s152 <i>Legal Profession Act 1987</i>	1	0
Breach costs disclosure provisions Part 11 <i>Legal Profession Act 1987</i>	2	0
Breach of Barristers' Rule 35 (Clyne case)	1	3
Breach of Barristers' Rule (other)	2	3
Breach of confidentiality	2	0
Conflict of interest	1	1
Conspiracy to pervert course of justice	2	1
Delay/failure to provide chamber work	1	2
Failure to adduce evidence available	5	1
Failure to advise properly or at all	1	4
Failure to appear	2	5
Failure to explain terms of settlement (properly or at all)	1	1
Incompetence in court	1	0
Incompetence in & out of court	4	
Incompetence out of court/in legal practice	2	0
Misleading conduct/dishonesty	6	7
Obstruct/delay proceedings	1	0
Other unethical conduct	3	12
Over zealous cross-examination (harranging a witness)	0	3
Overcharging and/or over-servicing	2	3
Personal conduct	2	3
Practising without a practising certificate	1	0
Pressure to change plea/plead guilty/to settle	1	2
Rudeness/discourtesy	1	1
Total	47	55

Table 5

Complaint received between 1 July 2004 and 30 June 2005 by complainant type (compared to previous year)

	2004-2005	2003-2004
Bar Council	4	5
Barrister	1	0
Client / former client	25	24
Instructing solicitor	2	2
Legal services commissioner	2	2
Opposing client	6	16
Opposing solicitor	2	0
Witness	2	3
Police	1	0
Other	2	3
Total	47	55

Professional conduct statistics - continued

Table 6

Length of time complaints commenced between 1 July 2004 and 30 June 2005 have been and remain under investigation (compared to previous year)

	2004-2005	2003-2004
Less than six months	23	22
Between six and less than nine months	9	11
Between nine and less than twelve months	6	10
Total	38	43

Table 7

Result of Investigations of complaints under Part 10 of the *Legal Profession Act 1987* commenced and completed between 1 July 2004 and 30 June 2005 (compared to previous year)

	2004-2005	2003-2004
Result of investigation		
Complaint under investigation	38	43
Withdrawn	2	3+
Dismiss – s139(1)(a)	0	0
Dismiss - s155(4)	7#	9*
Dismiss – s155(3)(b)	0	0
Refer to tribunal (professional misconduct) - s155(2)	0	0
Reprimand - s155(3)(a)	0	0
Total	47	55

+ The withdrawal of one complaint followed successful mediation of the complaint.

* In the period 2003-2004, one decision by the Bar Council made in 2003/2004 to dismiss a complaint pursuant to s155(4) was the subject of an application for review by the legal services commissioner. That decision was upheld by the commissioner under s160(1)(a). In the period 2003-2004, an application for review by the LSC was also made in respect of a decision made by the Bar Council in 2002/2003 to dismiss a complaint pursuant to s155(4) and in September 2004, the LSC decided to reprimand the barrister.

As at 30 June 2005, no applications for review by the legal services commissioner were made in respect of decisions made by the Bar Council in 2004-2005 to dismiss a complaint pursuant to s155(4)

Professional conduct statistics – continued

Table 8

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

	2004-2005	2003-2004
Result of investigation		
Withdrawn	6	3+
Withdrawn but council initiated complaint under s134(2)	0	0
Dismiss – s139(1)(a)	0	1
Dismiss – s155(3)(b)	0	1
Dismiss – s155(4)	29 [∞]	40*
Dismissed with conditions attached to practising certificate – s155(4)	0	0
Dismiss – s155A	1	1
Dismiss – s160(1)(a)	3	0
Refer to tribunal (professional misconduct) – s155(2)	2	5
Refer to tribunal (unsatisfactory professional misconduct) – s155(2)	1	1
Refer to tribunal (unsats prof conduct/prof misconduct) – s155(2)	2	2
Reprimand – s155(3)(a)	4	3
Reprimand – s155(3)(a), plus pay compensation	0	2
Reprimand plus conditions on practising certificate – s155(3)(a)	0	0
No action required as barrister's name removed from roll	0	0
Investigation transferred to LSC	0	1
Total	48	60

+ The withdrawal of one complaint followed successful mediation of the complaint.

* In the period 2003-2004, 11 decisions made by the Bar Council in 2003/2004 to dismiss a complaint pursuant to s155(4) were the subject of an application for review by the legal services commissioner. As at 30 June 2005, all of those decisions were upheld by the LSC under s160(1)(a). In the period 2003-2004, an application for review by the LSC was also made in respect of a decision made by the Bar Council in 2002-2003 to dismiss a complaint pursuant to s155(4) and in September 2004, the LSC decided to reprimand the barrister.

[∞] In the reporting period 2004-2005, 12 decisions made by the Bar Council in 2004/2005 to dismiss a complaint pursuant to s155(4) 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 under s160(1)(a). After 30 June 2005, a further one of those decisions was upheld by the LSC. As at 25 August 2005, seven decisions remain under review. In the reporting period 2004-2005, two applications for review by the LSC were also made in respect of decisions made by the Bar Council in 2003-2004 to dismiss a complaint pursuant to s155(4). As at 30 June 2005, both decisions were upheld by the LSC.